

Arizona man in self-defense case out of prison

The Associated Press State & Local Wire

July 22, 2009 Wednesday 4:34 AM GMT

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Section: STATE AND REGIONAL

Length: 667 words

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Dateline: FLAGSTAFF Ariz.

Body

An Arizona man who spent nearly three years in prison for fatally shooting a fellow hiker near Payson an act for which he claimed self-defense was released from custody around noon Tuesday, his attorney said.

An order signed Tuesday morning by Coconino County Superior Court Judge Mark Moran allowed Harold Fish to be released from the Lewis prison in Buckeye, pending a new trial in the case.

Fish said he acted in self-defense when he shot Grant Kuenzli in May 2004 while hiking in the Coconino National Forest. Prosecutors said Fish overreacted and that self-defense was not justified.

A jury convicted the 62-year-old Fish of second-degree murder, and he was sentenced to 10 years in prison. But a state appeals court overturned the conviction last month and ordered a new trial, saying the judge's jury instructions failed to adequately describe the law of self-defense.

Prosecutors have said they do not plan to retry Fish. They cited a new law that shifts the burden of proof in self-defense claim cases from the defendant to the prosecutor. Gun-rights supporters, who said Fish's conviction represented a threat to their right to protect themselves, prompted the change in the law.

Fish's wife and six of their seven children greeted him at the prison Tuesday, and the family returned home to Mesa, where they spent the afternoon washing dishes and cleaning house. They're planning to have a big breakfast Wednesday, and then it's on to yard work before a weekend of camping and next week's painting jobs, Fish said.

"They're really getting used to Dad coming home," the retired school teacher said in a telephone interview. "It's been very humbling. It's a lot like going to your own funeral. I'm amazed. I never realized so many people cared about me until this happened."

But Fish knows his release from prison doesn't guarantee he'll remain free.

A spokesman for Attorney General Terry Goddard, Steve Wilson, said the office will file a petition with the state Supreme Court to review the lower court's decision by the end of the month. The deadline is Aug. 5.

Wilson said the office disagrees with the appellate court's reasoning that the trial judge may have erred in barring evidence of Kuenzli's prior acts of violence related to dogs.

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The constitutionality of the new self-defense law also could be challenged. It doesn't go into effect until September but applies retroactively to Fish's case.

A challenge to the new law or appeal could take months or years to play out.

"It's up in the air," said Lee Phillips, who along with **John Trebon** represented Fish. "I'm hopeful that the state will be persuaded once Mr. Fish is back home with his family that enough is enough, and they will just let this go."

Michael Lessler, Coconino County chief deputy attorney, said he recently spoke with Kuenzli's sister about Fish's release. While she's not thrilled, Lessler said Linda Almeter understands the prosecution's position not to retry Fish and will respect any decision that comes down in the case.

Fish told authorities he was hiking in the forest near Payson when two dogs belonging to Kuenzli ran down a hill and threatened him. Fish said he fired a warning shot at the animals. Kuenzli then became enraged and threatened Fish, who warned he would shoot. Fish then fired three rounds and killed Kuenzli.

Fish believes the appellate court decision that overturned his conviction is strong enough to withstand a challenge, but his experience has left him with little faith in the justice system.

"There's a better way, especially in this environment, to spend the public's money than to incarcerate a public school teacher who was just trying to defend himself," he said.

If nothing more, he figures he has at least three months to spend with his family before the legal issues are settled or start up again. Meanwhile, his children are eager to go camping and fishing and there's a lot of work to be done around the house, he said.

"If I were to return to prison, it would break their hearts, really," he said.

Load-Date: July 22, 2009