

Supreme Court reverses Beach decision: High court ruling could mean man freed in 2011 will go back to prison

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HELENA —In a 4-3 decision, the Montana Supreme Court on Tuesday reversed a lower court's ruling granting Barry Beach, the man convicted in 1984 of a murder he says he didn't commit, a new trial.

The ruling also tossed out Beach's post-conviction petition, meaning Beach, who has been free since Dec. 8, 2011, will likely head back to Montana State Prison in Deer Lodge to finish out his 100-year prison sentence.

Beach was convicted in 1984 of the 1979 murder of Poplar teenager Kimberly Nees and sentenced to 100 years in prison.

The sole piece of evidence connecting Beach to the crime was his own confession, which he gave to Louisiana investigators years after the murder. Beach has since maintained that his confession was coerced by aggressive interrogation techniques and that he is innocent of the crime. His lawyers have tried to make the case that a gang of jealous teenage girls were responsible for Nees' death.

Beach asked the court to determine whether new evidence in the case —which came to light after high-profile newspaper and television accounts of his story made national headlines —merited a new trial.

After an initial District Court ruling denying Beach's petition for post-conviction relief, the Montana Supreme Court ordered the lower court to take a second look at the case and determine whether new evidence merited a new trial.

After a three-day evidentiary hearing in Lewistown in August 2011, Fergus County District Judge E. Wayne Phillips ruled in Beach's favor, granting him a new trial and freeing him on bail.

Phillips found that the new evidence was not available at Beach's original trial and was compelling and believable.

Then-Attorney General Steve Bullock, now governor, appealed that decision and asked the Supreme Court to overrule Phillips.

The high court sided with the state in a 93-page ruling written by Justice Jim Rice.

In her concurring opinion, Justice Laurie McKinnon, who was elected to the bench in November 2012 and was just appointed to the panel reviewing Beach's case in February, wrote Phillips erred when he "deliberately" listened to the new evidence presented at the August 2011 hearing while "failing to closely consider" the evidence presented at Beach's original trial, namely, his confession.

"After a review of all the evidence, we conclude that Beach did not provide reliable evidence of his actual innocence that displaced the trial evidence and thus his conviction," McKinnon wrote in the concurring opinion.

McKinnon and Rice were joined in their ruling by Justice Beth Baker and District Judge Richard Simonton.

Justices Brian Morris, Michael Wheat and Patricia Cotter dissented.

Peter Camiel, Beach's attorney in the case, said the high court's ruling is surprising because it not only overturns the lower court's ruling granting Beach a new trial, but throws out Beach's post-conviction petition entirely.

"I am very very surprised they went as far as they did," Camiel said. "As a general rule, a trial judge's conclusions about the credibility and testimony of witnesses is never second guessed by the appellate court. That's what this court has done."

Camiel said Beach is resigned to the fact that he will likely return to custody while the legal saga unfolds.

"Barry is taking this latest news in stride," Camiel said. "He is extremely disappointed, but he is not panicking. He takes this stuff better than we do. He understands what's going to happen, and he doesn't have any false hopes. He recognizes that's that he's likely going back to jail."

Jim McClosky, executive director of New Jersey-based Centurion Ministries, the group which spent more than a decade working to prove Beach's innocence, said he was stunned by the high court's latest decision.

"I'm just reeling," McClosky said late Tuesday. "It's just a punch in the gut. I can't believe this is the final decision from the court. This is something we couldn't imagine was going to happen. We're all stunned and taken aback by it."

Attorney General Tim Fox was not available for comment. Fox, who was elected in November, has made no public statements on the Beach case.

His spokesman said the Attorney General's Office was reviewing the 93-page order and would release more details Wednesday.

"It's a lengthy ruling. We're in the process of reviewing it and determining what it means for the case, and for Mr. Beach, and we'll have more to say tomorrow," Fox spokesman John Barnes said.
