

The Legal Intelligencer

Cop Shooter: Technical Violations Shouldn't Cause Return to Prison

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A state prisoner, acquitted this spring of murdering a Philadelphia police officer because the police officer died more than 40 years after the prisoner shot the police officer, is arguing that he deserves to be released on parole in part because of prison reform legislation that no longer requires that parolees be returned to prison for minor violations of parole.

William Barnes was prosecuted earlier this year by the Philadelphia District Attorney's Office on the charges of first-degree murder, second-degree murder and third-degree murder. After six hours of deliberation in May, a Philadelphia jury acquitted Barnes of Philadelphia Police Officer Walter Barclay's death in 2007.

Prosecutors tried to link the bullets Barnes shot into the police officer's body more than 40 years earlier. They argued that Barclay's death from urinary tract and bed sore infections that went septic was caused by the bullets Barnes fired in 1966. The defense argued there were several intervening events including three car accidents and two falls out of wheelchairs that disrupted the chain of causation connecting Barclay's trauma in 1966 to his death 41 years later.

After Barnes was acquitted in May, he did not become a free man. He is being held on technical parole violations, which include the possession of car keys and a cell phone.

In Barnes' petition for parole, his attorneys Samuel W. Silver, Bruce P. Merenstein and Nilam A. Sanghvi of Schnader Harrison Segal & Lewis in Philadelphia argued that "Mr. Barnes has exhibited the precise type of conduct, both within the correctional institution system and outside, that warrants the granting of parole," the petition said. "He has frequently and without hesitation expressed remorse and accepted responsibility for his past crimes. He has demonstrated that he will be a contributing member of society and will give back to his community. And there is no basis to believe he will return to his former criminal ways, something that he has not done in more than 20 years, particularly given his advanced age." Barnes worked for a grocery store when he was paroled earlier.

After Barnes' conviction for shooting Barclay, he committed and was convicted of further crimes, including two robbery charges, a charge of escaping prison and a charge of possession of a

weapon or implement in escape, Barnes' petition said. By 1983, Barnes was imprisoned for another 17.5 to 42 years in prison, and he began serving that sentence Dec. 12, 1988.

The Board of Probation and Parole determined in 2005 and 2007 that Barnes could be safely released, Barnes' petition said. Barnes was granted pre-release in 2005 in the months before he became eligible for parole June 12, 2006. After a heart attack in 2006, he was returned to the custody of the state Department of Corrections, but he was released in June 2007.

After Barclay died Aug. 19, 2007, Barnes was picked up for questioning by homicide detectives and he was found in possession of a cell phone and car keys, the petition said.

Barnes had been told he could own a car by his parole officer but he was picked up by the detectives before he obtained formal permission, according to the petition. And Barnes had the cell phone because he had not yet received a Life Alert pendant and he needed the phone in the event of another serious health incident, he argues.

For those technical parole violations, Barnes was held for three months' incarceration, the petition said.

Barnes also argues that because he was acquitted of Barclay's murder and because he already served "backtime" for the parole violations he should be released.

In an interview, Silver and Merenstein said that Barnes' release would be in keeping with the spirit of the new prison reform law.

"Now we have new law," Silver said "... If [parolees] were found to be appropriate candidates for parole and clearly found that they were not a risk to society and ... it was the best interest of all involved ... Clearly, the new intent of the law is that this sort of person should not be reincarcerated. The cost to the taxpayers, commonwealth, is very high."

In Barnes' petition, his attorneys said Barnes is not basing his parole request "on the modern trend in the corrections field to treat minor technical violations differently than serious parole violations and to address them with solutions other than incarceration." The reference to that trend was made to show that granting Barnes parole is "consistent with the modern trend in fiscally sound, evidence-based parole policy and the public policy of the commonwealth of Pennsylvania," the petition said.

Among other measures, the statute, signed into law by Gov. Edward G. Rendell Oct. 27, addresses technical parole violations, or more minor violations of parole such as failing to report to a parole officer. The law sets out a graduated sanctioning regime for parole violators instead

of automatically returning technical parole violators to prison. Violations are divided into low, medium and high-level categories and sanctions would be based upon the level of violation.

State Sen. Stewart Greenleaf, R-Montgomery, sponsored the prison reform legislation at a time that Pennsylvania's correctional system is at 115 percent of capacity and because 2,000 inmates are added to the system every year.

Forty-six percent of defendants are reincarcerated within three years of their release on parole because of technical parole violations, *The Legal* previously reported.

The Philadelphia district attorney is opposing Barnes' application for parole.

Assistant District Attorney Edward Cameron said he has written a letter opposing Barnes' parole petition.

Barnes has not finished serving his attempted murder sentence, Cameron said. Barnes has not shown the appropriate level of remorse, and he was not able to "follow very clear and very simple" directions to not possess an automobile or a mobile telephone, Cameron said.

Silver questioned why prosecutors, who now oppose Barnes' parole, offered Barnes a plea deal that would not have kept him in prison for longer than he had already served.

The District Attorney's office offered a plea bargain for Barnes to plead guilty to third-degree murder, which is punishable by up to 10-20 years in state prison, with the condition he receive credit for 16 years of time served, *The Legal* previously reported. Barnes served 16 years of a 10- to 20-year state prison sentence on the prior conviction of attempted murder in the Barclay shooting, *The Legal* also previously reported.

Cameron said his office, in extending the offer, would have taken a different view on Barnes' parole if he demonstrated the appropriate level of remorse. He said opposition to parole was because of Barnes' behavior since the offer was made and not because of the jury's acquittal.

The Legal previously reported that Barnes declined the offer, according to Silver, because Barnes felt he could not honestly say that those shots, fired four decades earlier, made him a murderer. Barnes never disputed that he had shot Barclay.

Barclay's surviving relatives also plan to oppose Barnes' parole, Cameron said.

Leo Dunn, a spokesman for the state Board of Probation and Parole, said that Barnes' application is on the November docket, and he will be interviewed this month or next month.

The prison reform law only applies to parolees prospectively, Dunn said, so Barnes' technical violations do not entitle him under the law to more intermediate sanctions, which involve placements at technical parole violation centers.

If Barnes is not released, he may be in prison until the age of 94, or until 2030. •

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