

# Las Cruces Sun News.

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## COURTS

# 'Hear me out.' New Mexico woman convicted of felony murder as a teen seeks new sentence



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*A sentence in this story has been corrected to read: "In a 2012 decision, the court declared mandatory life without parole for juvenile offenders as cruel and unusual punishment."*

Darcy Morrison describes her life at the Western New Mexico Correctional Facility in Grants as a quiet one.

She works in the library for much of the day, where she tutors other inmates. She completed her own bachelor's degree last year and enjoys teaching. After the 4 p.m. head count she reads or watches "Jeopardy!" In her unit, inmates room together in pods of four. She said her companions are quiet and get along.

When speaking on the phone she frequently paused to compose her thoughts into sentences. She also enjoys writing and her handwriting, as exhibited in a 15-page court filing she composed on her own in 2016, is carefully wrought in small letters as consistent as a computer font.

The New Mexico Corrections Department still lists her under her former married name, Darcy Smith. As a teenager, she was briefly wedded to Eric Smith, whom she described as violent and controlling in a relationship marked by substance abuse as well as physical and psychological violence.

She recalls the torment being bad enough that her arrest by police in 1993 felt like a rescue. By then, she was exhausted and weighed just 90 pounds because, she said, Eric Smith did not allow her to eat or sleep regularly.

Court records suggest that a confession she made to a friend at the couple's home in Belen precipitated her arrest and the criminal charges that eventually landed her in prison for life. It may have been a cry for help.

“I felt like someone had heard my prayers and even though I was being arrested, even though I was facing so much time, I felt like somebody had saved my life,” Morrison said, adding, “It wasn't just getting away from Eric. It was the fact that someone else knew and I didn't have to worry about keeping the secret anymore.”

The secret dated back to a bad night one year prior.

## **A murder in the desert**

Morrison was 17 years old when, one night in November 1992, she rode in the back seat of a car with Smith, 20, and his 19-year-old friend Mark Apodaca. The trio was drinking and cruising in Albuquerque. There were guns in the car.

The three would present varying accounts at trial of what happened that night and why. What is clear is that they kidnapped Adam Price, a 17-year-old who happened to be walking near the University of New Mexico campus when the trio

drove by. They drove Price into the remote area of Bernardo in Socorro County. Here, Price was beaten, shot and left to die in the desert.

Apodaca pled guilty to second-degree murder and was sentenced to 24 years in prison, while Eric Smith was sentenced to life plus 32 years on first-degree murder and other charges. Apodaca was released from prison in 2013.

Darcy Morrison was tried as an adult. In 1998, a jury acquitted her on charges of aggravated assault and conspiracy to commit murder but convicted her of false imprisonment and first-degree felony murder. Her sentence was life plus 18 months.

She has spent 24 years in prison and, under current law, will not be eligible for a parole hearing until she serves at least 30 years. She is 47 years old and since 1998 her only internet use has been on a device for online course work that is not equipped with a web browser. She has never used a smartphone, social media or most electronic devices taken for granted outside prison.

“Felony murder” is a legal doctrine that permits murder charges against participants in certain felonies if a death occurs in the midst of the crime – even participants who did not willfully commit murder.

“I don’t believe I’m innocent,” Darcy Morrison said in an interview. “I’m not faulting anyone for sending me to prison.”

She maintains, however, that her presence that night was coerced, that she was pressured into assisting the two men and that Smith’s abuse grew more cruel after the murder. She said in moments of anger he would threaten to treat her as

he had Adam Price; and that he would drive her out to the desert and fire a handgun at her feet for amusement.

## **‘Felony murder’ and juvenile culpability**

None of this, however, was taken into account at her sentencing, which took place immediately after her conviction. It was not a story she told at trial, as she did not testify in her own defense. She was represented by renowned defense attorneys Paul Kennedy and Mary Han, yet Kennedy now says he mistakenly assumed at the time that a life sentence would be mandatory and asked the court to proceed immediately to sentencing when the verdict was returned.

Kennedy made that statement in a sworn affidavit this year as Morrison seeks a new sentence with the assistance of the American Civil Liberties Union of New Mexico. Han died in 2010.

“Darcy is three times diminished in culpability,” ACLU-NM attorney Denali Wilson said, “as a victim of domestic abuse, as a young person and her diminished participation in the actual underlying offense.”

Morrison argues in a new petition filed in 7th Judicial District Court that New Mexico statute required a presentencing report that would have presented evidence of her diminished culpability; that her defense counsel was ineffective; and that her life sentence was unconstitutional.

She has filed petitions previously seeking review of her sentence, all of which were dismissed; but the current petition raises new legal claims. A hearing has not been set.

“All of the assaultive charges, she was acquitted of,” Wilson said. “The only thing she was convicted of was false imprisonment.” Because Morrison was a juvenile, Wilson said that charge by itself would be treated as a delinquent offense, protecting her from an adult criminal sentence.

“But because it gets ushered in through this super-archaic theory of felony murder, it gets exaggeratedly elevated to first-degree murder,” Wilson continued. “This inflation feels especially dramatic for Darcy and the facts of her case.”

## **‘Second chance’ bills**

Wilson’s focus is on youth sentencing reform and seeking parole hearings for individuals convicted in crimes that took place when they were minors. Based on the most recent data available, Wilson found that nearly 40 people convicted of such crimes in New Mexico are serving sentences of 30 years or more.

In the decades since Morrison has been confined, the criminal justice system all the way up to the U.S. Supreme Court has reconsidered how juvenile offenders are sentenced. Yet juveniles could be executed in the United States up until 2005, when the high court ruled it unconstitutional.

In a 2012 decision, the court declared mandatory life without parole for juvenile offenders as cruel and unusual punishment.

That led some state courts to apply the ruling to consecutive sentences that amount to de facto life-without-parole, while legislatures considered “second chance” bills guaranteeing eventual parole hearings for juvenile offenders.

In New Mexico, bills that would have provided parole eligibility for juveniles after 15 years and barring life sentences without the possibility of parole died in Santa

Fe during the 2021 and 2022 legislative sessions. Parole would have been subject to hearings and not automatic. Both bills were introduced by state Sen. Antoinette Sedillo-Lopez, D-Albuquerque.

Morrison would be eligible for a parole hearing once any such law took effect.

Yet the proposals have met with opposition from some prosecutors as well as survivors of violent crimes and family members of victims whose lives were lost.

## **‘I’m still afraid’**

Cathy Flores said that 14 years after her 15-year-old son, Joseph Garcia, was brutally murdered in Carlsbad, she still goes over what she might have done differently on a daily basis.

John Gamble, who was 16 at the time of Garcia’s death, was sentenced in 2009 to 60 years in prison on first-degree murder, kidnapping and other charges. The sentence was later upheld on appeal.

“I know that he’s incarcerated, but I’m still afraid,” Flores said. She described the prospect of him ever being released on parole as terrifying.

“It doesn’t matter how many years have gone by, I’m still going to be deathly afraid if he’s paroled or even having to face him in court,” she said.

Nathan Spulak, whose sister was assaulted by a minor, said the prospect of resentencing “shatters any type of closure that you would have gotten from that initial sentencing.”

“Just because someone wants their victimizer to be in prison does not mean that they hate them or that they're holding on to anger,” Lara Gingerich of the National Organization of Victims of Juvenile Murderers said. “A lot of victims and victims’ family members forgive the person that harmed them, but yet they still believe that that person is too dangerous to ever release. They want them to have a meaningful life within prison but they don't want to risk society and have them freed.”

Wilson says keeping Darcy Morrison in prison serves no public safety purpose and that her record as an inmate, her academic studies, therapy and work as a tutor all demonstrate her rehabilitation.

Morrison herself said, “I am not the same person that I was” as a troubled 17-year-old in 1992.

Flores admitted to her own difficulty viewing teens who commit violent crimes as potentially rehabilitated, particularly after serving long terms in prison.

“I just don’t see it,” she said. “They haven’t been out in society .... How are they going to handle issues that they’ve never experienced before?”

Assisting people who complete prison sentences is one way Morrison said she might contribute to society if she is ever paroled: She likes teaching and feels as though she could help other incarcerated people acclimate to life outside. She also envisions helping her mother, who still lives in New Mexico, as she ages and being an aunt to nieces and nephews born while she was in custody.

She admits that some people might have trouble seeing a juvenile offender as having potential to contribute to society as an adult.

“For the most part everyone has an experience of being around a child,” she said, “and one thing you don’t do is — you don’t give up on children. Yes, I was 17 and some people might think that that’s not a child, but it’s not an adult, either.”

## **Changes in adolescent brain science**

“When adolescents face situations where they have time to process what’s happening and their surroundings, they’re more likely to be able to distinguish from right and wrong and make an appropriate decision,” Merranda Marin, a licensed psychologist and family therapist said. Marin also serves on the faculty of New Mexico State University’s Department of Family and Consumer Sciences.

Emotional distress and peer pressure degrade that ability, no matter how healthy the child’s development and upbringing have been; and from puberty, Darcy Morrison showed signs of distress.

Although she excelled in her early school years, Morrison struggled with social anxiety and depression after her family moved to Albuquerque. She also developed polycystic ovarian syndrome, compounding the hormonal tides of typical adolescence. She dropped out of school, completed her GED and took a job. She joined a social circle where she drank regularly, she said, to stay numb — and that’s when Eric Smith entered her life.

“The legal system is struggling right now with how we impose appropriate consequences that aren’t going to continue to significantly, and negatively, impact the lives of adolescents,” Marin said.

Clinical psychologist Robert Kinscherff, director of the Center for Law, Brain and Behavior in Boston, said the sentencing of juvenile offenders such as Morrison



and many others in New Mexico rose in the context of legal and political events in the 1990s. The decade saw sharp increases in juvenile arrests, coinciding with increases in narcotics trafficking and handguns. Elected leaders promoted numerous measures toughening sentences and other criminal sanctions.

“The vast majority of my clients were all sentenced in the 1990s and early 2000s,” Wilson said, “at the height of this public fear around the ‘superpredator’ and this supposed generation of remorseless youth.”

At the same time, Kinscherff continued, technological advances and neurological research began to change prevailing notions about adolescence.

While data show rates of criminal activity tend to rise sharply in the late teens, he said the curve "drops like a rock" beginning at ages 20 and 21, upsetting Clinton-era narratives of a wild, lost generation. Meanwhile, studies of living brains have revealed much about how they function from pubescence into adulthood.

“Starting with puberty, there are ways in which the brain is structured and functions that make adolescents and early young adults more ‘future discounting,’” Kinscherff said. “Given a choice, they will take an immediate reward now over a greater reward later.”

While adolescents and teens can understand and describe safe behaviors, he said it does not guarantee they will execute those behaviors in risky situations, particularly when they are among peers. This is why, he said, some parents are surprised when their seemingly well-adjusted and successful child makes a bad choice and gets injured or arrested despite "knowing better."

Adding emotional arousal, drugs or alcohol, domestic abuse or other trauma further reduces their ability to make sound decisions or even recognize the choices available to them, he added.

Yet he said long-term data demonstrate that “the heinousness of the crime is not a reliable predictor of either recidivism or lack of capacity for rehabilitation.”

“I really just want somebody to hear me out,” Morrison said on the phone from prison, describing her hopes for a parole hearing.

“I feel like a life sentence is a lot. I’m not the same person, that I was. I have gone through a lot of counselling, I’ve gone through a lot of treatment; I have changed and become a better person. 24 years is a long time. ... Maybe it’s enough.”

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