

Devastated parents slam 'farcical justice system'

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By Bret Christian

Phillip Walsham's parents slammed the Appeal Court decision within minutes of it being delivered last Friday morning.

At a press conference at their Kingsley home, Mrs Walsham said: "The whole justice system is farcical."

John and Gwen Walsham said they could never accept the court's decision and said the system "stinks".

"To have two trials and all these people having heard the case for 10 weeks and then the judges come along.

"We're absolutely devastated, disgusted, but what can we do about it?" she said.

Mrs Walsham said the latest verdict had left her confused, and she thought the jurors must be wondering why they were involved when their unanimous verdict was overturned by the appeal judges.

The process had left the Walsham family confused, lost and angry, with little hope of achieving justice for Phillip, they said.

Tom Percy QC, who won the high-profile appeals of wrongfully convicted killers John Button, Darryl Beamish and Rory Christie, said justice and the community were not served by charging and convicting the wrong people.

"It is no solace to anyone," he said. "It does not help anybody, least of all the families of the victims."

Last Friday's appeal court verdict was "very, very rare", he said

In 30 years of taking appeals to the Court of Criminal Appeal, he had heard of only two similar WA cases

where a jury verdict was overturned and there was no fresh evidence and no misdirection by the judge.

Such a decision meant that judges were of the opinion that there was no evidence on which a jury could justly reach a guilty verdict.

"It means the court can safely say they should never have been convicted," Mr Percy said.

He said that when police caught someone for a crime, the families of the victim immediately assumed that person was guilty from the moment he was charged.

"It's a mindset they carry with them for years," he said.

"The families of the victims are usually inculcated with great feelings of hatred against the accused.

"The relatives come along to court to make sure the person who has been charged won't get out of it.

"They never have the slightest doubt that the right person is in the dock. To them, the trial is a formality."

The prejudice surrounding charged people was enormous, he said, especially from the moment they were brought into court.

"They are brought up from the cells surrounded by guards and people in 17th century dress, then the indictment is read against them.

"It is completely overwhelming for someone not used to it.

"This prejudice is especially strong in sexual assault cases. You can feel the hatred rising against the accused person as the indictments are read.

"It is like attending an execution without a word said in the accused person's defence.

"Against this, the jury has to try to absorb the judge's instructions to presume the prisoner innocent."

He said if the wrong person was convicted, it was worse for the relatives than if nobody had been arrested for that crime.

"It is very hard to accept that they have focussed their hatred on the wrong person, unless someone else is found and convicted," he said.

Families for the three men exonerated say their legal costs for an inquest, two trials and an appeal lasting a total of 20 weeks came to more than \$1 million.

In addition, they say, the men had spent two years in jail for a crime they did not commit.

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In WA, there is no automatic right to recover costs or compensation in such cases.

It is up to the discretion of the Attorney General.

This week Attorney General Jim McGinty said he would consider an application for compensation.

He said such ex-gratia payouts were rare, and were usually made in cases where a public officer was involved in wrongdoing.

Costs are often awarded in magistrate's courts for failed criminal prosecutions, but never in the District or Supreme Courts.

Defendants in the "bound babies" childcare case were this week awarded about \$10,000 in costs, paid by taxpayers.

The families of the Walsham Three have been financially wiped out by legal costs, even though Malcolm McCusker QC did much of the work for free.

Two of the families have lost their small furniture manufacturing businesses.

In the third, where the breadwinner had retired, he has spent all his superannuation and re-mortgaged the

family home.

At the age of 70, he is now working seven days a week in his trade as a crane mechanic to repay the mortgage.

The three men say that without extra money from their extended families, they could not have fought and won their cases.