

# Judge delays ruling on post-conviction motions in child's death case

Journal Gazette and Times-Courier

By DAVE FOPAY Staff Writer | Posted: Wednesday, April 6, 2011

CHARLESTON - A judge Wednesday said she wanted more information before deciding if Jamie L. Thomasson committed one crime or two.

Circuit Judge Teresa Righter delayed ruling on post-conviction motions on behalf of the man convicted of killing 2-year-old Holden Jones. She gave defense and prosecuting attorneys time to research and provide legal precedents to support their arguments on whether Thomasson should have been convicted of aggravated battery of a child as well as first-degree murder.

Ultimately, Righter will rule on whether to overturn Thomasson's conviction for aggravated battery of a child and whether to reduce the 70-year prison sentence she imposed for the murder conviction. The trial court has to handle such post-conviction motions before there can be an appeal, which Thomasson's attorney said is planned and will also address the conviction itself.

A jury in December convicted Thomasson of the two offenses that accused him of violently shaking Holden, causing brain injuries that led to the boy's death, and of breaking his collar bone. Holden was the son of Amy Bennett, Thomasson's girlfriend at the time, and he was babysitting the boy at her Charleston apartment when Holden died.

In February, Righter sentenced Thomasson to 20 years in prison for the aggravated battery of a child conviction but ordered that term to run at the same time as the 70-year sentence for the murder conviction. That meant the 20-year term won't really be a factor unless the murder conviction is overturned on appeal but the aggravated battery conviction is not.

On Wednesday, defense attorney Mark Wykoff said several earlier cases, similar to Thomasson's, support the idea of "one act, one crime" and provided Righter with one example. At trial, the defense tried to convince the jury that Holden's collar bone was broken at a different time than when the brain injuries occurred but the jury's verdict meant they rejected that, he said.

In response, State's Attorney Steve Ferguson said there was evidence that the abuse, or "rough play" that Thomasson claimed, took place over "a period of two or three days." The murder charge alleging shaking that caused brain injuries, while the aggravated battery of a child charge was the only one to refer to the broken collar bone, he noted.

Righter said she didn't "believe they were the same actions" but still opted for the delay. She gave Wykoff a week to provide his legal precedents and Ferguson a week after that to respond, and said she'd probably issue a written ruling during the first or second week of next month.

On the issue of Thomasson's sentence for the murder conviction, Wykoff said state law calls for "restoring the offender to a productive citizenry." Thomasson will have

to serve 100 percent of his sentence before parole's possible, he noted. "He's for all intents and purposes sentenced to die in the Department of Corrections," Wykoff said. "That does not achieve the mandate or serve the interest of justice."

Ferguson replied by noting that at sentencing Righter considered Thomasson's "very spotty" work history and evidence that he also mistreated children in the past. "That presupposes that there was productive citizenry before," Ferguson said of Wykoff's contention. "It was a very appropriate sentence under the facts of this case."

Thomasson attended the hearing in handcuffs and other restraints and under the supervision of two state prison guards.

Contact Dave Fopay at [dfopay@jg-tc.com](mailto:dfopay@jg-tc.com) or 238-6858.

[http://jg-tc.com/news/local/article\\_304251fa-6063-11e0-9b72-001cc4c03286.html](http://jg-tc.com/news/local/article_304251fa-6063-11e0-9b72-001cc4c03286.html)