

1 Brief Survey of the Commission's Decision

Chapters 2 and 3 give a survey of the history of the proceedings and the circumstances of the case. Fredrik Ludvig Fasting Torgersen was sentenced to life imprisonment by Eidsivating Court of Appeal on 16 June 1958, and up to 10 years' preventive supervision in the event of a release. Torgersen's appeal was dismissed by the Supreme Court 1 November 1958. He petitioned for a review in 1973. The Court of Appeal rejected the petition 27 June 1975. The Interlocutory Appeals Committee of the Supreme Court rejected Torgersen's interlocutory appeal 31 May 1976. Torgersen again petitioned for reopening in 1997. This petition was rejected by the Court of Appeal 18 August 2000, and Torgersen's interlocutory appeal was dismissed by the Interlocutory Appeals Committee of the Supreme Court 28 November 2001. Torgersen petitioned for a review to the Norwegian Criminal Cases Review Commission 25 February 2004, with final grounds on 5 April 2005. The Public Prosecuting Authority filed its statement 2 December 2005.

Chapter 4 gives a survey of the Commission's processing of the petition. The Commission has considered a considerable volume of material in the case. The Commission has conducted an independent evaluation of the total evidentiary material without being bound by previous decisions regarding reopening of the case. An oral hearing was held from 27 to 30 March 2006 concerning certain aspects of what has been termed the bite-mark evidence, pine-needle evidence and faeces evidence.

Chapter 5 discusses certain aspects of the evaluation of evidence in criminal cases, stressing the importance of the accused being given the benefit of any reasonable doubt. It is also emphasized that the evaluation of evidence often relies on an assessment of several elements which individually may carry varying evidentiary weight. It is not a requirement that each single element be proven beyond a reasonable doubt, provided that no reasonable doubt prevails about the conclusion after an overall evaluation of the elements.

In the petition for reopening, the part played by the expert witnesses was given special focus, and **Chapter 6** discusses certain aspects relating to expert witnesses in criminal cases.

Chapter 7 discusses petitioning for reopening under the Criminal Procedure Act Section 391 sub-s. 1. The provision can *inter alia* give grounds for reopening if there are clear indications that a witness gave false evidence, or if criminal offences were committed by the prosecuting counsel, police, public prosecuting authority or expert witnesses. The Commission did not find any such indications.

Chapter 8 discusses petitioning for reopening under the Criminal Procedure Act Section 391 sub-s. 3 and under Section 392, second paragraph. Under Section 391 sub-s. 3, a reopening may be petitioned based on new evidence or circumstances that seem likely to lead to an acquittal. Under Section 392, second paragraph, a reopening may be petitioned when special circumstances render it – for judgments prior to 1 January 1980 - very doubtful whether the judgment is correct, and weighty considerations dictate that the question of the guilt of the convicted party be tried again. The provision is meant as ”a safety valve of last resort”.

The chapter deals thematically with the grounds for reopening as cited. For each theme, initially there is a survey of the proceedings in 1958 and during the two reopening cases from 1973-76 and 1997-2001. It then lists the main items in the submissions by the convicted party and the prosecuting authority in the 2005 petition, followed by the Commission’s opinion. The Commission agrees to a large extent with the assessments made by the Court of Appeal and the Interlocutory Appeals Committee of the Supreme Court in 2000 and 2001.

Regarding the bite-mark evidence, the Commission points out that the interpretations and conclusions, contradictory in part, by a large number of experts are likely to create uncertainty about the extent to which the said evidence links Torgersen to the offence. The position of the bite-mark evidence has not altered very much since the decision by the

Interlocutory Appeals Committee of the Supreme Court in 2001. The Commission again does not find that the faeces evidence gives grounds for a reopening, and would draw particular attention to the evidentiary picture surrounding this evidence, the faeces found at the scene of the crime, on the victim, on Torgersen's gym shoe, in his pocket and matchbox, as well as similarities between the various samples. Again, the pine-needle evidence does not give grounds for reopening. Even if genetic identity can not be ascertained, the Commission finds it to be clearly most likely that the pine-needles found on Torgersen are from the scene of the crime.

In the same chapter, the Commission goes on to deal with submissions regarding certain witnesses, the picture at the crime scene, the evidence at the crime scene, on the victim and on Torgersen, the time of death, the possible alibi and other observations by witnesses regarding Torgersen and the movements of the victim. None of these circumstances gives grounds for reopening. The Commission points out *inter alia* that Torgersen's statement as to what he was doing in the period around the time of the homicide is contradicted by the testimonies of witnesses clearly found credible by the jury. During the 1958 trial, Torgersen identified a witness as the unknown Gerd who was alleged to have gone home with him on the night in question. Many years later, he admitted that this was not true. The jury clearly assumed that Torgersen was lying about this during the trial, which worked in his disfavour. The Commission finds no reason to assess this differently than in 1958.

Chapter 9 discusses certain other matters that have also been raised in previous petitions. This concerns Torgersen's attitude to giving a dental impression and hair sample, the question of alterations to Torgersen's teeth from 1958 to 1960, and matters concerning the so-called Klemetsen declaration. Finally, the Commission makes some comments on a joint declaration of 18 September 2006 to the Commission from 10 expert witnesses summoned by Torgersen, and on the communication of 22 November 2006 from Professor Eskeland regarding other possible perpetrators.

Chapter 10 gives a brief overall evaluation of whether the conditions for a reopening of the case have been fulfilled. The Commission states that

there are again no grounds for reopening after assessing the current Section 392 second paragraph, as it is not “doubtful” whether the judgment is correct.