

JD Editorial

Sentencing Enhancements Hurt The Innocent

It is well-known that an innocent person in the U.S. can be subjected to the misjustice of being wrongfully convicted. But insisting on one's innocence also typically results in a much harsher sentence than falsely accepting responsibility by taking a plea deal, or failing to express remorse after one's conviction.

Actual accounts abound of an innocent person being offered probation or a relatively short sentence before trial, and then given a long sentence or even life in prison after a conviction. That treatment can be described as the "innocence sentencing enhancement," since a guilty person indicted for the same criminal conduct as an innocent person is rewarded with a much lesser sentence for agreeing to a plea deal.

The "innocence enhancement" is not an anomaly. There are a number of state and federal sentencing policies that can enhance a convicted person's punishment. These enhancements include: a prior convicted offense(s) (e.g., three-strike laws); uncharged alleged offenses; and offenses a person has been acquitted of committing. A mandatory minimum sentence can even be considered as an "innocence enhancement" when an innocent person has refused a plea deal for a lesser offense that would have removed him or her from being subjected to a mandatory sentence.

High-sounding rationales are offered for these sentencing policies. But there is another *de facto* sentence enhancement that is

even more insidious, because it is only applied to a person whose period of confinement is considered insufficient *after* their sentence has been served in full.

That enhancement is civil commitment, and it can result in a person's confinement for life – even if their original sentence was for only a few years. In 1997 the Supreme Court approved civil commitment of a person who has completed their criminal sentence. (See, *Kansas v. Hendricks*, 117 S.Ct. 2072 (1997)) After a commitment trial a person judged likely to reoffend can be confined in a prison-like special facility until such time as he or she is no longer deemed a threat to society.

The prosecution is not hampered during a commitment proceeding by a criminal trial's requirement of presenting proof beyond a reasonable doubt.

Washington state has a civil commitment law for a person convicted of a sex offense involving violence. The perpetrator of a series of sexual assaults in Spokane in the late 1970s and early 1980s was dubbed the South Hill rapist by the media. Kevin Coe was convicted of four South Hill rapes after his 1985 trial, but the Washington Supreme Court reversed three of those convictions. Insisting on his innocence, Coe refused to participate in prison sex offender programs. Coe completed his 25-year sentence for the one conviction in September 2006. The 59-year-old Coe had paid a serious debt to society that he claimed he didn't owe. (*Justice:Denied* featured Coe's case in Issue 25 (Summer 2004)).

However, instead of being released as a free person Coe was immediately jailed by the State to await a civil commitment trial.

Coe's commitment trial began in September 2008 in Spokane. The judge stretched the outer bounds of the rules of evidence by allowing extensive hearsay, opinion, and alleged "bad character" and "bad acts" evidence that the State relied on to argue Coe was a threat to commit a sexual assault if permitted to live in society. On October 16, 2008 the jury announced its verdict that Coe should be confined in Washington's Special Commitment Center until such time as he is no longer considered a threat. If Coe continues to assert his innocence he will never be released, so the juror's verdict effectively "enhanced" his original 25-year sentence to the equivalent of life without parole.

Innocent or not, Kevin Coe completed the sentence for the crime of which he was convicted. If he is innocent he has already been subjected to a horrific injustice for more than two decades. If he is guilty he served his prison sentence. Every person in Washington and other states confined because of the "civil commitment enhancement" should be immediately released and those laws repealed. Not only is the prediction of future behavior a voodoo like craft and not a scientific process, but a commitment proceeding more resembles a hysteria driven 17th century witch hunt than a search for the truth.

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