

Not guilty, juror wrote

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By Bret Christian

An extraordinary insight into the mind of the jury at last year's Phillip Walsham murder trial was revealed in the Court of Criminal Appeal this week.

"I cannot find it in my heart to find them guilty," a juror wrote to the trial judge. "These men are not guilty."

She also expressed doubts about the integrity of the prosecution evidence she had heard, and hinted at a different mindset by the other jurors.

The woman juror wrote two letters to the trial judge asking to be discharged from the jury because she had made up her mind that the three charged men were innocent.

The other jurors were not of the same mind, she said.

Justice Eric Heenan then told lawyers for the prosecution and defence about the letter, but not its contents.

He urged the juror to reconsider quitting, then discharged her from the trial.

This week lawyers for the three convicted men argued that they should have been shown the letter during the trial.

They could have taken action, including examining all jurors to see whether they were able to reach a fair verdict according to their oath.

The defence may have applied for the entire jury to be discharged.



» Sam Fazzari, left, his girlfriend Mirella Scaramella, Carlos Pereiras and Jose Martinez. The men are now serving life sentences for murdering Phillip Walsham.

Lawyer Malcolm McCusker QC said this week that at the time of the second letter, the prosecution case had closed and cross-examination of the accused men had not finished.

There were more defence witnesses to be called.

Mr McCusker said the juror revealed that she was being influenced by a prior personal experience.

She wrote: "I too have a young son who fell foul of the law."

At the age of 17 he had felt obligated to "accept responsibility due to circumstances". He was eventually exonerated.

The juror wrote that spaces are filled when evidence is weak.

"I feel that is happening in this (Walsham) case," she wrote.

Appeal Court judge Justice Christopher Steytler said: "She is saying, 'I don't care what anyone says, I am not going to convict these people'."

Mr McCusker said the juror's personal experience had made her more sceptical.

However, Chief Justice Wayne Martin said the judge had acted correctly at the trial, given the contents of the letters.

The two other appeal judges agreed.