

March 15, 2011

Controversial convictions upheld

In a split decision with a strongly worded dissent, local appellate judges decided 2-1 today to uphold the convictions of three men even after someone later confessed to helping frame them for crimes they didn't commit.

The Division III Court of Appeals upheld the 2009 robbery and drive-by shooting convictions of Paul E. Statler, Robert E. Larson, and Tyler W. Gassman. Attorneys for the three men asked for new trials after another man, Anthony Kongchunji, apologized in writing for conspiring with another defendant to blame Gassman, Statler and Larson for robbery and drive-by shooting.

Judges Stephen Brown and Dennis Sweeney supported the decision to uphold the convictions, but Judge Teresa Kulik dissented in all three decisions, writing that attorneys for Gassman, Statler and Larson provided a "deficient performance" that prejudiced their clients "to an extent that undermines confidence in the outcome of his trial and creates a serious likelihood that justice has not been done."

"I, therefore, dissent from the majority," Kulik continued. "I would vacate (all three defendants') convictions and remand for a new trial."

The same three judges in January upheld a \$2,000 sanction levied against the Spokane County Prosecutor's Office for how it handled the cases.

In what she said was the first major sanction she levied in her career, Superior Court Judge Tari Eitzen fined Deputy Prosecutor Eugene Cruz after he waited until the day the trial was set to begin to change the date of the alleged offense from April 15 to April 17, 2008.

Defense attorneys argued in 2009 that Cruz's actions hurt their cases because all three defendants had alibis for the original date of the alleged crime.

After sanctioning Cruz, Eitzen allowed the case to go forward and a jury in February 2009 convicted Larson, Gassman and Statler of first-degree robbery, first-degree assault and drive-by shooting. A fourth defendant, Kongchunji, took a plea deal before trial.

Kongchunji then wrote a letter to Stater's father, apologizing for what he had done.

“I thought that I should let you know that Paul, Tyler and Robert were not involved with any of the alleged incidents ... because I was involved,” Kongchunji wrote. “The prosecution has threatened me with more charges if I was to get on the stand and tell my story.”

Superior Court Judge Michael Price denied attorneys’ requests for a new trial because the attorneys did not call Kongchunji to testify.

Price then sentenced Gassman to about 26 years, Statler to 41 1/2 years and Larsen to 20 years in prison.

The case went to appeal, and attorneys for all three defendants late last year argued for a new trial based on the Kongchunji letter. The case included Amicus briefs filed by attorneys from New York and from the Innocence Project Northwest Clinic.

But Judge Brown, writing for the majority, discounted arguments that changing the date of the offense prejudiced Gassman, or that the attorneys for Larson and Statler provided ineffective counsel for not calling Kongchunji to testify at trial.

“Any impact Mr. Kongchunji could have had on Mr. Statler’s trial ... is merely a possibility not a probability,” Brown wrote. “Given all, Mr. Statler does not show the trial outcome would probably change if Mr. Kongchunji testified. This factor alone gave the court tenable grounds to deny the motion for a new trial ... based on new evidence.”