



The Star-Ledger

Prosecutor won't retry penalty phase of Marshall case

Plotter of wife's killing could be paroled in 8 years

Saturday, May 13, 2006

BY MARYANN SPOTO

Star-Ledger Staff

Robert O. Marshall, once condemned to death for arranging his wife's murder, will be eligible for parole in eight years following a prosecutor's decision yesterday not to retry the penalty phase in one of New Jersey's most notorious cases.

Ocean County Prosecutor Thomas Kelaher said too much time had passed since the 1986 trial to present an effective case against Marshall, 66, who spent 18 years on death row before a federal court overturned his sentence in 2004.

"This troublesome and distressing conclusion was made only after extensive consultation with the family of the victim, Maria Marshall," Kelaher said. "While the death penalty is clearly warranted in this case, presenting all of the trial evidence at a penalty phase trial nearly 22 years later would be extremely difficult."

Marshall, a former Toms River insurance executive whose case spawned the best-selling book "Blind Faith" and a television miniseries of the same name, must now be resentenced under guidelines in place at the time of his conviction. The most severe penalty he faces is life in prison without parole eligibility for 30 years.

Because Marshall has already served nearly 22 years in prison, his first chance at freedom will come in 2014. Even if given the maximum, however, Marshall isn't certain to be freed by parole officials, Kelaher said.

"On a homicide case, they usually don't let them out anyway," he said.

The prosecutor added he expects his office will fight against Marshall's release down the line.

"I would hope that whoever is in my seat eight years from now would oppose it," he said.

No sentencing date has been set.

Kelaher said the decision, made in conjunction with state Attorney General Zulima Farber after consulting the Marshalls' three sons, was not an easy one. But he called it a logical one.

"The most compelling reason not to seek the death penalty is the stark realization that, assuming a jury returns a verdict of death for Robert O. Marshall, the death penalty would trigger 20 more years of legal maneuvering without a just closure for the family," Kelaher said.

Indeed, Marshall's conviction and sentence arguably represent the most exhaustively challenged death penalty case in New Jersey since the Legislature reinstated capital punishment in 1982.

His appeals gained traction two years ago, when a federal judge in Camden found Marshall's defense lawyer badly mishandled the trial's penalty phase, concluding in his statement to jurors, "Whatever you feel is the just thing to do, we can live with it."

Last year, the 3rd U.S. Circuit Court of Appeals in Philadelphia upheld the lower court's ruling to toss the sentence. The state Attorney General's Office, on behalf of the Ocean County Prosecutor's Office, then appealed to the U.S. Supreme Court.

In March of this year, the high court declined to hear the case, setting the stage for yesterday's decision by Kelaher. Marshall's murder conviction was unaffected by the ruling.

One of the two state public defenders handling Marshall's recent appeals said yesterday the decision was expected given all the factors prosecutors had to consider.

"It strikes me as a perfectly rational decision for them to conclude that this could be a difficult case to try, and old wounds would be reopened," Assistant Deputy Public Defender Stephen Kirsch said.

Marshall, who remains in New Jersey State Prison in Trenton, was pleased by the decision and hopes to participate at sentencing, the defense lawyer said.

"He wants to make his pitch for what he feels is the appropriate sentence," Kirsch said.

Marshall's three sons, now in their 30s and 40s, could not be reached for comment yesterday, but his daughter-in-law, Lori Marshall, said she was "relieved and happy" her father-in-law will no longer have to live with the specter of lethal injection hanging over his head.

"Whatever you want to believe about his guilt or innocence, Rob Marshall is my children's grandfather, and they care about him," said Lori Marshall, who married Marshall's middle son, Christopher, 39, after his father was sentenced to death row.

Lori Marshall said she has never met her father-in-law but talks to him on the phone frequently -- "he calls collect" -- from prison. She said the calls escalated to several times a week in the past year, since she and her husband separated.

"He talks to the kids, sends them letters and makes them presents," she said, adding that Marshall has become quite adept at making origami paper figures while in prison.

"My children want to know him," Lori Marshall said. "They want to meet him. My daughter cries about him being in prison."

Robert Marshall has six grandchildren by his two oldest sons.

Roby Marshall, 41, who is married to actress Tracey Gold and lives in California, has three sons, ages 9, 7 and 2. Christopher Marshall, who heads the alumni association at Lehigh University in Bethlehem, Pa., has two sons, ages 17 and 3, and a 9-year-old daughter.

Both sons have said in the past that they believed their father is guilty.

Marshall's youngest son, John, 35, always maintained his father's innocence and testified on his behalf as recently as 2003. John Marshall is unmarried and lives in Pennsylvania.

Marshall was convicted of hiring two ex-convicts from Louisiana to kill his wife so he could collect on a \$1.5 million life insurance policy and continue his dalliances with another woman.

On Sept. 7, 1984, Robert and Maria Marshall were returning to their Toms River home from Atlantic City when they stopped at a Garden State Parkway rest area. Robert Marshall claimed he was struck in the head as he examined one of his car's tires. When he regained consciousness, he said, his wife was dead.

The killing and the subsequent revelation that Marshall was having an extramarital affair with a local school administrator shocked the suburban Ocean County town and later became national news with the publication of "Blind Faith."

Marshall was convicted March 5, 1986. Within hours of the verdict, jurors sentenced Marshall to death.

New Jersey has not put an inmate to death since 1963. Last year, amid increasing debate about the death penalty across the nation, the Legislature enacted a one-year moratorium on executions while the issue is studied. The moratorium, signed into law by then-Gov. Richard Codey, runs through next January.

Staff writers Mark Mueller and Judy Peet contributed to this report.

© 2006 The Star Ledger

© 2006 NJ.com All Rights Reserved.