

Baumgartner, POLI 203 Fall 2014

Ken Rose and Bo Jones, part 3: The
appeals

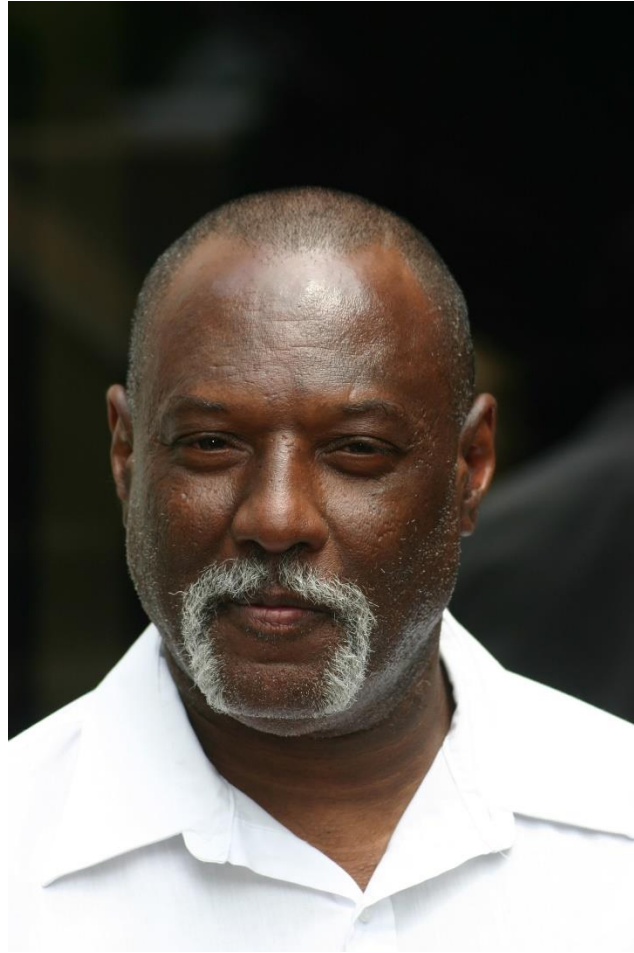
Reading: Second half of *Last Lawyer*

October 27, 2014

Catching Up

- Carolina College Advising Corps, job applications due in January for full time jobs.
- Paper topics
- Exoneration Registry
- “Quiz” today re: your questions for Ken Rose
- Maybe another quiz Wed, surprise

Bo Jones



The trial

- 3 days jury selection
- 1.5 days testimony
- 1 day deliberation: guilty

- Penalty phase
- 1.5 days testimony
- 0.5 days deliberation: death

Death, on that evidence?

- No physical evidence
- Six years later
- Not much of a defense
- Defense attorney: No way they can get 1st degree murder w/o evidence
- Detective and DA: What a surprising / successful outcome, wow!

- Recall DA Britt's statement: Do I have enough to convince a jury beyond a reasonable doubt?

Elements of the Bo Jones Case

- No longer the case:
- Seek permission from the judge to hire experts:
 - Psychiatrist
 - Psychologist
 - Attorney
 - Investigator
 - Social Worker
- DA gets to argue in court that you should not be allowed.
- Now, CDPL controls its own budget, state-wide

Prosecutorial Discretion

- Dewey Hudson, 1993 DA
- He had no choice, the law required that he seek death if there was an aggravating circumstance
- He had misgivings about the case, based on one person's testimony
 - Plus, that person was Lovely Lorden
- His hope, that Bo would take a plea
- Valerie Spaulding, defend the record

Prosecutorial discretion

- McCollum-Brown feedback...
- Johnson Britt (new DA in Robeson County)
- On taking office 17 re-sentencing hearings pending
- He had discretion to defend them or not
- He let 16 of the 17 drop, did not contest them and therefore those individuals are off death row.
- Sentencing hearings \neq trials of guilt

Appeals, part I

- Judge very hostile (The Deacon)
- Old-school judge from when you could get death for robbery, rape, arson
- Ruling 1: Bo Jones is psychologically competent to stand trial
- Ruling 2: The original trial was fair
 - “God bless”

OK, fine, bad ruling from the defense perspective, needs to be appealed

- Six years later, NC SC review: No.
- OK, appeal to federal courts
- Judge Boyle, US District Court, Republican appointee, good or bad luck?

Some things have changed from 1993 to time of the appeals

- Avoid publicity at all costs...
 - Now, publicity can be good for the defense
- A series of other clients were executed during this time
 - Slowed down only in 2003, stopped in 2006
 - Strong effect, as all are defended in the same office

New lawyer on the case

- Mark Kleinschmidt
 - Uh, he's the mayor of Chapel Hill now

Judge Boyle

- Denies 12 claims
 - Bible in the jury room not linked to the outcome and therefore inconsequential
 - Conflict of interest for Graham Phillips similarly ruled not to have affected his behavior...
 - A series of rulings against...
- Accepts 2 claims however
 - Ineffective assistance of counsel at the sentencing hearing
 - Mental capacity

Death, not innocence, on the line

- Judge Boyle accepted arguments about the sentencing hearing
- Can they use that to convince the judge that there were *ALSO* problems of the guilt phase?
- Tall order...

IQ tests and the rule of 70

- Above 70, you are fit to be killed
- Below 70, you are “mentally retarded” and can’t be executed.
- USSC just recently ruled that any such hard numeric rule is unconstitutional