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Brown's office reconsidering motion seeking to send Lisker back to prison

By MATT LAIT AND SCOTT GLOVER, LOS ANGELES TIMES SEP. 3, 2010 | 12 AM

A spokesman for California Atty. General Jerry Brown said Thursday that his office was reconsidering a move to have a man whose murder conviction was overturned last year sent back to prison on procedural grounds.

The announcement came about 24 hours after state lawyers had asked a judge to reverse her decision to overturn the murder conviction of Bruce Lisker. That ruling set Lisker free after he had served 26 years behind bars.

The state attorneys had argued that Lisker, convicted of killing his mother in 1985, should be sent back to prison because the U.S. 9th Circuit Court of Appeals ruled in July in another case that inmates cannot file “untimely” petitions for release even if they can prove they are innocent.

Lisker, now 45, had missed a statutory deadline in which to file his petition but was allowed to pursue his wrongful conviction claims because he met an “actual innocence” exception, U.S. District Judge Virginia A. Phillips ruled in August 2009.

Phillips overturned Lisker's conviction after finding that he had been convicted on “false evidence” and that his original attorney did not adequately represent him.

The judge's findings mirrored those of a 2005 Times investigation that raised questions about key elements of the prosecution's case against Lisker and exposed the LAPD's murder investigation as sloppy and incomplete.

Thursday afternoon, after The Times' website posted a story about the attorney general's new motion, Brown spokesman Jim Finefrock issued a news release stating that a chief deputy in Brown's office was “reviewing” the filing of the motion.

Asked whether that meant the decision to pursue the case was being reconsidered, Finefrock said yes.

Earlier in the day, in a telephone interview with The Times, Lisker called the filing of the motion “an absolute kick in the gut.”

“This is an end run around justice ... It’s outrageous,” he said. “Prison is hanging over my head once again.”

Upon being told that the motion was being reconsidered, Lisker’s attorney, William Genego, said Thursday afternoon, “I’m hopefully optimistic that they’ll do the right thing and withdraw the motion.”

The attorney general’s motion hinges on the 9th Circuit’s decision in Lee vs. Lampert. In that case, Richard Lee’s conviction for child sex abuse and sodomy had been overturned by a district court judge even though Lee had missed a federal deadline in which to file his habeas corpus petition. As in the Lisker case, the district court judge determined after evidentiary hearings that Lee had met an “actual innocence” exception to the deadline.

In the 9th Circuit ruling, the judges noted the overturning of Lisker’s conviction and said there was a “widening split among the district courts of our circuit on whether there is an actual innocence exception.” They concluded that no such exception exists and reinstated Lee’s conviction.

In order to prevail on a habeas corpus claim in federal court, proving one’s innocence is not enough — a defendant must show that his or her constitutional rights were violated at some point in the legal process.

Because of the Lee decision, the attorney general contends in the motion that Phillips should vacate her ruling in Lisker’s case.

Genego said he found it ironic that the attorney general, who had decided not to pursue an appeal of Phillips’ ruling last year when the office was given 30 days to formally challenge the decision, is attacking Lisker for missing a deadline.

Instead of appealing the judge's ruling at the time, the attorney general sent the case back to the district attorney to prosecute Lisker again for the slaying of his 66-year-old mother, Dorka. Prosecutors ultimately dropped the case, citing a lack of evidence.

"It really shows the perverse view of the legal system that they have," Genego said.

Eric M. Freedman, a constitutional law professor at Hofstra University and a defense consultant in the Lee case, called the motion in the Lisker case "thoroughly misguided."

He said it should be denied on procedural grounds because the attorney general had an opportunity to appeal the judge's earlier decision and failed to do so.

L.A. County prosecutors and state attorneys have said they still believe Lisker committed the slaying.

Lisker's legal saga began March 10, 1983, when he said he found his mother badly beaten and stabbed in the family's home in Sherman Oaks and called paramedics for help.

Detectives were immediately suspicious of Lisker, a frizzy-haired 17-year-old with a history of drug abuse and fighting with his mother. His relationship with his parents had deteriorated to the point that they were paying for him to live in a nearby studio apartment.

Lisker's conviction was overturned when Phillips concluded that most of the evidence used to implicate him in the crime had been seriously undermined or proved false.

For example, a bloody shoe print that prosecutors used to link Lisker to the killing has since been determined by the LAPD not to have been made by his shoes. Additionally, an LAPD crime analyst now says a bruise on the victim's head was an apparent shoe impression that did not match the treads of Lisker's shoes but was "similar in size and dimension" to the mysterious bloody shoe print found in the house.

In the year since his release, Lisker has been living with a girlfriend in Marina del Rey. He has traveled to Hawaii, Europe and Northern California. He has enrolled in Santa Monica College but has been unable to find a steady job.

He has also sued the LAPD detective who investigated his mother's slaying, claiming that the detective framed him. That case is scheduled to go to trial next year.

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