

VIRGINIA ACTS OF ASSEMBLY -- 2019 SESSION

CHAPTER 652

An Act for the relief of Gary Linwood Bush.

[S 1477]

Approved March 19, 2019

Whereas, Gary Linwood Bush (Mr. Bush) spent almost 11 years in prison within the Virginia Department of Corrections for crimes he did not commit; and

Whereas, on October 6, 2006, a man wearing a baseball cap robbed the Bank of Southside Virginia on Crater Road in Petersburg, Virginia; and

Whereas, a bank teller and a bank manager both erroneously identified Mr. Bush as that man, with those identifications based on each glimpsing that man for a few seconds while he was looking down; and

Whereas, on November 8, 2006, a man robbed a BB&T bank at the Crossings Shopping Center in Prince George County; and

Whereas, a bank teller erroneously identified Mr. Bush as the man who robbed the bank, although she remembered that the man was wearing a baseball cap, and therefore she could only see the lower part of his face; and

Whereas, a construction worker who was working in the BB&T at the time of the robbery testified that he had seen Mr. Bush around town before and also erroneously identified Mr. Bush as the robber; and

Whereas, Mr. Bush denied any involvement in either robbery and testified at both trials that he was in other locations at the time of each robbery; and

Whereas, Mr. Bush provided a palm print sample that did not match the palm print found on the note used during the BB&T robbery; and

Whereas, Mr. Bush also provided a handwriting sample that could not be identified as the same handwriting found on the note used during the BB&T robbery; and

Whereas, in 2007, Mr. Bush was convicted of both robberies and sentenced to a combined 12 years' incarceration for the crimes; and

Whereas, on May 17, 2016, Christian Amos called the Prince George County police and asked to speak with someone about multiple bank robberies; and

Whereas, Christian Amos told a detective that he had robbed both the Bank of Southside Virginia in Petersburg and the BB&T in Prince George; and

Whereas, Christian Amos was unaware that another person had been convicted and incarcerated for those robberies; and

Whereas, Christian Amos at that time provided numerous details that matched those of the November 8, 2006, robbery of the BB&T in Prince George; and

Whereas, Christian Amos provided a handwriting sample that was strikingly similar to the handwriting found on the note used in the BB&T robbery; and

Whereas, Christian Amos pleaded guilty to the BB&T robbery on November 10, 2016, and his plea was accepted by the court; and

Whereas, Christian Amos was sentenced to 50 years' incarceration, with all but five years suspended, for the BB&T robbery; and

Whereas, on June 30, 2017, Christian Amos admitted in a declaration that he also committed the October 6, 2006, robbery of the Bank of Southside Virginia and provided accurate details of that robbery; and

Whereas, Mr. Bush filed petitions for actual innocence on December 15, 2017, based on newly discovered evidence and developments regarding the robberies in the form of the confession, guilty plea, conviction, and declaration of Christian Amos; and

Whereas, the Commonwealth of Virginia did not contest Mr. Bush's petitions before the Court of Appeals of Virginia and instead agreed that his petitions should be granted; and

Whereas, the Court of Appeals conducted an independent review of the petitions and evidence, notwithstanding the Commonwealth's concession of their merit; and

Whereas, the Court of Appeals found that Mr. Bush had proven his actual innocence claim by clear and convincing evidence as required by subsection A of § 19.2-327.11 of the Code of Virginia; and

Whereas, on May 22, 2018, the Court of Appeals granted both of Mr. Bush's petitions and issued writs of actual innocence for both robberies; and

Whereas, the Court of Appeals directed the circuit courts to immediately enter orders of expungement for both robberies; and

Whereas, Mr. Bush served almost the entirety of a combined 12-year sentence for robberies he did

not commit; and

Whereas, Mr. Bush, as a result of his wrongful incarceration, lost almost 11 years of his freedom and countless life experiences and opportunities, including family relations, the opportunity to further his education, and the opportunity to earn potential income from gainful employment during his years of incarceration; and

Whereas, Mr. Bush has no other means to obtain adequate relief except by action of this body; now, therefore,

Be it enacted by the General Assembly of Virginia:

1. *§ 1. That there is hereby appropriated from the general fund of the state treasury the sum of \$520,163 for the relief of Gary Linwood Bush, to be paid by check issued by the State Treasurer on warrant of the Comptroller upon execution of a release of all claims Mr. Bush may have against the Commonwealth or any agency, instrumentality, office, employee, or political subdivision in connection with the aforesaid occurrence.*

The compensation, subject to the execution of the release described herein, shall be paid as follows: (i) an initial lump sum of \$104,033 to be paid to Mr. Bush by check issued by the State Treasurer on warrant of the Comptroller within 60 days immediately following the execution of such release and (ii) the sum of \$416,130 to purchase an annuity no later than September 30, 2019, for the primary benefit of Mr. Bush, the terms of such annuity structured in Mr. Bush's best interests based on consultation among Mr. Bush or his representatives, the State Treasurer, and other necessary parties.

The State Treasurer shall purchase the annuity at the lowest cost available from any A+ rated company authorized to sell annuities in the Commonwealth, including any A+ rated company from which the State Lottery Department may purchase an annuity. The annuity shall provide that it shall not be sold, discounted, or used as securitization for loans and mortgages. The annuity shall, however, contain beneficiary provisions providing for the annuity's continued disbursement in the event of Mr. Bush's death.

§ 2. That Mr. Bush shall be entitled to receive career and technical training within the Virginia Community College System free of tuition charges, up to a maximum of \$10,000. The cost for the tuition benefit shall be paid by the community college at which the career or technical training is provided. The tuition benefit provided by this section shall expire on January 1, 2024.

2. That the provisions of § 8.01-195.12 of the Code of Virginia shall apply to any compensation awarded under this act.