

Ex-Asheville officer's sentence splits council along racial, political lines

Joel Burgess

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The jail-less plea deal of an officer convicted of assaulting a black pedestrian has split members of the city's governing body along racial and political lines, according to comments gathered by the Citizen Times through Aug. 20.

Criticism of ex-Asheville Police Department officer Christopher Hickman's Aug. 9 probationary sentence has come from the City Council's two African American members, Sheneika Smith and Keith Young, and one white member, Brian Haynes. The three have often voted together on issues ranging from police budgets to hotel zoning.

But the four other council members — Mayor Esther Manheimer, Vice Mayor Gwen Wisler, Vijay Kapoor and Julie Mayfield — either declined to comment or did not criticize the sentence worked out between Buncombe County District Attorney Todd Williams and Hickman's attorney.

While Asheville is politically progressive by most measures, it has a shrinking African American population that is poorer and less advantaged in many ways from white residents. Race has played a central role in how the beating has been viewed, from the time it was revealed to the public through leaked police body camera footage, until now.

Smith said she was "beyond disturbed" by the lack of jail time and questioned whether the victim, Johnnie Rush, approved the plea deal without pressure.

"Under normal conditions, Mr. Rush wouldn't have ever agreed on this deal or been flim-flammed into a restorative justice process with an officer who targeted, tased, punched and strangled him mercilessly," she said.

Mayfield, a 2020 Democratic candidate for state Senate, said she understood "the anger expressed by others," but she didn't want to "comment on things I don't have full information on so I'm not going to comment on something that the city, and particularly council, played no role in."

While the council was not involved in criminal proceedings, it took multiple actions after Rush's Aug. 24, 2017, beating made national news through the leaked footage. After the Citizen Times published the video Feb. 28, 2018, the council fired the city manager, went to court to convince a judge to release other body cam videos related to the beating and called for police reforms. Hickman was arrested a week after the publication on March 8.

Did victim want restorative justice?

The plea deal for 12 months of probation with a restorative justice program was supported by Rush without pressure, said Williams and Rush's attorney James "Fergie" Ferguson, a well-known civil rights lawyer who represented Rush for free and negotiated a \$650,000 civil settlement for him from the city. Ferguson — who is set to argue an Aug. 26 North Carolina Supreme Court death penalty racial bias case — had praised the restorative justice aspect of the deal.

Smith, a former mental health counselor who worked with juvenile sex offenders in a program similar to restorative justice, said voluntary participation by victims is crucial and doubted whether that was true with Rush.

She and others have pointed to Rush's January 2019 arrest for felony cocaine possession and other charges, more than a year after Hickman's assault on him.

After the charges, Williams delayed the case against Hickman and turned over Rush's prosecution to Henderson County District Attorney Greg Newman. Williams said he acted out of ethical concerns because he didn't want his office prosecuting Rush while also working with him as a victim and witness against the former officer.

But some, such as Smith, Young and Mayfield's Senate primary opponent, Ben Scales, continued to assert Rush felt compelled.

Young downplayed Hickman's apology to Rush, saying, "last time I checked, we don't elect D.A.s to secure apologies."

He said the sentence would set an unfair precedent for police officers who commit crimes and would lead to "their actions ... dismissed and expunged from the same criminal records that hold back many black and brown individuals and some for lesser crimes."

Responding to the criticism, Williams said hundreds of juveniles, drug offenders and veterans have been diverted from jail through initiatives he set up similar to restorative justice programs. Hickman's violent felony would be the first such diversion in the county and could be the start of a new program, the district attorney said.

He said the restorative justice program could provide things Rush told him he wanted but were not likely from a criminal trial: an apology from Hickman, a recognition of the violation of his rights and preventing his experience from happening to others.

If Hickman completes the probation he will have his charges dismissed. He could then seek to have them expunged, meaning they would be erased from his criminal record.

Possible jail time, case 'not a slam dunk'

The former officer pleaded guilty to charges of felony assault by strangulation, misdemeanor communicating threats and misdemeanor assault inflicting serious injury.

While the judge told Hickman his maximum sentence could be four years, Williams said it would have likely have been 8-10 months. Asked for an estimate by the Citizen Times, defense attorneys Meghann Burke and Andy Banzhoff said on Aug. 22, if convicted on all charges his actual imprisonment would have probably been 8-10 months.

Williams said if a judge had granted a change of venue to another county, it might have been difficult to get a conviction.

Banzhoff, a well-known criminal law specialist, said even if it had been tried in Buncombe, the case against Hickman was "far from a slam dunk."

"The trial of this case had some serious concerns for the state," he said. "Despite all of the sentiment out there, Hickman was likely legally justified in stopping Mr. Rush."

"I am aware of cases where officers inflicted much more serious injuries than those inflicted to Johnnie Rush. Many of those officers are still working today, and many are in supervisory capacities," he said.

As depicted in the footage, Rush argued with Hickman and APD trainee Verino Ruggiero after being stopped a second time and told he had jaywalked. Hickman moved to arrest Rush who ran, then stopped before being tackled, beaten, shocked and choked by Hickman.

Burke, a well-known LGBTQ rights attorney who filed a brief in the 2015 Supreme Court case legalizing same-sex marriage, said she was currently busy preparing for another case and declined to comment on what a likely trial outcome would have been.

But she said it was clear there was no reciprocity for Rush since he was still having to deal with the drug charges. Still, Burke said the charges themselves were evidence of "criminalization of simple possession of controlled substances, overpolicing of communities of color (and) institutional racism."

Will Hickman be able to work as officer again?

Along with council members' split reaction on the plea deal, there was also disagreement over whether Hickman would be able to work again in law enforcement.

Haynes, the one non-black council member to criticize the sentence, said he was "not surprised" but "was disappointed with the leniency shown to Mr. Hickman."

"I'm also troubled by the conviction possibly being expunged after a year. One would hope that this conviction would never allow Mr. Hickman to return to a career in law enforcement," he said.

Kapoor, who didn't criticize the sentence and is Asian American, said hoped the conviction "brings Mr. Rush some closure" and that he was "glad that with this sentence Mr. Hickman will never be a police officer again."

Williams said he thought any department that would hire Hickman, "would be looking at immense liability."

The district attorney had said he would send a letter to state Attorney General Josh Stein's office in a move to revoke Hickman's certification.

Hickman's attorney, Thomas Amburgey, said his client was a "realist" and did not think he would ever work in law enforcement again given the notoriety of the incident.

The two council members not commenting at all on the sentence were Manheimer and Wisler.

N.C. Senate candidates respond

While Mayfield said she wouldn't comment on specifics, the councilwoman did answer a question about if she thought the General Assembly should play a role, saying there were "likely criminal justice reforms to be done at the state level."

"But I don't know if this particular case is emblematic of a larger, systemic issue that the legislature can address through policy change."

"Again, I understand the anger and frustration. What isn't clear – and what I haven't heard calls for – is whether changing state law provides a path to addressing that anger and frustration," she said.

Mayfield's primary opponent, Asheville attorney Ben Scales, said the one issue he believed could be addressed by legislators is ensuring prosecutors retain the power to use restorative justice, a type of program he supported.

But Scales, who in 2018 ran for district attorney against fellow Democrat Williams and criticized his handling of the Hickman case, said he was "puzzled" by the use of restorative justice in this instance.

Scales said he didn't have any special knowledge of the facts of the case, but like some others, he said Rush might have thought his chances at mercy for his charges would be better if he went along with the plea deal.

"Such a program is generally used to repair wounds to the community caused by criminal activity. In this case, it appears that its use has reopened old wounds and deepened divisions within the community," he said.

"In other words, my question is, what is going to be done to restore the justice that so many community members feel has been taken from them by this plea agreement?"

Two national researchers on crimes by police also expressed different opinions on the Hickman sentence.

Jonathan Blanks, a Cato Institute researcher focused on law enforcement practices, overcriminalization and civil liberties, said he was a "big believer" in restorative justice and that if Rush was happy with the outcome, that "should be front and center."

"But I also understand the feelings of the black community in Asheville," Blanks said. "I want to see the system be more humane to everyone. But if it's only more humane to well off white people or cops, that is a problem."

Phil Stinson, a Bowling Green State University criminal justice professor and creator of a database tracking crime by police said he thought restorative justice in this case might offer more than a trial.

"I don't know if it's a very satisfying experience for many victims to sit through a court trial where a defendant is perhaps convicted, maybe not, then sentenced to whatever. This affords an opportunity to, perhaps, bring some good or at least some better resolution."