

# Uneven justice

A "cooperating state's witness" gets off easy. Often.

There's been a story the Cheyenne Herald has been working on for months. With the primary election, writing about it had been delayed.

But this morning's WT-E (8/27) carried kind of a parallel occurrence and the delayed story has even more significance. And without taking a position on the fairness of the sentence meted out in the WT-E story because we haven't followed it from the beginning, it does provide a basis of comparison readers can consider.

Their story was about a sentence handed down by Judge Edward T. Grant. He sentenced the perpetrator to 20 years to 22 years and two months on an attempted second degree murder charge for running his car into his girlfriend, then ten more years on two aggravated assault charges for waving a gun at her friend. The sentences are to run consecutively - not concurrently. The story said the guy had "a clean criminal record."

His crime was unpardonable. The sentence may be fair. But contrast the outcome of his behavior to the story we've been investigating for several months.

Our story is based on a review of lengthy case files held in the Laramie County District Court offices, interviews, and an exchange of questions and answers with Assistant District Attorney Becket Hinckley, who prosecuted the latest charges against the subject of our story.

The micreant and serial felon in our story started his criminal career in Tennessee. In 1986, he was convicted of Burglary, a felony in Tennessee. While out on probation, (within 24 hours, we were told) he committed another crime, a violent one this time, and was convicted of Aggravated Assault, a felony in Tennessee.

Two felonies and counting. He spent approximately nine years in a Tennessee prison.

In 1998, he was charged locally and later convicted for Manufacture and Delivery of Methamphetamine, a felony.

Wyoming has an habitual criminal provision in the statutes. But it does not cover crimes such as possession and distribution of drugs. W.S. § 6-10-201 defines an habitual criminal in the following way:

(a) A person is an habitual criminal if:  
 (i) He is convicted of a violent felony; and  
 (ii) He has been convicted of a felony on two (2) or more previous charges separately brought and tried which arose out of separate occurrences in this state or elsewhere.  
 (b) An habitual criminal shall be punished by imprisonment for:  
 (i) Not less than ten (10) years nor more than fifty (50) years, if he has two (2) previous convictions;  
 (ii) Life, if he has three (3) or more previous convictions.

Some important provisions of the law to keep in mind: The felonies do not have to be committed in Wyoming, the first two don't have to be violent felonies but the third one does, and Wyoming statute is specific - it says the habitual criminal SHALL be punished with the enhanced penalty. It does not leave the decision up to the discretion of local prosecutors. The serial felon "SHALL be," punished by imprisonment of a minimum number of additional years. Period.

Up to this point in the story, the subject had two felony convictions, one violent.

Then he came to Wyoming.

In 1997, by all statements in a related case file, he stole saddles, jewelry and tools locally. He buried the jewelry in the ground on a relative's property. In that case file, it stated that a cousin of his "told the deputies that his cousin, ----- (the subject of this story), admitted that both --- (a relative) and he had stolen some saddles and jewelry from a neighbor, and he could not understand how the cops knew the jewelry was buried in the yard." Another page in this case file indicated that the subject had admitted to the theft and disposal of the stolen property.

The subject himself was quoted as saying: "... his uncle ----- was just as involved as he (the subject) was."

But, alas, the subject was never charged. His uncle was. He took a plea to receiving stolen property, paid a fine and was released from probation early.

This charge would have been another felony of which the subject would surely have been convicted.

But he wasn't even charged.

Why? Keep reading. This was not the only criminal behavior that this subject

has engaged in in Laramie County.

And it isn't as though Laramie County would have had a tough time gaining convictions for some of the other infractions.

It just seemed they didn't want to. Why?

At trial on the meth charge, law enforcement went to bat for him, testifying that he had been helpful in gaining convictions of bigger meth dealers. As a result, the subject was sentenced to 5-7 years in prison (all suspended) and three years probation.

The record was becoming clearer. The reason he has repeatedly been given preferential treatment became obvious.

He was an informant.

Or, as ADA Becket Hinckley put it, he was "a cooperating state's witness." And careful to avoid a felony that could be considered violent. Until ...

In December, 2004, he was being evicted from his sister's house for his behavior and concluded that an older relative (the same one on whose property he had buried the stolen jewelry and the same one with whom he had once lived) was responsible for his poor standing with his own sister. The relative told the Cheyenne Herald he was sitting at the dining room table when the subject walked by and all of a sudden kicked him in the face. After knocking him to the floor with the kick, he continued to kick him in the chest and face, causing him serious injuries.

The victim was never called to testify at sentencing nor provide a statement to be read about the incident even though an arrest was made and charges were lodged against the "cooperating state's witness." The subject said his uncle had grabbed him by the throat and they fought.

The beating left the victim requiring surgery on his eye and he still has not regained vision. Another surgery is in the future. The victim, who drove semis, lost his interstate CDL.

For this offense, the subject was charged with Aggravated Assault and Battery, a felony in Wyoming. A conviction on this charge would have left the Laramie County District Attorney's office with no choice but to then charge him as an habitual criminal. Family members were told by authorities that the subject would be sent away "for life."

During the time leading to trial, he DNA (did not appear) when he was supposed to and a warrant had to be issued for his arrest. He also was charged with Larceny for the theft of more tools during this time.

It's beginning to sound like society may finally be relieved of this fellow's presence, doesn't it?

Not so.

Prosecutor Becket Hinckley, without advising the victim of the assault, plea bargained the charge to the "high misdemeanor" of reckless endangering. When asked if the victim had been advised, consulted or told of this action, Hinckley told the Herald that "in all honesty, I can't remember and my file doesn't reflect that would help jog my memory."

Well, DA Jon Forwood remembered. When the victim visited the DA's office to ask where the case stood, Forwood told him it had been resolved and apologized for not contacting the victim about the court schedule. The victim told the Herald that the subject's sister and nephew had been told and they were in court the day the plea bargain was presented and accepted by Judge Burke. The Larceny charge was incorporated and dismissed.

The aggravated assault and battery charge, a felony, could have been the subject's ticket to the Big House. His sentence? 180 days in county jail, reduced to time served (95 days), 85 days suspended, 1 year unsupervised probation.

He was a "cooperating state's witness." He may have informed on other drug users or dealers. He is Teflon. And free.

## Not all jurisdictions bought into this subject's behavior

In Laramie County files, from Greeley:

"... and his unwillingness to be honest about his criminal histories. [He] stated more than once that he had been convicted of 4-5 felonies and that he had never in his life been subject to any kind of abuse. Collateral reports sent from his supervising officer indicated that he had indeed been a victim of severe abuse as a child, and that he had been convicted of 8 felonies, including sex crimes."

"Based on these findings, it is questionable that [he] would be appropriate to treatment at Island Grove. He is therefore being referred back to Intervention for a higher level of supervision, as well as to IGTS for a sex offender evaluation."

4-5 felonies? 8 felonies? Was Laramie County not aware of his admissions to so many more felonies than they presumably were aware? How many more multiple offenders are on the streets because they are "cooperating state's witnesses?"



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