

# Walsham Three Freed

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By Bret Christian

Three men walked free from jail on Friday (July 6) after their conviction for the murder of Phillip Walsham was overturned.

Chief Justice Wayne Martin said there were vital gaps in the prosecution case and the convictions could not stand on the basis of speculation.

The effect of the decision by Justices Mertin, Steytler and Miller is that the jury got it wrong.

The judges said the verdict had been unsafe and unsatisfactory.

Justice Martin said two aspects were particularly important:

- The time needed for the men to get back to the scene of the death from their meeting with other people; and
- A gap in the prosecution case relating to what the judge described as "Mr Walsham's fall from the footbridge."

The three men have always maintained that it never happened.

They have served a total of two years in jail, spending much of it working in the Hakea Prison kitchen.

They say that not only did they not push or throw Phillip Walsham to his death, but they were at least six kilometres away at the time and had no reason to want to kill him.

They believe that somewhere out there is a hit-run car driver who knows he or she is responsible for the death of Mr Walsham (21).

Hours after this edition of the POST went to press, the Court of Criminal Appeal was due to hand down its

decision in an appeal by Salvatore Fazzari (28), Jose Martinez (29) and Carlos Pereiras (27).

In April 2006, they were sentenced to life imprisonment for the murder of Mr Walsham by throwing or pushing him off the footbridge at Stirling Station on February 28, 1998.

Last month lawyers for the three men asked three judges of the Appeal Court to overturn the jury's verdict on the grounds that the evidence did not support a guilty verdict.

In other words, they said, the jury got it wrong in April 2006.

The prosecution put to the jury a "flimsy circumstantial case based on prejudice, conjecture and speculation," according to Malcolm McCusker QC, lawyer for Mr Fazzari (POST, 9/6/06).

The three friends came under police suspicion because two of them had kicked Mr Walsham who had been sitting, highly intoxicated, on a bus stop seat near the steps leading up to the footbridge.

It was undisputed at the trial that the three had then left the scene in a car.

They said they never returned, and would not have had time to return from a meeting with friends on a street corner about 4km away.

Mr Walsham was found dying on the freeway on-ramp near the footbridge above 15 minutes after the three men had left.

A witness told the court that she had seen someone fall from the footbridge (see page 7).

Nobody identified the three men on the bridge, nobody saw them return to the bridge or leave again, and despite a thorough search, no forensic evidence connected Mr Walsham to the men or to the footbridge.

The three men were cleared by police of any involvement in Mr Walsham's death in 1998.

But six years later, after an inquest, they were charged with his wilful murder.

The men said that by that time, a large amount of evidence that they said would clear them had disappeared,

including all notes of police interviews.

Mr McCusker argued at the appeal last month that a major problem with the trial had been that the prosecution had invited the jury to speculate by linking the assault on Mr Walsham with his subsequent death.

He said the trial judge should have given a very strong direction warning the jury against "forbidden reasoning", but had not.