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Inmate seeks parole for his exemplary prison record

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SPECIAL TO THE HERALD NEWS

Luis Del Orbe insists he isn't the man he used to be. But try making people believe that, after you've spent the past 20 years in state prison.

"Can you really convince someone who doesn't know you that you've changed?" he said with an exasperated laugh, sitting in a small, stifling visiting room in East Jersey State Prison in Woodbridge.

Del Orbe, formerly of Passaic, is fresh off a failed legal try to get out of prison early.

The basis of that attempt: his exemplary record as an inmate during 20 years and a seldom-invoked subsection in the state criminal code.

It's hard to picture him as a robber, abducting two men off a Passaic street at gunpoint. Or handcuffing and pistol-whipping them, and threatening them with a cocked gun to their ears. Or driving them to a remote spot and stripping them to their underwear, leaving them to freeze.

But he's the guy. Or, at least, he was. That was in 1986, when he was 21.

Del Orbe's rap sheet includes a conviction for robbery and burglary in New York that occurred while out on bail awaiting trial on the New Jersey case.

When he was finally convicted and sentenced in Paterson in 1988 for the kidnapping and armed robbery, he was already serving a six-year prison term for the New York crimes.

Those six years had to be completed before he could begin a 40-year term in the New Jersey case. He must serve 19 of those years before parole eligibility.

Those 19 years are what's known as the "mandatory minimum." Del Orbe is only 14 years into his New Jersey sentence and won't be eligible for parole until 2012.

Now 42, he would prefer not to be thought of as a kidnapper and robber.

Instead, he wants to be known as the guy who earned 58 college credits in prison with a 3.24 grade-point average; as the guy who served as assistant director for the Hispanic Americans for Progress Inc., a prison-based inmate self-help group; as the founder of Support for Kids at Risk, which taught young people about criminal laws and penalties, and as the guy who served as director of the Hispanic Educational Literacy Program, which taught second-generation Latino inmates how to read and write in Spanish.

"One of the things I am most proud of is, one day ... I was in the visiting room sitting there with my parents and this lady came over. She taps me on the shoulder, I stand up, I don't even know this lady. She grabs me and she gives me this big hug. Now I see the guy sitting behind her and I see he's one of my students.



BETH BALBIERZ / THE RECORD

▲ Luis Del Orbe is currently serving the 20th year of a 40-year sentence for kidnapping.

"So she's crying and she says she wants to thank me because after 15 years of her son being in prison, he wrote her the very first letter he ever wrote her, in Spanish. So she actually understood it. Things like that give you the motivation to keep going."

Del Orbe documented these and other deeds when he appeared in Paterson last month, asking state Superior Court Judge Ernest M. Caposela to reconsider his 1988 sentence.

"If they're not going to reconsider this guy, who would they reconsider?" asks John Schadeegg, Passaic County assistant public defender. Though Del Orbe researched and wrote his own legal motions, the court appointed Schadeegg to represent him.

Del Orbe relied on a provision in the state penal code, added in 1989, that allows first-time convicts serving mandatory minimums to be reconsidered for sentencing. There's one catch: The prosecutor must consent.

Schadeegg argued that Del Orbe's sentence no longer served the "interests of justice," as the statute says, because he is a changed man since the sentencing.

But Passaic County Senior Assistant Prosecutor Paul De Groot vehemently disagreed. And without the prosecutor's consent, Judge Caposela had no choice but to deny the motion.

Del Orbe's victims – who could not be reached for comment -- were not in court, nor did they take any part in the review. De Groot says regardless of what position they might take now, the state would still oppose Del Orbe's motion.

"All the things he's doing in prison are good things and he should be commended on that," De Groot says. "But does it make up for stripping a person and leaving them in the cold? Does it make up for putting a gun to the back of a guy's head? Does it make up for a robbery and a burglary in New York?"

Del Orbe says he will appeal, but "I'm not going to fault the prosecutor for doing his job."

He only wishes he could make prosecutors see that a punishment doesn't always fit a crime – or a criminal – decades after the fact.

"There are a number of things I have done to improve myself, in terms of my maturity," he says. "The person I was at 21 is not the person I am at 42."

Retribution's gone too far, some say

Prison and time may have changed Luis Del Orbe. But does that mean he should get out early?

"The state is more interested in retribution or just desserts and says, 'This is the crime that was committed.' On one level, that's all you should care about," said George Thomas, distinguished professor and distinguished scholar at Rutgers Law School. "On the other hand, what an inmate might argue is: You have to temper retribution with the individual, and if he really has changed ... I think that's a better theory of justice, and I'm sorry he lost," Thomas said of Del Orbe's failed motion for sentence reconsideration.

In 1979, state lawmakers began instituting mandatory minimum sentences for many crimes. Before then, judges and the state parole board had flexibility in sentencing and release.

"That was not a good system, and it led to a lot of frustration," said Mario Paparozzi, former chairman of the New Jersey State Parole Board and chairman of the Department of Sociology and Criminal Justice at the University of North Carolina at Pembroke. "We're talking about justice. We're not talking offender rehabilitation. That was a different era. The '60s and '70s had a more liberal point of view. People would say, 'OK, the offender is rehabilitated, let's get them back into the community.' But ... little attention was paid as to whether justice was served from the punishment component."

Thomas said the '80s brought "all kinds of experiments in longer sentences" because of a sense "crime was out of control and that the only way to stop it was to put people away for a long time."

But with prisons now crowded, that theory may need a new look, said Ben Barlyn, executive director of the New Jersey Commission to Review Criminal Sentencing. The Legislature formed the commission – comprising state officials and criminal justice experts -- in 2004 "to promote sound sentencing policy predicated on the basic precepts of public safety, proportionality and fairness."

"There's a reasonable view that with regard to serious violent crimes, the pendulum swung too far to the left in the '70s," Barlyn said. "But the pendulum has now swung too far the other way ... We're trying to make sure the pendulum stays in the middle."

For example, the panel advised the Legislature last year to rethink harsher penalties enacted in 1987 for drug activity within 1,000 feet of a school.

It proposed shrinking the zones, which now encompass practically all of some cities.

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