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Only in the World-Herald **Judge's reading of jail rules drops case in inmate's death**

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The man's son, outraged by the decision, says "justice has got to be done." He agonized and groaned for help for the better part of two days in September 2007 - before collapsing at the Omaha City Jail and dying of a bleeding ulcer.

No jailer came to **Alexander Simoens'** aid until it was too late.

But a judge's ruling Friday means that none of the jailers indicted by a grand jury three years ago will face criminal consequences in the 47-year-old inmate's death.

Douglas County District Judge Peter Bataillon upheld a defense motion to dismiss the case against jailer Joachim Dankiw - a decision that essentially wipes out the state's cases against both Dankiw and jailer Mark Haefele. The two were supposed to go to trial next week on misdemeanor charges of official misconduct.

Bataillon's reason: State regulations say that "the facility administrator" of a jail shall ensure that proper medical attention is provided.

Lower-level jailers reading those regulations would not know that that requirement applies to them, he said.

Prosecutors are considering an appeal. They said they "respectfully disagreed" with the judge's decision.

Simoens' son, Shawn, was more blunt.

"I'm livid," he said. "I see no justice in this at all."

"I'm appalled. I'm appalled that they're sweeping it under the carpet and acting like my father never died in that jail."

The case has drawn outrage not only from **Simoens'** family but also from those who have watched the video of **Simoens** writhing in his cell, vomiting blood and begging for help.

It also drew the ire of the grand jurors who heard the case in December 2007 and immediately called for the closing of the city jail.

Jurors indicted the jailers after reviewing the video of a dying **Simoens**, who had been jailed for driving with a suspended license.

"It's horrible," Deputy Douglas County Attorney Jeff Lux said of **Simoens'** death. "That's why we've been trying so hard to move this case forward."

Shawn **Simoens** said the decision was another blow to him and his sister, Elizabeth Higgins, who have waited 3½ years for justice. The family's civil lawsuit against the city has been stalled while awaiting the outcome of the criminal case.

The U.S. Attorney's Office for Nebraska recently declined to file federal charges against the jailers on allegations they deprived **Simoens** of his civil rights.

Then came Friday.

In front of Bataillon, Lux argued it was illogical to expect the facility administrator to be on duty 24 hours a day, seven days a week.

When defense attorneys first made the same argument two years ago, Lux had called it "absurd" to suggest that only the jail administrator was required to render aid at a jail. It was only natural to expect that jailers or any designees of the jail administrator would also be required to render aid, Lux said.

However, Bataillon said, he had to strictly adhere to the language of the official misconduct law and state jail regulations.

Under state law, a public servant commits official misconduct if he "knowingly violates any statute or lawfully adopted rule or regulation relating to his official duties."

In turn, the regulations - issued by the Nebraska Jail Standards Board - don't specify that a jailer can assume the duties of the facility administrator, Bataillon ruled.

The regulations say: "Observation of inmates: If there are indications

of illness or injury, the facility administrator shall, to the best of his ability, insure that the proper medical attention is provided as soon as possible."

Said Bataillon: "I didn't interpret that regulation to be that expansive to go beyond the facility administrator."

Two years ago, Bataillon drew fire when he dismissed the grand jury's indictment against jail supervisors Jeanele Moore and Andrew Freeman on the basis that they had no direct knowledge of **Simoens'** condition.

At that time, Freeman's attorney, James Martin Davis, also made the argument that the state regulations did not apply to anyone but "the facility administrator."

Bataillon did not address that argument then.

Attorney Patrick Dunn on Friday pushed the judge on that issue.

He argued that Bataillon should throw out the case not only because of "the facility administrator" language but also because authorities could not show that any of the jailers had violated a "lawfully adopted rule," as required under official misconduct charges.

Lux pointed to the Omaha jail operations manual, which called for jailers to provide "adequate medical care."

However, Dunn said, that manual was not "lawfully adopted" by the Omaha City Council or anyone else.

Dunn said Dankiw, who has since retired, was relieved by the decision.

"This has been very, very hard on him," Dunn said. "His life came apart at the seams over this."

Shawn **Simoens** said he hopes prosecutors appeal the judge's decision. Meanwhile, he said, his family will press on with its federal lawsuit.

"I want to see somebody held accountable for my father's death," he said. "These guys are walking scot-free while my dad is sitting (in an urn) on top of my TV."

"Some justice has got to be done. This is in no way, shape or form the end of it."

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