

Sextuple Jeopardy**Toto, I have a feeling we're in Iowa | Marcel Strigberger**By **Marcel Strigberger**

Marcel Strigberger

(November 29, 2019, 8:48 AM EST) -- Dead or alive? That is the question. An interesting decision came out of the Iowa Court of Appeal recently.

Benjamin Schreiber has been in an Iowa state jail since 1996, serving a life sentence for murder. Unfortunately, in 2015 he came down with severe septic poisoning and died. Fortunately, doctors worked feverishly after his heart stopped beating and they restarted it five times, bringing him back to life.

He brought a court application arguing that he should be released from jail as by dying, he had fulfilled his life sentence. Unfortunately, the court denied his request saying if he is alive, he must remain in jail and if he is dead, the appeal is moot.

I disagree with the court. In my view there has been a miscarriage of justice.

Firstly, the court is on the wrong horns of the dilemma. Actually, if he is dead, he should be released. After all prisons are no place for dead people. If nothing else, any attempts at rehabilitation are doomed to failure.

If he is alive, given that he was dead already, he is now into life number two. He should be released. Nowhere does it say he received consecutive life sentences. The trial judge hit him with life in prison and never added anything like, "And if you should die and come back from the dead, go directly to jail."

It is a fundamental principle of law that a felon is entitled to the benefit of the legal presumption that unless specified consecutive, all sentences are presumed to run concurrently.

The court also violated another fundamental principle of criminal justice, namely double jeopardy. You can't convict someone twice for the same offence. Schreiber was convicted, clearly died, returned and got nailed again. Actually, given that the doctors restarted his heart five times, he could argue he is now into life number six. I don't know if there is a legal principle of "sextuple jeopardy." If double gets him out, then *a fortiori* sixfold should land him a get-out-of-jail-free card.

The Appeals Court noted there was no case law supporting Schreiber's application. Well hey, I wouldn't want this appeal panel of judges to have sat on landmark cases such as that British iconic 1930s negligence, snail in the ginger beer case, *Donohue v. Stevenson*. They'd probably say something like, "We have never seen a case where a snail finds its way into a bottle of ginger beer. How is this anybody's fault?"

The court noted Schreiber must remain in custody until a medical examiner determines he is dead for good. This ruling reminds me of that scene in the *Wizard of Oz*, where after the house falls on the head of the Wicked Witch of the East, the Munchkins send in that coroner to examine her. (Is this some Midwest routine? There must be some nexus.)

I suppose in the case at bar; i.e., this case, had there been a medical examiner standing by after those doctors restarted Schreiber's heart, the good doctor would have sung a song,

"As coroner I must aver,
I thoroughly examined him,
And he's not really dead,
Nor most sincerely dead."

Kudos to his lawyer for bringing this novel case to the court. No news yet currently whether a further appeal is imminent. I certainly can't think of further legal arguments. The gentleman has come back to life multiple times. Maybe he can argue the state violated his rights as a cat.

Marcel Strigberger retired from his Greater Toronto Area litigation practice and continues the more serious business of humorous author and speaker. Visit www.marcelshumour.com.

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