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# The Bulletin

## DA should drop Madras case

One of the scariest stories this Halloween season is what Oregon's justice system is doing to David Lee Simmons of Madras. Simmons was punished for felonies for which he was never indicted.

That was sloppy legal schlock. But wait, it gets worse.

After the blunder was discovered, Simmons could file a lawsuit. Prosecutors filed misdemeanor charges against him. If they can convict him of misdemeanors, Simmons will have a tougher time arguing in court that he was wronged.

So let's get this straight: Simmons has already been wrongly punished for felonies he was not indicted for. The Jefferson County District Attorney's Office did not do its job then. And now the district attorney's office is going to do a job on Simmons?

It's not right.

Before going any further, let's be clear up front who the blunderers were: Jefferson County Deputy District Attorney Steven Leriche, Simmons' attorney, Jennifer Kimble, and Circuit Judge Mike Ahern.

Now, the details. The Oregonian gets credit for reporting the story first.

Last year, a Madras resident was reading a newspaper and noticed an article about Simmons. Simmons, now 19, had negotiated a plea bargain and plead guilty to two counts — one of third degree rape and another of third degree sodomy. He had been charged with six felonies in September 2006 for having sex with a 14-year-old girl, who was his girlfriend at the time.

The court sentenced Simmons to 30 days, five years' probation, community service and to register as a sex offender.

The Madras resident reading this story happened to be the foreman of the grand jury that had heard Simmons' case. The foreman didn't understand why Simmons was charged with the felonies. The grand jury never indicted him.

Enter the three legal professionals on the case.

Deputy District Attorney Leriche apparently never noticed that the grand jury did not indict.

Neither did Judge Ahern.

And neither did Kimble, the attorney for Simmons.

They apparently never read the grand jury's decision and proceeded as if Simmons had been indicted on all counts.

Without an indictment, the case against Simmons should have been dismissed and he should have been immediately released. Instead, he was held in jail and agreed in October 2006 to the plea bargain for what he thought were charges against him.

After Simmons served his 30-day sentence, he went back to the courthouse to schedule a meeting with his probation officer. Kimble, his lawyer, told him the surprise news that the grand jury foreman had called the prosecutor and pointed out that Simmons had never been indicted. Kimble was forthcoming and gave Simmons a letter telling him that he may have a claim against her and others for failing to notice that he was never indicted.

Judge Neilson convened a hearing that same day. All parties agreed to — as they say in legalese — “vacate the judgement.”

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## DA should drop Madras case (cont'd)

"What transpired here in essence is a nullity," Judge George Neilson said in court that day. "It will be treated as if it never happened in the sense of the law."

Then he went on to praise Simmons' attorney and the deputy district attorney.

"It's a credit to your counsel and the state's counsel that they came to the court immediately upon discovering, and took the appropriate action," he said. "And there's some professionals in this world that wouldn't do that."

Of course there are some professionals in this world, we hope better than zero out of three, who would have bothered to read the indictment. But people do make mistakes. Kimble said it best: "None of us did our job."

The case was over. For about a month. Leriche, the deputy district attorney, filed new misdemeanor charges at the end of 2006 against Simmons. Jefferson County District Attorney Peter Deuel says Simmons has not undergone sex offender treatment and is not under supervised probation.

Simmons' new attorney, Steven Richkind, tried to convince the courts that the new charges should have been dismissed under the double jeopardy rule. That basically says you can't have a defendant face the same charges twice.

Judge Gary Thompson said the new case "may seem unfair and may fail the smell test as suggested by Mr. Richkind," but he couldn't see any reason why the state could not charge Simmons with the misdemeanors. The Oregon attorney general's office issued a legal opinion that Simmons couldn't qualify for double jeopardy because his first case did not happen in the eyes of the law — because the grand jury never filed charges.

That's sort of like justice being blind, we guess. The end result for Simmons is that the Oregon Supreme Court decided not to hear the double jeopardy assertion, which means the misdemeanor case against him can go forward.

The case can go forward. Just because it can, does not mean it is in the best interest of justice.

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