

Court refuses to uphold probation officer's firing

McKimmey fired after parolee killed trooper

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RALEIGH — A state parole officer fired for failing to report criminal charges against a parolee should have kept his job, the state Court of Appeals ruled Tuesday.

The parolee, Ivan F. Lovell, shot and killed a Maryland state trooper in October 1995 after he was not held in this state for violating terms of his parole.

Lovell's parole officer, Michael McKimmey, was fired the next month. He appealed the firing and both an administrative law judge and the State Personnel Commission ordered him reinstated.

In Tuesday's ruling, the Court of Appeals upheld the commission's decision, saying there was no evidence that McKimmey was responsible for "grossly inefficient job performance."

Such a finding was necessary under state personnel laws to fire McKimmey without earlier disciplinary action.

Judge Wanda Bryant, writing for a 3-member panel of the court, said there is little indication that Lovell would have been immediately arrested even if McKimmey had turned in timely reports to the state Parole Commission.

Bryant noted that in other cases of violations that the commission had instructed officers only to continue supervision.

"The evidence of record does not show that the submission of the (reports) would have triggered a series of events that would have resulted in the revocation of (Lovell's) parole, thus removing the potential for him to engage in malfeasance," Bryant wrote. "Therefore, we find that there existed insufficient evidence that respondent's failure to submit the (reports) resulted in the creation of the potential for death or serious bodily injury."

While on parole, Lovell was

charged with misdemeanor assault in August 1995 after stabbing a man with a screwdriver. The next month, he was arrested and charged with two misdemeanor counts of assault for incidents involving his ex-girlfriend.

A little more than a month after the assaults, Lovell shot and killed Maryland state trooper Edward Plank during a traffic stop. A jury gave Lovell the death penalty, but the sentence was overturned on appeal.

He is now serving a prison sentence of life without the possibility of parole.

Danny Glover Jr., an Elizabeth City lawyer representing McKimmey, said the ruling

makes clear that his client's actions were proper and had no effect on events in Maryland.

"We're pleased for Mr. McKimmey that he was able to keep in place the decision," Glover said. "What he did certainly had no bearing on the Maryland trooper's death, which was certainly a tragedy."

During the personnel proceedings against McKimmey, other parole officers testified that they had filed violation reports without ever having a parole warrant issued.

A supervisor had also instructed McKimmey that he did not have to file such reports on misdemeanor charges, testimony indicated.