

Bruno Has "Very Good Chance" on Appeal

The prosecutors who invested years in obtaining two felony convictions against former Senate Majority Leader Joseph Bruno have no objection to allowing him to remain free until his appeal is decided — something one legal analyst called a “tacit acknowledgment” that the conviction will be tossed. Such consent is uncommon in federal cases, legal experts said.

The recent U.S. Supreme Court decision in the case of former Enron CEO Jeffrey Skilling shed new light on Bruno’s case. As his appeal of his conviction had already been filed, it will be up to the Second Circuit Court of Appeals to apply that decision — which stripped the “theft of honest services” statute Bruno was convicted under of much of its vagueness — to the former lawmaker’s case.

U.S. District Judge Gary Sharpe, who sentenced Bruno to two years behind bars for his convictions on “honest services” mail fraud counts, had previously allowed him to remain free pending the Supreme Court decision. On June 25, he asked each side for their arguments on whether to allow Bruno to remain free until his appeal is decided — something that, in the federal system, requires a solid chance of success on appeal.

Bruno’s attorney, William Dreyer, submitted arguments last week that a reversal of Bruno’s conviction is “required” under the language of the Skilling decision. On Tuesday, Assistant U.S. attorneys Elizabeth Coombe and William Pericak filed a one-sentence letter consenting to allowing Bruno to remain free.

“What’s interesting is that the judge gave the prosecution a chance to argue [what] they were likely to win on appeal, and they did not make that argument,” said Paul DerOhanessian, an Albany attorney and legal commentator. “I think that’s perhaps a strong sign Senator Bruno has a very good chance on appeal.”

Proving a likelihood of success upon appeal after having been convicted by a jury and sentenced by a judge, he said, is typically “a very difficult thing for a defendant to do.”

“If this were a case where it looked like his conviction was going to be upheld, I think the U.S. Attorney’s office wouldn’t be taking the position they’re taking,” said Thomas Carr, an attorney with Tully Rinckey PLLC in Albany. “By them not objecting, I think it’s kind of a tacit acknowledgement that the legs have been cut out of the conviction by the Supreme Court decision.”

In the Skilling case, the nation’s highest court narrowed application on the “honest services” statute to cases where a bribe or kickback could be proven. Bruno’s case hinged on undisclosed conflicts of interest between the lawmaker and entities with interests in state government, some of which had him on the payroll as a consultant.

A quid-pro-quo arrangement was not part of either of the two counts of which the jury found him guilty late last year. They acquitted him of five other counts and deadlocked on another. “There can be no question that the non-disclosure of conflict of interest theory deemed unconstitutional in Skilling is precisely the theory that the government pursued against Mr.

Bruno in this case,” Dreyer wrote to Sharpe in his argument.

But it might not be that simple, Carr said. He suspects prosecutors will argue on appeal that payments to Bruno — in particular \$80,000 from Loudonville Jared Abbruzzese for a racehorse the government said was essentially worthless — were, in essence, kickbacks. That transaction, which was to satisfy the remainder of a cancelled contract, was one of two guilty counts. The other stemmed from a \$200,000 payment to Bruno from a company associated with Abbruzzese.

However, Carr said he expects the appellate court’s decision to go in Bruno’s favor. Bruno maintained both before and after his conviction that he had done nothing wrong and would be vindicated by the Supreme Court decision. His unapologetic nature during a lengthy statement at his sentencing in May irked Sharpe, who told Bruno he “trampled on the integrity of the state Legislature.”