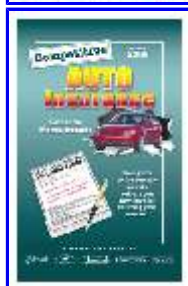


# Police chief's killer seeking new trial

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**Michael Souza**

WORCESTER - Thirteen years after he was sentenced to life without parole at MCI Cedar Junction (Walpole) for the murder of Paxton Police Chief Robert J. Mortell, Michael D. Souza was in Worcester Superior Court on April 30 trying to convince Justice Peter Agnes that he deserves "release from unlawful conviction" or at the very least, a new conviction" or at the very least, a new

Chief Mortell, 38, was killed on February 1, 1994 while attempting to apprehend three burglary suspects in Holden. Souza, 25, and 22-year-old Kenneth Padgett were convicted of first degree murder and sentenced to life without parole. The third suspect, Jamie C. Riccio, 22, waived trial and pleaded guilty to second degree murder, and is eligible for parole in 2019. All three are from Worcester.

At the time of the murder, Holden police reported that Souza had been in and out of prison since the age of 17 and had a history of 156 prior offenses, 93 percent of which were felonies.

Souza was found guilty on March 29, 1995 of 11 criminal charges; sentence was imposed on April 11. As is legal custom, an appeal of the verdict was filed on April 18 and an appeal of the sentence on April 18.

Since then, Souza has filed more than 60 motions related to the case, including for previous requests for new trials, copies of transcripts, and new counsel. He refused counsel and represented himself at last Wednesday's hearing.

Souza, now 39, arrived at court in handcuffs wearing prison-issue gray clothes, with a packet of documents that he referred to frequently.

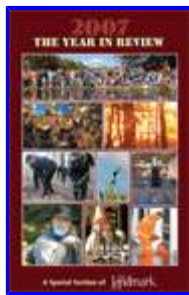
Judge Agnes said he was assigned to this matter because of the number of motions by Souza over the years that have not been addressed by the court.

"It has been indicated to me that there are particular issues that occurred before, during or after your trial that you believe constitute reason for a new trial," he said. "I'll give you 30 minutes to present these issues you think worthy of my attention for the court to consider."

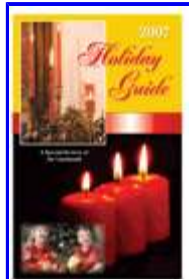
Agnes said Assistant District Attorney Elyn H. Lazar-Moore would then have 30 minutes to respond on behalf of the Commonwealth.

Agnes said, "I'll review the case and decide if there should be an evidentiary hearing. If a hearing can proceed with the evidence we already have."

### Potential conflict



Souza said his trial attorney, Michael Hussey, was arrested on March 16, 1994 by police, but that his arrest file was kept secret and not allowed to be entered in Souza proceedings. He said that the trial judge was approached about the case, Hussey's report destroyed, and Hussey was told that he was now under obligation to the po prior to Souza's trial.



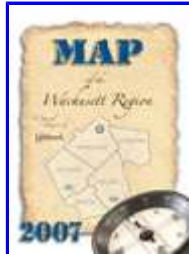
"There was a potential conflict of interest from that arrest. There was an absolute c of interest," Souza said. He said withholding the report by the police denied the co its right of discretionary powers. "Police stated to Attorney Hussey that he 'would b working for them in court,'" Souza said.

Agnes said the matter of Hussey's arrest was not secret, that it had been reported media, and known to the public.



"Apart from it appearing in the press, what is it that occurred at your trial or didn't c your trial, that hurt your case?" Agnes said.

Souza said he was prevented from declaring that the case was one of self-defense had no choice" - but the self-defense plea was never raised. He claimed Hussey t jury that self-defense was not the issue, only whether Souza was guilty of the char murder, because it was Padgett who was the shooter. He said the jury was not giv correct instructions as to the self-defense possibility.



Agnes reminded Souza that the full Supreme Judicial Court reviewed the instructio the jury in the case, and found no error in the judge's instructions.

"What is it you say we should consider was in error?" Agnes persisted. "At trial an appeal, you said you didn't want a selfdefense plea, and now you're saying it was attorney's fault because he didn't introduce a self-defense position. The focus now what occurred or didn't occur, that prejudiced you, that was in error? It's not my rol speculate what might have happened if the trial had gone another way. My role is determine if there was in error.



"You must provide concrete evidence that something occurred that prejudiced the and affected the outcome of the trial... I'm not here to retry the case."

His time nearly up, Souza added that he was not allowed to change the venue of t and that he did not receive good advice from his counsel.



### DA's side

ADA Lazar-Moore took only a few minutes to refute Souza's claims. She said ther no suggestion that there was anything hanging over Hussey's head that in any wa have affected Souza's trial, or that the defense attorney did anything but a good jo defending Souza.

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She said that despite Souza's appeals, the Supreme Judicial Court determined th instructions the trial judge gave the jury were correct.

Agnes offered Souza a chance for rebuttal.

"Nobody has the right to deny the jury access to information regarding Hussey's a

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and implied conflict of interest," Souza said.

"I will take it under advisement," said Agnes, and closed the hearing.

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