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The Docket

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'The Last Link in the Chain': Denver Attorney Works for Pardon of Man Wrongly Convicted of Murder

by Nicole M. Mundt

On Jan. 6, 1939, Joe Arridy, a 23-year old man with an IQ of 46, who was said to have the mind of a child between the ages of 4 and 6, was executed by the State of Colorado for a murder that evidence indicated he did not commit. He ate only ice cream for his last three meals and passed his time on death row smiling and playing with toy trains.

Through what can only be described as fate, David A. Martínez, a local Colorado attorney, learned of Arridy's story in 2007. Shortly thereafter, he became what he refers to as "the last link in the chain" when he submitted the petition for Arridy's pardon. On Jan. 7, 2011, as a result of Martínez's work and that of many others before him, Gov. Bill Ritter granted Colorado's first posthumous pardon to Arridy. At that time, Colorado was only the 14th state in the U.S. to do so.



The chain of events that ended with Arridy's pardon is nothing short of incredible. Martínez spoke humbly about his role in all of it, taking every possible opportunity to deflect the credit given to him onto the other dedicated individuals who devoted a great deal of their lives to clear Arridy's name.

In the late 1980s, Bob Perske, a Colorado native living in Connecticut who worked closely with the mentally disabled, came across a poem in the Village Voice about the execution of a mentally ill man in Colorado. Arridy's name was not in the poem, but Perske returned to Colorado and began investigating who the man was to learn his story. In 1995, Perske published a book about Arridy's case, titled "Deadly Innocence?"

More than 10 years later, in early 2007, a close friend of Martínez asked him to look into a legal matter involving veteran's benefits for a friend, who also happened to be a screenplay writer. The writer had taken Perske's book and turned it into the film "Woodpecker Waltz," poignantly named for the journey to Woodpecker Hill, the cemetery in Pueblo where executed convicts are buried. That June, ARC of the Pikes Peak Region raised enough funds for a headstone for Arridy's grave, and Martínez attended the placement ceremony. There, he met Perske, who informed Martínez that he had told Arridy's story to a number of lawyers in the past who had offered to help with the pardon process and then never returned his calls. Martínez committed to follow through and work to clear Arridy's name.

Perske sent him all of his files on Arridy, including newspaper clippings dated back to the

late 1930s. The amount of information Perske had collected over the years was daunting, and Martínez knew he first had to understand the pardon process.

The law involving pardons had evolved significantly, but as Martínez began the process of compiling the research, records, and petition letters on behalf of Arridy, he quickly learned there was no precedent on posthumous pardons. Posthumous pardons had not been applied for or granted in Colorado. Martínez said he felt constant self-doubt. He spent nights and weekends going through the boxes and boxes of information supplied to him by Perske, learning Arridy's tragic story.



At the age of 10, Arridy was committed by the Pueblo County Court to the State Home and Training for Mental Defectives in Grand Junction.

On Aug. 8, 1936, he and some other boys from the institution ran away and hopped a train. In Pueblo, sometime between the night of Aug. 15 and the morning of Aug. 16, 1936, 15-year-old Dorothy Drain was raped and violently murdered in her bed with a hatchet. About a week later, the sheriff of Cheyenne, Wyo., reported that Arridy had confessed to the crime.

Arridy was convicted and sentenced to death, despite evidence showing he was not even in Pueblo the night of the crime; his testimony that he did not own a hatchet and didn't even know what one was; and the subsequent confession and conviction of Frank Aguilar, who was arrested for the murder while attending the victim's funeral. Following Aguilar's arrest, the Cheyenne sheriff obtained a second false confession from Arridy, stating that he acted with Aguilar in the murder. Aguilar, however, said he never knew Arridy. Further, the hatchet used in the murder was found in Aguilar's home. Aguilar was found guilty at his trial and was executed on Aug. 17, 1937.

Arridy was not executed until a year and a half later. The delay was a result of very creative lawyering on the part of his attorney, Gail Ireland (who later became Colorado Attorney General). Ireland represented Arridy following his conviction and successfully secured numerous execution stays for him.

In the first appeal (*Arridy v. People*, 103 Colo. 29 (1938)), Ireland sought reversal of Arridy's judgment, setting forth 75 assignments of error. Ireland argued that Arridy's commitment to the State Home and Training for Mental Defectives in Grand Junction when he was 10 was *res judicata* as to his sanity. Therefore, Ireland argued, Arridy should not have been legally tried on that issue in the criminal case. Ireland further asserted that Arridy's institutional commitment also established a presumption of mental insanity. The Court rejected both arguments, explaining that it "does not follow from a commitment to such an institution that one necessarily is incapable of forming the intent to commit a crime," and even if Arridy's commitment had created a presumption of insanity, the state had overcome that presumption by introducing sufficient evidence to

indicate that Arridy knew the difference between right and wrong.

Despite a finding by three doctors that Arridy was mentally disabled and incapable of distinguishing right from wrong, the Supreme Court found that the jury is entitled to give as much weight as it chooses to the testimony and opinions of the doctors.

In affirming the judgment, Justice Norris Bakke concluded the first appeal by lamenting the current state of the law:

In conclusion, acknowledgement should be made of the commendable effort on the part of defendant's counsel and others to save Arridy from the death sentence ... but until such time as the race, in its evolution process, can work out a more intelligent solution of cases such as is here presented, it remains the duty of courts only, to safeguard the rights of a defendant and see that he had a fair and impartial trial under the law of the state as it is now, not under what we wish it might be, or should, or may be at some time in the future. [103 Colo. at 38-39].

The second appeal, (*People v. Eldred, County Judge, 103 Colo. 334 (1938)*) occurred in December of the same year, notably about a month after the date the Supreme Court set for Arridy's execution in the first appeal. Following another creative legal maneuver to have the Fremont County Court declare Arridy presently insane, thereby staying his execution, the Colorado Supreme Court had a second opportunity to consider the Arridy case. The second appeal stemmed from an analysis of his sanity at the time he was scheduled to be executed, rather than at the time he allegedly committed the murder.

The Court was asked to determine whether the county court had jurisdiction to proceed with the insanity determination. It held that the only court with jurisdiction to make an inquiry into the sanity of a death-row inmate is the court that conducted the original murder trial. In this case, that was the District Court for Pueblo County, not the Fremont County Court.

Like the first appeal, however, the Supreme Court again issued an opinion expressing its difficulty in reconciling the current state of the law with simple morality. The final paragraph of the published dissent has the same chilling effect as the final paragraph of the first appeal opinion:

Are we then to further say that a right to obtain legitimate evidence is to be denied? If so, then there are instances when justice is insecure. I will not lend myself to such denial, particularly where, as here, counsel and others, prompted only, as it clearly appears, by feeling and inclinations most creditable to man, are making a fair and legitimate effort to prevent the cold and tragic taking, by the people, of the life of an admitted mental incompetent, an imbecile since birth, now friendless and penniless, and without conception of what is about to occur. [103 Colo. at 343-44].

When asked why he took on Arridy's case, Martínez could only point to the concluding paragraphs of the two appeals. The Supreme Court recognized that the execution of Arridy was wrong; however, their hands were tied. They were forced to act within the four corners of the law as it existed at that time.

Martínez explained that what happened to Arridy could never happen today. and it is important to remember that this case took place in 1936. A small community had just experienced a brutal rape and murder of one of its children, and someone had confessed to the crime. Martinez contends, and it's hard to dispute, that no one charged with the murder of Dorothy Drain would have received a fair trial, much less someone who allegedly confessed (twice) to the crime. The people were out for blood. The jury dismissed the testimony of multiple doctors who told them that Arridy did not have the mental capacity to form the requisite criminal intent to commit the crime. Martínez referred to it as "frontier justice"—the notion of the community taking "justice" into its own hands.

In no way does this excuse the fate that befell Arridy. At most, it provides some context.

Many people, in learning Arridy's story, are overcome with a sense that the legal system failed this man. It did. But the work of Martinez, and those before him, to clear Arridy's name vindicates the legal system in a sense.

"Fortunately, the law has evolved in just the manner contemplated by Justice Bakke [in the denial of Arridy's first appeal]," Ritter said in his Executive Order granting the pardon. "Under current law, it would be unconstitutional to execute a person such as Mr. Arridy. ... Pardoning Mr. Arridy cannot undo this tragic event in Colorado history. It is in the interests of justice and simple decency, however, to restore his good name. Granting this pardon demonstrates that Colorado has, in fact, matured in its understanding of mental disability."

Arridy's pardon is the result of decades of hard work on the part of people who didn't even know him. They simply knew that his story in no way reflected justice. Ireland, Perske, Martínez, and the other links in the chain devoted their time, energy, and spirit to right the wrong of Arridy's conviction and execution.

Because of them, Arridy will live on as an innocent man, and his last dance will no longer be the Woodpecker Waltz.



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