

Judge scolds parole officials over sex offender classification

Sam Sparks stops trial after attorneys object to comments he made to jury about witness' testimony.

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A federal judge on Thursday issued a stern rebuke to state corrections officials for the way they classify some parolees as sex offenders even though the defendants have never been convicted of sex crimes.

U.S. District Judge Sam Sparks also voiced frustration with state parole officials for ignoring earlier court decisions and a previous directive by him and ordered the state Board of Pardons and Paroles to review whether to leave parolee Ray Curtis Graham on sex offender restrictions.

"It's time for the parole division and the Board of Pardons and Paroles to stop being defensive and start trying not to use technical defenses," Sparks said, in ruling that the restrictions were not imposed on Graham legally and that parole officials ignored a subsequent court warning about the deficiency.

"The undisputed evidence established no official involved in the ... process has ever made the necessary finding that Mr. Graham constituted a threat to society by his lack of sexual control."

Sparks also declared a mistrial in the case after a week of testimony when attorneys for the state objected to comments he made to the jury about a witness' testimony.

Graham filed suit against parole officials after they officially listed him as a sex offender in December 2007 — without allowing him to see the results of a psychiatric evaluation they ordered him to undergo or to appear with his attorneys at a hearing at which the decision was made. Graham, who served time in prison for burglary and attempted murder, was never convicted of a sex crime. He was arrested for aggravated rape in 1982, but was never convicted.

In January 2008, Sparks warned the parole board that he had serious concerns about their policy on imposing restrictions on some parolees. For Graham, that meant requiring him to undergo sex-abuse therapy and barring him from becoming a minister and going to church, among other things.

In a parole system known for its secrecy — decisions are usually made behind closed doors, and most parole files are not public record — Thursday's development marked a rare crack in that armor, although not the first. In three other cases in two years, Austin federal judges have questioned the legality of the state's policy by which restrictions are placed on parolees. Across Texas, parole officials said, more than a dozen other lawsuits on the issue are pending.

"I think this case displays the arrogance of power that permeates the parole board," said Bill Habern, one of Graham's attorneys.

That view is strongly disputed by parole officials, who insist they are following the law as they interpret it.

Sparks stopped the trial Thursday morning after he contradicted a parole board witness on her testimony about federal court decisions.

After former parole board general counsel Laura McElroy testified that federal court decisions allowed the state's policy, Sparks had told jurors: "The lady is wrong ... the lady is wrong ... (McElroy) is stating issues of the law that are just wrong."

Assistant attorneys general representing the state complained that the judge's remarks might have prejudiced the six-member jury against Parole Board Chairwoman Rissie Owens and state parole director Stuart Jenkins.

"I was out of bounds," Sparks said of his remarks. But he also told parole officials they will have to answer for their actions in not giving Graham a hearing before they imposed the conditions.

While the case involved only Graham, Sparks said he believes the parole board has illegally placed restrictions on perhaps thousands of parolees who have been classified as sex offenders.

"I don't believe the Board of Pardons and Paroles can justify the imposition (of the condition) on any parolee," Sparks said, citing wording in the current policy that says the condition can be attached if an offender "could" pose a public safety threat.

"Everyone in this room is a possible risk to the public, including this federal judge," Sparks said, noting that restrictions had been placed on Graham even though the parole board never had made that finding in his case. "Actually, that's more troubling to the court than this individual case."

Until June, parole officials routinely refused to give offenders a copy of psychiatric evaluations and other documents and to provide face-to-face hearings. That policy was changed after Graham's case appeared headed to trial.

In testimony, parole officials said they specifically made the new policy retroactive to cover Graham and about 650 others without sex-crime convictions who have been placed under sex-offender rules.

Parole officials repeatedly insisted the state policies are legal — even though Sparks in January 2008 strongly hinted they were unconstitutional and ordered copies of his order delivered to state parole officials. Several testified they had either never received it or not read it.

Parole officials also said there was no legal requirement for a "live" hearing. To provide offenders hearings, they said, could cost more than \$1.7 million a year for additional staff.

Parole officials and a spokesman for the attorney general declined to comment on the case.

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