

Prosecutor will try to appeal Brush ruling in Supreme Court

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SOUTH BEND — Pacific County Prosecutor David Burke announced last week that he will try to appeal a controversial ruling about murderer Brian Brush's prison sentence in the state's Supreme Court.

Originally, Brush, who fatally shot his girlfriend Lisa Bonney in September 2009, was convicted of first-degree murder and sentenced to 88 years in prison. But in an opinion filed May 12, the Court of Appeals for the state of Washington determined that while his conviction was appropriate, his extra-long sentence was not. Of particular concern to the appellate court was the decision to give Brush an exceptional sentence for aggravated domestic violence.

During the sentencing, the Pacific County Superior Court provided the jury with a brief definition of "aggravated" domestic violence. Officers of the local court believed that they did so in strict compliance with the state's guidelines on how to communicate with jurors. However, Brush's attorneys argued that the court had improperly commented on the case, and influenced the jury's conclusions.

The appellate court sided with Brush's attorneys, and remanded his case to Pacific County Superior Court for re-sentencing.

Even if Brush's sentence is reduced, he will most likely stay in prison until at least his late 60s. Nonetheless, the decision to overturn his sentence came as a shock to the community, and especially to Bonney's loved ones, who had believed their ordeal with Brush was through.

In May, Burke said he needed to give the matter careful consideration before deciding whether to ask the Supreme Court to review the appeals court decision. Pursuing the matter further, he pointed out, could be a time-consuming and costly undertaking.

Tuesday, Burke said that while Brush's lawyers raised other objections in their appeal, his petition to the Supreme Court focuses on the dispute over the jury instructions.



Brian Brush

At a recent conference of prosecuting attorneys, Burke asked a panel of highly experienced appeals attorneys to advise him about the best course of action. Those attorneys said that raising other objections to the ruling would simply distract the Supreme Court from focusing on the issue that represented his best chances of winning.

“A lot of people who do this on a day in day out basis ... weighed in. They thought this was our best avenue,” Burke said.

In early July, he filed a “petition for review” with the Supreme Court.

Lorrie Thompson, a spokesperson for the Supreme Court, said on Monday that there is only a small chance that case will be heard.

Each year, the highest court in the state receives roughly 1,000-1,200 petitions for review. They accept around 100 cases per year.

“They are not required to take every case,” Thompson said. “The court reviews the petitions to find out if there is actually a question of law. ... If they have found the court of appeals has adequately reviewed the issues, they don’t need to accept it.”

Brush won’t be seeing a reprieve anytime soon. If a panel of judges agree that the case should be reviewed, “There’s a whole process of each party filing briefs,” which can take a year or more, according to Thompson. Then a date is set. Once the case has finally been heard, the court takes an average of about nine months to reach a decision.

It is “fairly common” for the Supreme Court to receive requests for review of the state’s jurors’ instructions, Thompson said.

“The details matter,” Thompson said, “It very often comes down to details that need to be clarified because they affect people’s lives so much.”