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Mark Farley Grant: freedom but not exoneration

Commuting Grant's sentence, O'Malley renders no judgment on inmate's credible claim of innocence

March 29, 2012|Dan Rodricks

When Renee Hutchins, the University of Maryland law professor, got her client on the phone Thursday afternoon and told him the news — that the governor was going to commute his life sentence — Mark Farley Grant was "largely speechless and completely stunned."

Hutchins said she will visit her client at the state prison in Hagerstown on Monday. By then, Grant should have a complete understanding of what's happening: freedom after nearly 30 years in prison, but no exoneration and no pardon.

This was never simply a case of a convicted killer asking for parole as he approached middle age. There are plenty of such cases.

This was a young man — 14 years old at the time of his arrest in a fatal shooting of another teenager in Baltimore in 1983 — with a credible claim of innocence. He had exhausted all his appeals over two decades since his trial.

Then, as a last resort, he'd asked Gov. Martin O'Malley to look at the facts of his case and consider his petition for clemency. Hutchins, together with another professor, Michael Millemann, and students at the University of Maryland law school (the governor's alma mater) spent four years researching Grant's 1984 conviction. They filed a report with the governor's office in 2008. I caught wind of it a year later, and I first visited Grant in prison in September 2009. My first column on this case, drawing to the public's attention the disturbing facts raised by the law school's impressive investigation, appeared that month.

Each time I asked, a member of the governor's staff said the case was "being reviewed."

But it is clear by now that the governor never acted on the report. He never made a judgment about whether Grant had been wrongfully convicted.

Time went on, month after month, year after year.

From prison, Grant wrote several letters, asserting his innocence and stating his hope that Mr. O'Malley's heart would be turned.

"Remember this, if nothing else," Grant wrote me from prison in November 2010, "our creator, God, Lord of the Universe, created the sun, the moon and the Earth, and gave Earth life and everything in it. God is the turner of hearts."

Still, nothing happened with regard to his claim of innocence.

And with Thursday's executive order, O'Malley remains silent on the question of whether Mark Farley Grant ever belonged in prison.

All the governor has done is commute Grant's sentence — something that would have happened on March 30 in the absence of gubernatorial action. The General Assembly made it so.

Legislators changed the law that gives the Maryland governor final say on parole recommendations for lifers. As of last Oct. 1, when the new law took effect, the governor had to act within 180 days of a Maryland Parole Commission recommendation or the recommendation automatically took effect. Grant's was among those that were still pending on Oct. 1.

O'Malley denied 57 other recommendations.

So, in that regard, I guess Grant should be grateful. He has claimed his innocence since the night of his arrest 29 years ago. He had the help of law professors and students, who put in long hours to investigate the case and to locate witnesses, one of whom said he testified against Grant under threat of death from the real killer's family. Grant's advocates got the governor's attention. Considering that the politically ambitious O'Malley has embraced the "life means life," no-parole policy begun (but since disavowed) by the state's previous Democratic governor, Parris Glendening, Grant is lucky.

But minus action by the governor, who has the authority and power to independently investigate Grant's claim of innocence, Grant leaves prison under a cloud. It is disingenuous of Mr. O'Malley to say he is being just and fair in commuting Grant's sentence while not acting on — perhaps even ignoring — his credible claim of innocence.

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http://articles.baltimoresun.com/2010-04-13/news/bs-ed-rodricks-free-mark-grant-20100413_1_dna-testing-mr-grant-dna-evidence

Can Mark Farley Grant get justice — in an election year?

Innocence Project established another man's guilt two years ago, yet Governor O'Malley has taken no action

April 13, 2010|By Dan Rodricks

In the matter of Mark Farley Grant — who was convicted in 1983 of a murder that the Innocence Project argues persuasively he did not commit — there is no DNA evidence. There's no old shirt with stains, no jacket or pants in a forensics lab, nothing that could undergo the kind of biological testing that might exonerate him and force the governor of Maryland to release Mr. Grant after 27 years in prison. There's nothing CSI-like about the case.

No, the things that would prove Mr. Grant's innocence are kind of old-fashioned: affidavits of witnesses who said they lied at his trial way back when, the discovery of a failed lie detector test by the key prosecution witness, that sort of thing. The Innocence Project, a faculty-student effort at the University of Maryland School of Law, conducted a lengthy investigation into Mr. Grant's claims of innocence. The students burned some shoe leather, found many of the witnesses and identified another person as the perpetrator. Mr. Grant, the report said, was the victim of perjured testimony and a flawed defense.

Mr. Grant was 14 when police arrested him for the street shooting of another boy, Michael Gough, during a botched robbery one winter night in West Baltimore. Mr. Grant claimed his innocence at trial. He claimed his innocence after being sentenced to life. When he wrote from prison to the University of Maryland Innocence Project for help, the students and professors there took nearly two years to review his case. They took another two years to gather information and affidavits. Their report on the case, in which they identified the apparent real killer of Michael Gough, went to the governor's office with a request for clemency for Mr. Grant.

That was nearly two years ago.

No action has been taken. Mark Farley Grant is still in prison in Hagerstown.

Given the Maryland governor's reluctance to commute a sentence or grant clemency to anyone — as well as his embrace of the no-parole-for-lifers and "life means life" philosophy — it's hard to imagine Martin O'Malley ever acting on Mr. Grant's case, never mind in an election year.

But, of course, had there been some DNA, this all might have been over by now, and Mark Grant would be out on the street looking for a job.

Now that we are in the age of DNA testing, claims of wrongful convictions without it appear to be at a striking disadvantage, especially if calculating, what's-in-it-for-me politicians are asked to make a judgment call. The availability of DNA testing and resulting exonerations have "made it harder for prisoners seeking to prove their innocence in the much larger number of cases that do not involve DNA evidence," The New York Times reported last year. "Many lawyers have grown more reluctant to take on these kinds of cases because they are much harder and more expensive to pursue."

Last year, Maryland received one of the first Bloodsworth Awards given by the National Institute of Justice. The award is named for Kirk Bloodsworth, who was cleared of a Baltimore County murder through DNA testing while serving life in a Maryland prison. The funds, more than \$300,000, will be used for post-conviction DNA testing.

"The advent of advanced DNA testing provides law enforcement a vital tool to find and convict criminals quickly," Mr. O'Malley said at the time, "and this new grant will give us the means to use DNA testing to help clear the wrongfully convicted."

In February, Mr. O'Malley's chief legal counsel noted the Bloodsworth award in a letter to Mark Farley Grant's aunt, though it had no relevance to her nephew's case.

"Governor O'Malley takes his constitutional powers of executive clemency very seriously," Elizabeth Harris wrote Mr. Grant's aunt, Regina Grant Zelik of Pittsburgh. "This requires a thorough vetting of the merits of each application for executive clemency. I can assure you that the application of Mr. Grant, like all clemency applications, is getting a serious, full and thorough review."

If only such a thing were believable. It's not like the Innocence Project sends these cases to the governor's office every week, or even every year. Yet, there is no sense of urgency about it, and no evidence that the Grant case is being handled at any level above the Maryland Parole Commission, and just like any other case that comes along.

Ms. Zelik, the youngest sister of Mr. Grant's late mother, doesn't understand what's taking so long. "Everything needed to make this decision," she wrote Ms. Harris, "is in the hands of the governor."

Everything but DNA. The lack of it, however, shouldn't put Mark Farley Grant at a disadvantage in his quest for clemency, especially when his advocates have put so

much time and effort into documenting what they firmly believe was a wrongful conviction. There might be no DNA in this case, but there is the hard sweat of justice.

Dan Rodricks' column appears Thursdays and Sundays in print and online, and Tuesdays online-only. He is host of the Midday talk show on WYPR-FM.

http://www.innocenceproject.org/Content/Maryland_Governors_Office_Slows_Possible_Exoneration.php

Innocence Blog

Maryland Governor's Office Slows Possible Exoneration

Posted: April 13, 2010 4:30 pm

A Maryland man convicted of murder in 1983 has spent 27 years in prison for a crime that a legal clinic in Maryland says he did not commit.

Mark Farley Grant, who was 14 when he was arrested for a shooting in a botched robbery, is said to be the victim of false testimony and a flawed defense. He always maintained his innocence, including letters to the Post-Conviction Advocacy clinic at the University of Maryland School of Law. After reviewing his case for almost two years, they took him on as client. In gathering information and working on the case, the clinic says it identified the apparent real perpetrator and requested clemency for Grant.

Yesterday, Dan Rodrick wrote in his Baltimore Sun column that the governor's office has yet to take action in overturning the conviction.

Given the Maryland governor's reluctance to commute a sentence or grant clemency to anyone — as well as his embrace of the no-parole-for-lifers and "life means life" philosophy — it's hard to imagine Martin O'Malley ever acting on Mr. Grant's case, never mind in an election year.

But, of course, had there been some DNA, this all might have been over by now, and Mark Grant would be out on the street looking for a job.

Now that we are in the age of DNA testing, claims of wrongful convictions without it appear to be at a striking disadvantage, especially if calculating, what's-in-it-for-me politicians are asked to make a judgment call. The availability of DNA testing and resulting

exonerations have “made it harder for prisoners seeking to prove their innocence in the much larger number of cases that do not involve DNA evidence,” The New York Times reported last year. “Many lawyers have grown more reluctant to take on these kinds of cases because they are much harder and more expensive to pursue.” Maryland received a Bloodsworth Award—named for Kirk Bloodsworth, the first person exonerated by DNA testing in the U.S. who had spent time on death row—from the National Institute of Justice last year to be used for post-conviction DNA testing. But Grant’s case does not include DNA evidence. The clinic at the University of Maryland School of Law says that it proved his innocence by reviewing affidavits of witnesses who said they lied at trial and the discovery of a **failed lie detector test** by the key prosecution witness.

However, earlier this year, Governor Martin O’Malley’s chief legal counsel mentioned the Bloodsworth award in a letter to Grant’s aunt saying that the request for clemency will be reviewed seriously. It’s already been two years.