

Federal court overturns rulings entitling Massachusetts convicted murderer to taxpayer-funded sex change operation

BOSTON — A federal appeals court on Tuesday issued a split decision overturning lower court rulings that entitled convicted murderer Michelle Kosilek to a taxpayer-funded sex change operation.

The First U.S. Circuit Court of Appeals ruled 3-2 on Tuesday that the treatment being afforded Kosilek, a transgendered inmate in Norfolk medium security prison, did not violate the prisoner's Eighth Amendment protection from cruel and unusual punishment.

"After carefully considering the community standard of medical care, the adequacy of the provided treatment, and the valid security concerns articulated by the DOC, we conclude that the district court erred and that the care provided to Kosilek by the DOC does not violate the Eighth Amendment," Circuit Court Judge Juan Torruella wrote for the majority.

Torruella wrote, "Given the positive effects of Kosilek's current regimen of care, and the DOC's plan to treat suicidal ideation should it arise, the DOC's decision not to provide SRS does not illustrate severe obstinacy or disregard of Kosilek's medical needs."

Kosilek was born as a man Robert Kosilek and suffers from diagnosed gender identity disorder. She was convicted in 1992 of strangling her then wife Cherly McCaul and sentenced to life in prison without parole. Though the state has provided Kosilek with hormone therapies, laser hair removal and therapy to treat her identity disorder, Kosilek sued the state and won, seeking a permanent, costly gender reassignment surgery.

The Department of Corrections has argued that the surgery could create security concerns for both Kosilek and other inmates should she be housed post-surgery in the state's only female prison in Framingham.

In 2012, U.S. District Court Judge Mark Wolf ruled in Kosilek's favor, a decision that was upheld by a panel of the Appeals Court before the Patrick administration requested a full bench review.

Senate Minority Leader Bruce Tarr commended the Department of Corrections for challenging the lower court ruling that he said could have led the country down a "dangerous path resulting in serious ramifications not yet identified."

"The Federal Court of Appeals decision to deny convicted killer Michelle Kosilek gender reassignment surgery is an affirmation of fairness and justice," Tarr said in a statement.

"Allowing someone who has committed first degree murder to receive extraordinary surgery at best lacks commonsense, and at worst offends the interests of justice."

Tarr has filed legislation that he said he would refile in 2015 that would ban the use of public funds for sex reassignment surgery, laser hair removal or hormone replacement therapy.

In a dissenting opinion, Judge O. Rogeriee Thompson compared the ruling to past historic cases like Plessy v. Ferguson that upheld state-base racial segregation laws, and argued the Kosilek decision would "not stand the test of time."

"I am confident that I would not need to pen this dissent, over twenty years after Kosilek's quest for constitutionally adequate medical care began, were she not seeking a treatment that many see as strange or immoral. Prejudice and fear of the unfamiliar have undoubtedly played a role in this matter's protraction," Thompson wrote.

By Matt Murphy