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Refusal to bargain finally pays

off as inmate goes free

5-17-80
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Mpls. Trib.
5-17-1980



Wilmer Martin

Wilmer Martin's stubborn refusal to bargain away his claimed innocence paid off Friday, but not before the itinerant Indian laborer had spent nearly two years at Stillwater Prison.

"Oh boy, this is something else," Martin said about the Minnesota Supreme Court's decision yesterday reversing his June 1976 conviction for third-degree murder in the beating death of former state Sen. Ralph Mayhood. The court ordered Martin released.

"They (prison officials) told me before noon. I been so excited I don't know what to do," Martin said. "I'm just glad I have my freedom."

Like many inmates, he said he has been consumed by the case, compiling a thick file of letters, transcripts and newspaper articles in

his cell in the event he needed the information for a new trial.

Martin, who has served several prison sentences but never for a violent crime, said his latest stay was particularly difficult "because I think about it (the case) day and night. I think people are tired of me talking about it. I even dream about it, dreaming mostly about freedom."

He said that he has worried constantly about the case, that his hair is turning gray as a result and that he has been unable to hold down food for many months.

Martin, a quiet man, said during an interview at Stillwater that he keeps to himself. He works in the foundry during the day and watches television in his cell at night.

But he is a good worker. Last year he was named inmate of the month by a staff inmate

committee and he was duly recognized in the Prison Mirror, the Stillwater newspaper.

The state supreme court rarely reverses murder convictions, particularly on the ground that there was not enough evidence to convict a man. Usually cases are overturned on technical legal errors made by a judge.

But in a unanimous decision, written by Justice Rosalie Wahl, the court said the evidence that a Hennepin County District Court jury used to convict Martin was insufficient.

Martin, 50, and Charles Des Jarlais were charged with third-degree murder in the beating death of Mayhood Jan. 18, 1978, at a Minneapolis flophouse he owned. The defendants were staying there at the time.

Des Jarlais, then 31, struck a bargain with the Hennepin County attorney's office and pleaded guilty to first-degree manslaughter, a lesser

charge. He was sentenced to 15 years in Stillwater, where he is still serving his sentence.

Martin protested his innocence, refused to plea-bargain and went to trial. He was convicted and sentenced to 25 years. The discrepancy in sentences was particularly bothersome to Martin's attorneys because all the evidence indicated that Des Jarlais was more responsible for Mayhood's death.

"I told them I wouldn't take no lesser charge for something I didn't do," Martin said yesterday in his soft voice. "I was just at the wrong place at the wrong time."

At Martin's trial, one juror, Nancy Gilbertson, sent the judge a note saying she was being pressured to change her vote and couldn't hold out much longer. She eventually voted to

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convict even though she said later that she was angry at herself for being "conquered" by the other jurors.

"I'm glad he's out," Gilbertson said yesterday. "I don't know if he's innocent or guilty, but there was not enough concrete evidence ... I'm happy about it because I felt I really didn't do my job. I didn't hold out long enough."

The jury foreman, Stephen Clark, said yesterday that he was convinced the jury was right. But he added, "I'm happy for the guy if we were wrong. It (the court's decision) doesn't upset me."

Prosecutor Robert Lynn declined to comment on the decision.

Martin's trial lawyers, Craig Cascarano and Kevin Burke, said they were "delighted."

"It's a shame that it took two years," said Cascarano, an assistant county public defender. "What it shows is that the system works, but it takes a long time."

Burke, a former public defender now in private practice, said, "It's really kind of a humbling experience for everyone in the system ... the system sometimes makes mistakes." He said he would help Martin file a claim against the state to compensate him for his two years in prison.

The events that led to Mayhood's death are clouded by the fact that all the witnesses, as well as Martin and Des Jarlais, had been drinking heavily. Martin's blood alcohol content was .42 of 1 percent and Des Jarlais's was .29 of 1 percent. The legal level to indicate intoxication in driving cases is .10 percent.

According to court records, Mayhood tried to intercede after Des Jarlais stole a wallet from another tenant in the rooming house, 1810 Washington Av. S. Evidence indicated that Des Jarlais hit Mayhood over the head with a wine bottle and kicked him, the decision said. Mayhood died of a heart attack shortly after the incident.

The two key witnesses against Martin, Leo Siss and George Kimbrough, told the police and grand jury one story and told a different version to the trial jury.

Wahl pointed out that Siss, who is crippled and confined to a wheelchair, could not see the entire incident. After earlier claiming that Martin stomped on Mayhood's chest, he testified at the trial that he only saw Martin step once on Mayhood's chest. Siss's credibility was brought into question when he could not identify a photograph of his own room at the trial, Wahl said.

Kimbrough, who earlier said he saw Martin beat Mayhood with a pipe, testified at the trial that he was lying

Mayhood. He said he only saw Martin kneeling over the body.

Martin gave two different versions of the incident to police, but he always denied he was involved in the assault.

"He (Martin) was present in the hallway and apparently did nothing to stop the beating," Wahl wrote. "But we question the reasonableness of requiring a middle-aged alcoholic with a blood alcohol content of between .38 and .42 percent to attempt to stop a vicious assault perpetrated by a much younger, larger and undoubtedly stronger man."

Martin is a slight man, about 5 feet 8 and 130 pounds.

The state public defender's office appealed the conviction on several legal grounds, but the court only considered the question of the evidence.

Martin, one of six children, was born on the Fond du Lac Indian Reservation near Duluth. He left school after the eighth grade.

He has been a heavy drinker and a wanderer, working on oil-rig trucks in Wyoming and construction projects in Houston and as a car painter and furniture mover in towns in between.

He will be released within a few days when the proper paper work is sent to the prison.

"I have no hard feelings for this place (the prison) or the people that was in my court," he said. "It's just the way it happened."

When he gets out, he said, he will go to the reservation for a week or so to visit his cousins and then back to Wyoming to find work in an oil field or at a ranch or chemical company.

"It's isolated, open, quiet out there," Martin said.

Mayhood