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## Wrongfully convicted, Artis Whitehead is free after 21 years but fettered

By [Julia Baker](#), Daily Memphian

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**Artis Whitehead rejoices outside the Walter L. Bailey Jr. Criminal Justice System after finding out he was exonerated by Shelby County Criminal Court Division 2 Judge Jennifer Fitzgerald. Whitehead served nearly 21**

**years in prison for a robbery that occurred at B.B. King's restaurant on Beale Street in 2002.** (Carter Malone Group)

Artis Whitehead is adjusting to the outside world after serving nearly 21 years of a 249-year prison sentence for a 2002 robbery he did not commit.

After his conviction was overturned, Whitehead walked out of prison Dec. 15, and Shelby County Criminal Court Division 2 Judge Jennifer Fitzgerald exonerated him Jan. 31.

### 'I was choked up': Governor restores voting rights to Office of Re-Entry director

"It's an adjustment, but for the better part, I feel relieved, like I've had a large weight lifted off of my shoulders," Whitehead told The Daily Memphian.

He was convicted in November 2003 for a May 9, 2002, robbery that occurred at B.B. King's restaurant on Beale Street. A man entered the restaurant through the back door and held several employees and a produce delivery driver captive, taking their valuables and injuring two people.

At 39 years old, Whitehead was convicted on 12 counts, including multiple counts of especially aggravated kidnapping and aggravated assault.

He missed his four children growing up, the youngest of whom was around 5 when Whitehead was convicted.

"It's hard trying to raise children from a penitentiary setting," Whitehead, 60, said. "Because you miss graduation, you miss birthday parties. You miss the little scrapes and the falls. You miss being able to actually guide them, give them the proper encouragement, do the proper things throughout life."

### Appeals court upholds Pervis Payne sentencing decision

His parents helped raise his kids. But he has since lost both of his parents, as well as his grandparents.

Whitehead is getting acclimated to the real world while living between New York City and Nashville. He's spending time with his five grandchildren, looking for a new job and getting used to technology he has never been exposed to before.

In 2019, Whitehead began working with the Tennessee Innocence Project, an organization that represents convicted people claiming their innocence. He is the first TIP client in Memphis and the sixth in the state to be exonerated.

Most of the time during his incarceration, Whitehead said he was pro se, meaning he represented himself in legal proceedings. He said there was a lot of evidence that wasn't turned over to him as a result.

"And they were able to come on board and gain access to stuff that I didn't even know existed," Whitehead said of TIP.

### Tennessee Innocence Project to open Memphis office



**Artis Whitehead poses with Jessica Van Dyke, executive director and lead counsel for Tennessee Innocence Project. Whitehead was exonerated by Shelby County Criminal Court Division 2 Judge Jennifer Fitzgerald Jan. 31 after he served nearly 21 years in prison for a 2002 robbery. (Carter Malone Group)**

“To see the charges dismissed exactly 21 years to the day that he was arrested — it took too long, but we finally got here,” said Jessica Van Dyke, executive director and lead counsel from TIP. “There’s nothing better than greeting a client outside of prison for the first time.”

After reviewing Whitehead’s case, Shelby County District Attorney General Steve Mulroy said his office “found critical errors” and “deviations from standard police

procedures.”

The DA’s office will not seek a retrial and dismissed all of his charges.

### **‘I couldn’t understand why and how’**

Before Whitehead was arrested, he worked as a house manager for the Whitehaven Development for Children. He had worked in social services since he was 18 years old.

At the time of the robbery, he was undergoing training to run the organization’s four group homes.

“I couldn’t understand why and how,” Whitehead said of his arrest.

500 days in jail: Lawyers, judges, case volume, bail all part of keeping defendants at 201

The Memphis Police Department picked up — and released — another suspect before Whitehead.

Whitehead’s arrest followed a CrimeStoppers tip implicating him in the crime. The tip came from acquaintance Greg Jones, who was under arrest for two aggravated robberies that occurred in the fall of 2002.

During a federal sentencing hearing, an MPD detective admitted Jones falsely implicated suspects in a Union Planters robbery.

Jones later admitted to falsely accusing Whitehead in the Beale Street robbery.

“Nobody told me anything,” Whitehead said. “They didn’t share that information.”

500 days in jail: Shelby County routinely keeps people locked up, without trial, for more than a year

As a result of Jones’ tip, Whitehead’s photo was put into a photo lineup.

Memphis Police contacted five victims for help with identification; one picked Whitehead out before his arrest. A second identified Whitehead after he was arrested.

Two witnesses testified in Whitehead's trial that the robber's appearance had changed from the robbery to the trial.

The witnesses described the robber as a slim Black male between 5-foot-4 and 5-8. But Whitehead was described as a weightlifter who was more than 6 feet tall and weighed more than 200 pounds.

None of Whitehead's alibi witnesses or "key individuals" — including a training facilitator, direct supervisor and director of the program — testified during the trial.

### Tennessee Innocence Project director talks wrongful convictions at NAACP meeting

Whitehead chose not to testify.

"It was nothing for me to actually say," he said. "I mean, the evidence should have spoke for itself if anybody would actually took the time to examine it after all these years as Judge Fitzgerald did. She sat down and examined the facts. And that's all they had to do from the very, very beginning."

While in the Hardeman Correctional Facility, Whitehead channeled his frustration by studying law, representing himself when filing his own post-conviction petitions and becoming a legal aid for the Tennessee Department of Corrections.

"I couldn't get an attorney to take my case and to represent me in the manner that I felt that I needed to be represented," Whitehead said.

Whitehead filed a direct appeal on his convictions in 2006, which included claims that there were errors in admitting evidence and insufficient evidence on the robber's identity. Judge John Everett Williams of the Court of Criminal Appeals of Tennessee at Jackson affirmed the convictions and sentencing. Williams died in 2022.

## MICAH pushes for a conviction review unit at virtual town hall

Whitehead also filed multiple post-conviction petitions, the first in 2008 and the last in 2023.

Among the allegations in the petition:

- His counsel, Howard Wagerman, failed to call on a key witness who supported his alibi, to bring forth other witnesses who had given different descriptions of the robber, to communicate the legal aspects of the case to Whitehead, to present other suspects to the jury, and to divulge a potential conflict of interest with a partner who represented Jones.
- The State of Tennessee engaged in prosecutorial misconduct by failing to identify Jones as the confidential informant who implicated Whitehead in the case and reveal Jones had been compensated for the tip.

Whitehead also filed a petition for writ of coram nobis, which cites new or previously unknown evidence that could potentially prove a convicted person's innocence, on June 1, 2023, which stated Jones admitted he falsely implicated Whitehead in the crime.

A two-day hearing was held September 6-7, 2023, where nine witnesses testified. One of the witnesses, Judge Mark Fishburn, a retired judge from Nashville, said Wagerman "absolutely had a conflict of interest" with Scott Hall, who represented Jones and should have notified Whitehead.

## Destroyed evidence offers little chance of redemption for convicted

Another witness, attorney Lucian Pera, said a second conflict of interest involved Michael Robbins, who drafted an appellate brief for Whitehead while also representing Jones.

Fitzgerald considered dozens of findings in her ruling before granting Whitehead's right to a new trial and post-conviction relief. They include:

- Police detectives did not independently investigate the identity of the shooter beyond photo lineups to confirm what Jones told police.
- The state committed a Brady violation by not identifying Jones as the confidential informant.
- No physical evidence, including fingerprints, linked Whitehead to the crime.
- Whitehead's defense counsel failed to investigate the conflict of interest with Jones' attorney, even when he was informed of Jones' identity mid-trial.
- The defense failed to present a law enforcement expert at trial to question the police investigation, including that they lost a statement from a witness.
- The prosecutor made improper statements intended to mislead the jury, and the defense counsel neglected to object to them.

Whitehead is eligible for compensation of up to \$1 million, but before receiving any money, Tennessee's governor must officially exonerate him after a recommendation from the Tennessee Board of Parole. Lawrence McKinney was last person to receive state compensation after Gov. Bill Haslam officially exonerated him in 2018, according to the Carter Malone Group, public relations firm for TIP.

Whitehead said his experience gave him a different outlook on life and was a learning experience.

### Nashville Conviction Review Unit could be a model for Shelby County

From everything he learned, he wants the public to understand how flawed the criminal justice system can be.

"People sit on juries, and are not given the full scope of the cases that they're sitting on," Whitehead said. "And I say that because I'm looking at all of the information that was hidden in my case. So they need to understand that this is very, very real. If it weren't for wonderful organizations like TIP and people like Jessica (Van Dyke) and Jason (Gichner), the system would remain in shambles."

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### **Julia Baker**

Julia Baker covers Memphis and Shelby County's law enforcement agencies and is a member of The Daily Memphian's public safety reporting team. A lifelong Memphian, Julia graduated from the University of Memphis in 2021. Other publications and organizations she has written for include Chalkbeat, Memphis Flyer, Memphis Parent magazine and Memphis magazine.

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