

Delivery alert until NaN

Arrest warrant for suspect in Jeremiah Valencia murder case delayed

By Edmundo Carrillo / Journal Staff Writer

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Thomas Ferguson sits with his attorney during a sentencing hearing for probation violation for a sexual assault conviction. (Eddie Moore/Albuquerque Journal)

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SANTA FE – A bench warrant for the arrest of Thomas Ferguson, charged with torturing and killing his girlfriend's teenage son in late November, was delayed for three months last year because the Santa Fe District Attorney's Office failed to get the ball rolling.

Had the warrant been issued promptly and distributed to law enforcement agencies, police would have had a better chance of knowing that Ferguson was a wanted man for a probation violation in the months leading up to the killing of 13-year-old Jeremiah Valencia about Nov. 26.



District Court Judge T. Glenn Ellington has overseen Thomas Ferguson's cases in state District Court in Santa Fe. (Eddie Moore/Albuquerque Journal)

The delay is the latest of several instances, including others previously reported by the Journal, of mistakes or inaction by people in the criminal justice system that helped keep Ferguson on the streets before Jeremiah was beaten to death.

District Attorney Marco Serna acknowledged last week that his office should have filed the motion to revoke Ferguson's probation sooner, and that the office has now "completely changed" how it handles probation violations.

Serna could not provide an explanation as to why his office didn't file the motion when District Court Judge T. Glenn Ellington first ordered a bench warrant in August. Instead, the DA's Office filed the revocation motion in November, just a few days before Jeremiah's death.



District Attorney Marco Serna, left, shown here at a January news conference, acknowledges his office didn't file to revoke the probation of Thomas Ferguson when a judge first raised the issue.

"I wish I had an answer for that," Serna said. "It fell through the cracks. That's why we're changing our system. That's why we need to change our process in our office."

In August, the state Probation and Parole Division filed a probation violation report about Ferguson, 42, in Santa Fe District Court after Ferguson failed to show up for meetings with his probation officer, as required in his sentencing for a guilty plea in a 2014 domestic violence case.

Judge Ellington quickly issued an order calling for a bench warrant and asking that the District Attorney's Office determine whether a motion should be filed to revoke Ferguson's probation.

But nothing happened for three months.

Probation and Parole refiled the same violation report again on Nov. 17, prompting Ellington to refile the exact order that he'd issued in August. Deputy District Attorney Michael Nunez finally filed a motion to revoke Ferguson's probation on Nov. 20, and Ellington issued the bench warrant for Ferguson the next day.



Jeremiah Valencia

That was just a few days before Ferguson allegedly killed Jeremiah, the son of his girlfriend Tracy Ann Pena, at their house in Nambé.

Arrest order issued

Probation and Parole on its own had issued what's called an arrest order, which goes into a national criminal information database, for Ferguson in July.

But without a bench warrant, according to the Santa Fe County Sheriff's Office and Santa Fe Police Department, officers don't know if an individual is wanted unless that person comes into contact with police and an officer decides to run the name and identification information through the national database.

Whereas with bench warrants, both departments said they collect them from the local courts on a daily basis and issue notices to officers and deputies.

Ferguson and Pena, who also had an outstanding warrant, eventually were arrested on Jan. 17 after a Santa Fe city police officer spotted them together.

Jeremiah's death subsequently was discovered after Pena talked in jail about it. The boy's body was found on Jan. 28, buried not far from the Nambé house north of Santa Fe that was the home of the Ferguson/Pena family.

Judges rarely act on own

Ellington could have issued a bench warrant on his own, without prosecutors first filing a motion to revoke probation, but it's rare for a judge to do that, according to District Attorney Serna.

"It's not common for a judge to file a bench warrant, and I've never heard of that happening, quite frankly," Serna said.

Spokesman Juan Rios of the Santa Fe County Sheriff's Office said deputies go the district and magistrate courts in Santa Fe every day to pick up bench warrants. They are then entered into the computer-aided dispatch system and sent to the Santa Fe Regional Emergency Communication Center so they can be disbursed to other law enforcement agencies in the county, Rios said. The sheriff's office has two agents who track bench warrants and look for the offenders.

An arrest order like the one Probation and Parole issued for Ferguson in July, entered into the National Crime Information Center, doesn't get the same attention.

"Even if (probation officers) enter it into NCIC, unless we're notified we're not going to know about it," Rios said. "We're tracking our bench warrants and even distributing them to other agencies."

Rios said Probation and Parole didn't contact the sheriff's office for assistance in arresting Ferguson before the bench warrant was filed.

Jennifer Munoz, the SFPD's district attorney liaison, said she goes to the district, magistrate and municipal courts in Santa Fe as well as the district attorney's office on a daily basis to pick up bench warrants. She said an internal email that includes suspects with warrants goes out to all officers every morning.

It wasn't until last month that Ferguson – still behind bars and now facing 18 counts in Jeremiah's death – finally faced Ellington on a probation violation and was found guilty of absconding. The judge last week sentenced Ferguson to serve the seven years in prison that had been suspended in the 2014 domestic violence case.

Past missteps

A month before Ellington first ordered the bench warrant in August, probation officers actually went to Ferguson's Nambé home looking for him, but they didn't go to the door because the gate was locked and dogs were around. Probation officers never went back.

Under probation, Ferguson was required to stay in the Las Vegas, N.M., area, his former probation officer, Ernest Duran, said at a probation violation hearing last month in Santa Fe District Court.

But Ferguson stopped showing up for meetings and never reported back to Duran after June 6, 2017, Duran said.

Ferguson did send a text message to Duran on June 26 saying that he was going to be living at an address in Nambé – the same house where Jeremiah was killed. Duran had no further contact with Ferguson. On July 25, Duran sent an email to Española probation officer Mary Ann Sarmiento to do a field call at the address that Ferguson had provided.

Sarmiento said at the March court hearing that when she went to the Nambé house, the gates were locked and there were maybe three or four pit bulls in the yard. “We saw the pit bulls, the large animals,” Sarmiento said. “Since the animals approached the gate, we decided for officer safety to end our field call at that point.”

Sarmiento said she and a partner didn’t knock on the door and announce their presence or leave notification that probation officers had been there. She also said probation officers never went back to the house. Jeremiah was allegedly killed there about four months after the field call.

In response to Journal questions, Probation and Parole spokesman S.U. Mahesh didn’t provide a clear answer as to why the probation officers never went back to look for Ferguson.

“Officer was unable to make entry to the residence because the main gate was padlocked,” Mahesh said in an email. “A probation report was submitted requesting a hearing as the offender’s whereabouts were unknown and he had not availed himself to supervision.”

Mahesh also didn’t directly confirm whether Probation and Parole’s Security Threat Intelligence Unit, which tracks probation offenders, was actively looking for Ferguson after he was considered an absconder. “Our STIU investigators are always on the lookout for absconders in our state,” Mahesh wrote. “They work closely with law enforcement agencies and follow up on any viable leads involving an absconder’s whereabouts.”

A few weeks later, in mid-August, Ellington asked the DA’s Office to consider issuing a bench warrant for Ferguson, which the DA’s Office failed to do.

Meanwhile, the Journal previously reported another instance in which authorities had an opportunity to put Ferguson behind bars but failed to do so.

While Ferguson was free on a suspended sentence and probation for a guilty plea in the 2014 case where he’d been accused of beating and raping a woman in Santa Fe, he pleaded guilty to another offense, battery against a household member, in Rio Rancho.

But Ellington was never told about that conviction during an April hearing regarding the probation in his first case. Since the judge was unaware of the second conviction, he continued Ferguson’s probation – allowing Ferguson to be free when Jeremiah was killed.

Changes at the DA’s Office

In light of the mishaps as Ferguson’s probation case was handled by various prosecutors, Serna said one attorney from the District Attorney’s Office now will handle all probation violations in Ellington’s court while another will take care of probation violations in front of Santa Fe District Court’s other criminal judge, Mary Marlowe Sommer, in order to streamline the process.

Ellington expressed concerns with the DA’s Office at Wednesday’s probation violation sentencing for Ferguson over continuity with prosecutors on the case and with communications within the office.

“With all of this, we completely changed how we do probation violations in our office because we don’t want these things to happen again,” Serna said. “This will be a much more uniform process. These individuals will be able to track probation violators much more easily.”

Contact the writer.

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