

Bruno's Fate Decided Today

Former state Senate Majority Leader Joseph L. Bruno faces as much as a decade in federal prison when sentenced this afternoon on two felony mail fraud convictions, but a variety of possibilities exist in the sentencing procedure, legal experts said.

Federal prosecutors are seeking an eight-year, one-month prison sentence for the 81-year-old Brunswick Republican, whom a jury found guilty late last year of defrauding New Yorkers of their right to honest government through his outside business dealings. Bruno's attorney, William Dreyer, is asking U.S. District Judge Gary L. Sharpe to sentence the longtime legislator to only probation and a fine.

Some legal analysts consulted Wednesday expect the result to likely be somewhere between those recommendations.

"What we'll probably see (today) is the judge will come down with some period of incarceration, probably toward the lower end," said Thomas Carr, an attorney with Tully Rinckey PLLC in Albany and a former prosecutor.

Carr offered a guess of two years or less behind bars.

"If there is a jail term — and there no guarantee there will be — just how long can be debated," said Daniel Moriarty, a professor at Albany Law School. "It's very difficult to predict with any degree of certainty."

The government's recommended sentence falls at the bottom end of the federal guidelines given the government's view of the factors, which include the crimes and the defendant's background, which would dictate between 97 and 121 months in prison. Should Sharpe accept the factors establishing those guidelines as appropriate, any departure would require a written explanation.

Attorney and legal analyst Paul DerOhannessian noted that, unlike state courts, the sentence is subject to appeal from either side. For that reason, he doesn't expect Sharpe to depart radically from the guidelines he deems appropriate after considering all factors the law dictates.

But the guideline range could fall substantially if Sharpe rejects the prosecution's argument that the conduct alleged in the five counts on which Bruno was acquitted should be considered, DerOhannessian said.

"That's a tough matter for defendants and sometimes lawyers to accept, but that's the law," he said. "But the judge doesn't have to accept it."

Bruno was convicted of two counts stemming from his dealings with Loudonville businessman Jared Abbruzzese, from which Bruno profited \$280,000 — an amount he will pay in restitution under an agreement reached this week. The jury found Bruno broke the law by accepting payments for consulting work from companies affiliated with Abbruzzese without disclosing the conflict of interest.

Some of those dealings surrounded thoroughbred racing — an industry Abbruzzese had a hand in that is heavily regulated by state government.

The government memorandum penned by Assistant U.S. Attorney Elizabeth C. Coombe calls Bruno's crimes "particularly egregious."

"Defendant was well aware that the people he solicited understood the breadth and scope of the power he enjoyed as a result of his office," it reads. "This enabled defendant to extract exorbitant payments while performing no legitimate services anywhere commensurate with the magnitude of those payments."

Dreyer's memorandum argues that a number of factors shift the guidelines down to between zero and six months.

Stephen Coffey, an Albany attorney and supporter of Bruno, said those factors include his age, lack of criminal background and history of public service. The fact that the jury acquitted Bruno on multiple counts should also work in his favor, Coffey said. While Moriarty said Sharpe will be looking to send a message to politicians about abusing the public trust with his sentence, Coffey said the fact Bruno was a politician should also benefit him.

"Part of what they convicted him of was the appearance of impropriety in his public office," he said. "The positive is, he had 30 years of exemplary service. If you're going to apply the negative, you've also got to apply the positive."

Approximately 60 letters have been sent to Sharpe from individuals regarding the sentencing. Some who sent letters include former Gov. George Pataki, former Rensselaer County District Attorney Patricia DeAngelis, and Larry Bugbee, Rensselaer County's GOP election commissioner. Others writing on Bruno's behalf include Stewart's Shops Corp. Chairman William Dake, Troy attorney E. Stewart Jones, Tri-City Valleycats President and Principal Owner William Gladstone, Lansingburgh Boys & Girls Club Executive Director Joseph G. Manupella, businessman John Nigro, former state Senator Howard Nolan, President of SEIU 1199 Dennis Rivera and Saratoga socialite Marylou Whitney and her husband John Hendrickson.

DeAngelis wrote that sending Bruno to prison would be "a horrible injustice." While the time Bruno will spend behind bars — if any — is very much an unanswered question, one thing is certain, Carr said: an appeal will be coming.

Bruno's attorneys, and the defendant himself, have blasted the honest services statute as excessively broad. The U.S. Supreme Court is currently weighing its legality.

Bruno's appeal would be heard to the Second Circuit Court of Appeals, which Carr said has ruled twice on honest services convictions. One was overturned and the other was upheld, he said.

"It's not like there's even a clear indication from the appellate court on which way an appeal would go," Carr said.