

By Senator Garcia

39-166-02

1 A bill to be entitled
2 An act for the relief of the estate of Frank
3 Lee Smith; providing an appropriation to
4 compensate that estate for Mr. Smith's having
5 been the victim of a miscarriage of justice;
6 providing for a waiver of any claims by the
7 estate of Frank Lee Smith; providing an
8 effective date.
9

10 WHEREAS, on April 14, 1985, 8-year-old Shandra
11 Whitehead was the victim of a brutal rape and murder in
12 Broward County, Florida, and
13 WHEREAS, on May 9, 1985, Frank Lee Smith was indicted
14 for first-degree murder, burglary, and sexual battery in
15 connection with the Shandra Whitehead case, and
16 WHEREAS, Frank Lee Smith maintained his innocence
17 during interrogation by sheriff's deputies assigned to the
18 case, and
19 WHEREAS, Frank Lee Smith was tried and convicted on all
20 counts and received a sentence of death on the conviction for
21 first-degree murder, and
22 WHEREAS, there were no fingerprints, hair fibers,
23 blood, semen, or other physical evidence linking Frank Lee
24 Smith to the crime or the crime scene, and
25 WHEREAS, Mr. Smith was convicted primarily upon the
26 basis of testimony provided by a witness who stated at trial
27 that she recognized Frank Lee Smith as the person who
28 approached her car on the night of Shandra Whitehead's murder
29 in the vicinity of the victim's residence, and
30 WHEREAS, prior to trial, this key state witness
31 provided the sheriff's detective with a description of the man

1 she saw in the vicinity of the murder victim's home which did
2 not match Frank Lee Smith's physical appearance, and

3 WHEREAS, the key state witness subsequently recanted
4 her trial testimony in a 1989 affidavit, stating that she felt
5 pressured by the sheriff's detectives into providing her trial
6 testimony and was certain that Frank Lee Smith was not the
7 person she saw on the night of Shandra Whitehead's murder, and

8 WHEREAS, Mr. Smith remained incarcerated on Florida's
9 death row for 14 years, including 11 years after the state's
10 key witness recanted her trial testimony, and

11 WHEREAS, the state prosecutors or local sheriff's
12 detectives, or both, through negligence or design, continued
13 to maintain that Frank Lee Smith was the perpetrator of the
14 murder even after the recantation of the state's key witness,
15 and

16 WHEREAS, the state prosecutors or local sheriff's
17 office, or both, through negligence or design, failed to
18 investigate evidence implicating another likely suspect as the
19 perpetrator of the crime, and

20 WHEREAS, the other suspect is a relative of the
21 victim's mother who would have been familiar with the family's
22 routines and would have had opportunity to commit the crime,
23 and

24 WHEREAS, the other suspect matches the physical
25 description provided to police by the state's key witness
26 before the arrest and trial of Mr. Smith, for example, with
27 respect to his having a distinctive "droopy eye," and

28 WHEREAS, the other suspect was also under suspicion in
29 a series of other sexual assaults and murders which occurred
30 in Broward County, and Mr. Smith had no criminal history of
31 sexual assaults, and

1 WHEREAS, the other suspect was known to the police at
2 the time of Mr. Smith's arrest in 1985, and

3 WHEREAS, at the time of the recantation by the state's
4 key witness, the other suspect was confined to a state mental
5 institution because he had been found to be incompetent to
6 stand trial for other crimes, and

7 WHEREAS, Mr. Smith died of cancer on January 30, 2000,
8 while in state custody in a facility far from his family and
9 friends, and

10 WHEREAS, Mr. Smith was deprived of having medical care
11 of his own choosing and was without the comfort and support of
12 his family and friends while he suffered through a terminal
13 illness, and

14 WHEREAS, Mr. Smith's sister is a registered nurse who
15 has experience in hospice care and could have provided both
16 medical and spiritual support to Mr. Smith at the end of his
17 life had Mr. Smith not been wrongfully incarcerated for a
18 crime he did not commit, and

19 WHEREAS, DNA evidence was tested by the Federal Bureau
20 of Investigation laboratory, and the FBI report dated December
21 13, 2000, confirms that Frank Lee Smith was not the
22 perpetrator of the rape and murder of Shandra Whitehead, and

23 WHEREAS, the trial court has now set aside the
24 convictions and sentences of Frank Lee Smith in the Shandra
25 Whitehead case, and

26 WHEREAS, Mr. Smith suffered physical, mental, and
27 emotional harm while incarcerated on death row, and

28 WHEREAS, Mr. Smith and his family suffered shame,
29 humiliation, and mortification from being associated with a
30 heinous crime committed against an innocent child, and

31

1 WHEREAS, considering the totality of the circumstances,
2 a gross miscarriage of justice occurred, and agents of the
3 state and local law enforcement officials cooperated in that
4 miscarriage, either negligently or deliberately, NOW,
5 THEREFORE,

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. There is appropriated from the General
10 Revenue Fund to the Department of Corrections the sum of \$3.5
11 million for the relief of the estate of Frank Lee Smith as
12 full and complete compensation for Mr. Smith's having been the
13 victim of a miscarriage of justice.

14 Section 2. Acceptance of payment of this claim by the
15 estate of Frank Lee Smith constitutes a waiver of any cause of
16 action that the estate of Mr. Smith has against the State of
17 Florida or any of its political subdivisions, officials,
18 employees, or agents, or against the Broward County Sheriff's
19 Office or any of its officials, employees, or agents, arising
20 from the conviction, sentence, and incarceration of Frank Lee
21 Smith in the Shandra Whitehead case.

22 Section 3. The Comptroller is directed to draw a
23 warrant in favor of the estate of Frank Lee Smith in the sum
24 of \$3.5 million upon funds of the Department of Corrections in
25 the State Treasury, and the State Treasurer is directed to pay
26 the same out of such funds in the State Treasury.

27 Section 4. This act shall take effect July 1, 2002.
28
29
30
31

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31

SENATE SUMMARY

Provides an appropriation to compensate the estate of Frank Lee Smith for Mr. Smith's having been the victim of a miscarriage of justice; Provides for a waiver of any claims by the estate against the state or the Broward County Sheriff's Office or any subdivisions, agents, or employees of either entity.