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Change on timing of appeals sought

Greenleaf wants to end the 60-day deadline for providing new evidence to court.

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The chairman of the Pennsylvania Senate Judiciary Committee plans to propose legislation that would permit defendants to file post-conviction appeals at any time based on significant new evidence of their innocence, regardless of when that evidence was unearthed.

The current state law, one

of the nation's most stringent, requires such evidence — unless based on DNA — to be presented to the court within 60 days of discovery.

Eliminating the 60-day rule is “the only fair thing to do,” said State Sen. Stewart J. Greenleaf. “When there’s a claim of actual innocence accompanied by some credible evidence, there shouldn’t be any time limit. I don’t see how anyone can argue about that.” He said he planned to introduce the bill within a month.

Greenleaf’s comments followed an Inquirer report last month on the case of Milton

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Scarborough, convicted along with two others in 1977 of a heinous triple murder in north central Pennsylvania. In the years since the trial, all four witnesses against Scarborough, now 71, have recanted.

Two other men have provided sworn affidavits identifying another person who they said tearfully confessed his participation in the murders.

Scarborough, who has served more than his minimum sentence of 30 to 60 years, has always maintained his innocence.

Centurion Ministries, a Princeton-based nonprofit that champions the rights of wrongfully convicted defendants, reinvestigated the case and came up with the new information.

Despite the evidence assembled by Centurion, Scarborough's most recent appeal — based on the recantations and other new evidence — was rejected in October when Common Pleas Court Judge Robert E. Dalton Jr. ruled that the 60-day rule precluded him from considering it.

As the 60-day rule has been interpreted by state courts in Pennsylvania, it means that each time investigators discover a new piece of exculpatory evidence — however minute — defense attorneys would have to file a petition with the court.

From the perspective of experienced lawyers who work on complex criminal appeals, that timetable is unrealistic, because it often takes years, not months, to determine whether fragments of new evidence, added together, are enough to construct a solid case. Requiring defense lawyers to file multiple petitions, they say, not only would clog judicial calendars but also deter attorneys from pursuing cases like Scarborough's.

The news that Greenleaf planned to introduce new legislation elated Centurion's founder, James C. McCloskey.

"It's amazing! It's a miracle," McCloskey exclaimed. "This has long been needed, and it's long overdue. I hope that enough other legislators see the wisdom and the merit in this, because it's been desperately needed in the state of Pennsylvania."

Pennsylvania's 60-day rule is one of tightest timetables in the nation, according to lawyers who specialize in cases of wrongful convictions. Other states grant more leeway — like New Jersey and Florida, which have windows of one and two years, respectively — and New York has no time limit.

The president of the state district attorneys' association, Edward M. Marsico Jr., the prosecutor in Dauphin County, said he was "interested in working" with Greenleaf on drafting the legislation. The key to crafting a new law, he said, is doing so "with precision" and "addressing those cases that need finality for the victims."

John T. Rago, the Duquesne University professor of law who chairs the state's Commission to Study Wrongful Convictions, said the 60-day rule would "catch some frivolous appeals." But he said it also inevitably stymied "cases that should be heard."

Rago said he recognizes and "respects the value of efficiency in criminal justice [but] would hope that our rules and practices would never overcome a credible claim of actual innocence, which may be the case in the Scarborough matter."

'Pretty remarkable'

He said the circumstances in the Scarborough case, with all four prosecution witnesses recanting and two others identifying a suspect who has never been prosecuted, seem "pretty remarkable."

The panel that Rago chairs, also known as the Innocence Commission, is composed of more than 40 people, including defense attorneys, prosecutors, judges, law

enforcement officers, and victims. Created by the state General Assembly with the strong backing of Greenleaf, their mandate is to “study the underlying causes of wrongful convictions” and make recommendations to the legislature that would minimize the number of cases in which innocent people end up in prison.

Greenleaf, a Republican who early in his career spent seven years working as a prosecutor in the Montgomery County District Attorney’s Office, said this week that comprehensive legal research, backed up by DNA evidence, has shown that people sometimes confess to crimes they didn’t commit. “I don’t want to run the risk that someone who’s innocent remains in jail,” he said.

The Scarborough case dates to Aug. 6, 1976, when Claire Kepner and her two children were murdered in Muncy, near Williamsport. State troopers described it as a home break-in that escalated. Even though Scarborough was offered a deal by the prosecution that would have entailed serving no time in prison in exchange for his cooperation, he told his attorney that he knew nothing about the murders, then testified in his own defense at trial and ended up being convicted.

At two separate trials, four witnesses — one who claimed to have driven to the murder scene with Scarborough and two brothers, Robert and David Hubble — testified against the three defendants. (Scarborough was tried with Robert Hubble. David Hubble was tried separately.) In the ensuing years, all four said they lied because they were promised lenient treatment by state police and to avoid being charged with murder themselves.

Tormented for decades

The key witness, John Shafer, who testified that he drove to the Kepner house with the Hubbells and Scarborough, said in an interview with The Inquirer that he has

been tormented for decades by his complicity in the case. “I’d been thinking about it for years and years. What I did was wrong. It was wrong, wrong, wrong.”

Shafer, who turned 53 in March, said he had suffered a stroke in recent years and didn’t “want to be dying with this on my head.”



The case of Milton Scarborough has forced the issue.



State Sen. Stewart Greenleaf aims to change the 60-day law.

Scarborough, who now resides at the Laurel Highlands state prison in Somerset, recently retained two new attorneys, David Rudovsky and Leonard N. Sosnov — both veteran lawyers with decades of experience in civil rights law — to explore new avenues to appeal his conviction.
