

Theresa Lee Hernandez Is Finally Released! See videos

November 21, 2008

Theresa Lee Hernandez was released from custody this week.

Theresa had endured over 4 long years in prison after having suffered a stillbirth. The prosecutor had, at the time of her conviction, made the claim (based on no scientific evidence) that her use of methamphetamine drugs was the cause.

This is an amazing success for Theresa, and for all those who advocated on her behalf from the moment her prosecution began, through the guilty plea and the past year when it appeared that she might have to spend up to 15 years in jail. Below are more details about her case and the community education and activism that helped ensure her release.

[News 9 video](#)

[KOCO News 5 video](#)<

On November 19, 2008, after serving only one year from the date of sentencing, Theresa Lee Hernandez was released from prison.

Ms. Hernandez was arrested in 2004 and charged with first-degree murder (a crime with a potential penalty of 25 years-to-life imprisonment) and second-degree murder for having suffered a stillbirth. The state claimed -- without any scientific basis -- that the stillbirth was caused by her methamphetamine use.

In 2007, as her case approached trial, national and state-based organizations, advocates and experts organized, educated and spoke out against the prosecution. These efforts were instrumental in helping Ms. Hernandez avoid a life sentence and in enabling her counsel, Robin Shellow and Jim Rowan, to negotiate a plea bargain. That plea, entered last November, resulted in a sentence of 15 years, to be revisited after Ms. Hernandez served one year in prison.

As the Tulsa World reported: "Theresa Lee Hernandez, 31, appeared before Judge Virgil Black for a sentencing modification hearing. At the request of prosecutors, Black agreed to "suspend the remainder of her sentence and ordered her released from custody." Ms. Hernandez will go to a private treatment program for 90 days and will be on probation for 10 years.

Just a week before Ms. Hernandez's November 19 release, the second of two public forums regarding pregnancy, parenting and drug use was held. This forum, held at the Integris Baptist Medical Center in Oklahoma City, was co-sponsored by the local chapters of the National Association of Social Workers and of the American College of Obstetricians and Gynecologists, the YWCA Oklahoma City, and Oklahoma State University's Gender and Women's Studies program. The panel discussion included local experts, doctors Eli Reshef and Dana Stone, and continued a conversation that drew upon evidence-

based research concerning pregnancy, parenting and drug use. This conversation had begun at an Oklahoma forum one year earlier, in anticipation of Ms. Hernandez's sentencing.

The extent to which the organizing and public education effort made a difference is not only evident in Ms. Hernandez' early release, but also in what happened on the day of her release, how the media reported the decision, and what the prosecutor, District Attorney David Prater is now saying and doing.

Ms. Hernandez' release was not typical. Even in cases where a conviction is completely overturned, prisoners are almost always returned to prison for processing – something that can take weeks or even months - before they are finally released. In Ms. Hernandez' case, the judge ordered that her handcuffs be removed right in the courtroom and that she be allowed to leave straight from the courthouse to her awaiting family and friends. Ms. Hernandez was thus able, that day, to have her first taste of freedom in four years.

The media reporting was also an amazing example of what can be accomplished through meaningful education, outreach and activism.

The Channel 9 news story: "Freed from Prison" began by noting that "The case created a firestorm with doctors and women's advocates who rallied to the woman's side." Both print and television coverage noted that her release was met by the applause and cheers of family, onlookers, and supporters.

The entire Channel 9 news story was framed in a positive light. The correspondent on the Channel 9 story was asked to report about, "how authorities are now working to prevent another case like this from occurring." The correspondent began his report again referencing the experts: "Medical experts questioned whether the drug use actually caused the death of the baby, and the District Attorney heard those pleas and today asked that the prison sentence be suspended."

Kathleen Wallace, an Oklahoma City University law student, NAPW legal intern, and Oklahoma activist, appeared in the broadcast news report explaining, "It is bad precedent to charge pregnant women with a crime when what they did was try and take their pregnancy to term in spite of a drug addiction." According to Channel 9 news, "the district attorney agreed. . ."

District Attorney David Prater's actions and statements also indicated the extent to which education, outreach and activism made a difference. On the one hand, Mr. Prater stuck to the junk science story that pregnant women who use illegal drugs kill their babies, and the fable that imprisonment serves a social good by giving bad people like Ms. Hernandez a chance to prove themselves and to taking advantage of prison-based treatment programs.

(Surely, Mr. Prater is aware of a recent case in which Oklahoma county had to pay \$385,000 in damages to a woman who suffered a stillbirth as the result of horribly inadequate health care and treatment while imprisoned in the very same County Jail that Theresa Hernandez was held in for three years.)

On the other hand, Mr. Prater emerged as a meaningful spokesperson regarding the value of drug treatment and the need to increase access that treatment. On Channel 9 news, he said, "Drug and alcohol addiction is something that most people don't understand and that people need help in dealing

with their drug and alcohol addiction." According to the Channel 9 news report, "Because of this case, Prater is now working to put a pilot program in place to divert pregnant women on drugs into treatment instead of locking them up. And state lawmakers will be asked to fund the program once it is developed."

Significantly, there has not been a single new OK County arrest of a pregnant woman or of a woman who suffered a stillbirth since the state-based organizing and education efforts began.

Nevertheless, while there is real cause to celebrate, there is no cause to stop working to ensure justice for pregnant and parenting women who struggle with drug problems. Although Ms. Hernandez was released to a treatment program, this was only made possible by a private benefactor willing to pick up the costs of her private treatment program – a program that may or may not facilitate her recovery and ensure that she will remain free.

The state needs to address the appalling lack of access to drug treatment and other services that will help pregnant women and families address drug and other health problems and stay together. On June 30, 2004 the Oklahoma Legislature established the Joint Task Force on Prenatal Addiction and Treatment. At their first meeting on Dec. 20, 2004, Sally Carter, an employee with the Department of Mental Health and Substance Abuse Services reported, "More than 80 percent of pregnant women in OK who need substance abuse treatment do not have access to it." Nearly three years later, on May 23, 2007, the Commissioner of the Oklahoma Department of Mental Health and Substance Abuse Services, Terri White, stated:

"Although we are making progress in providing better perinatal services to pregnant women addicted to drugs or alcohol, a large gap in access to services still remains. . . . Not enough resources are going toward this group of women, among the most vulnerable in our society. . . Greater access to services is key[.]"

For Ms. Hernandez's sake and the sake of so many other women and families, we need to keep the pressure on to ensure that health problems are addressed through the public health system, not the criminal justice system, and that supportive, accessible and appropriate services are fully funded and made available to the people who need them. In other words – treatment must become available not as a matter of diversion from the criminal justice system but rather provided as a matter of human rights.

We know that many advocates and activists in Oklahoma are committed to developing new interventions, programs and policies to support pregnant and parenting women, and NAPW looks forward to continuing to work with these leaders on these ongoing efforts.