



## In Appeal of Construction Fraud Case, DOJ Seeks Tougher Sentences

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In a very rare case in which the government [argued that it viewed criminal sentences as too lenient](#), the U.S. Department of Justice contended in an appeal to the U.S. Court of Appeals for the 1st Circuit on Nov. 7, 2011, that the sentences handed out to two government contractors convicted of fraud did not accurately reflect the seriousness of their crimes.

Robert Prospero, the former general manager of Aggregate Industries, N.E. Inc., and Gregory Stevenson, a former district operations manager for the company, were convicted of a total of 135 felony counts, including conspiracy to commit highway-project fraud, conspiracy to defraud the government with respect to claims, and making false statements in connection with highway projects. Aggregate Industries was a major concrete supplier for the \$15 billion “Big Dig” tunnel project in Boston.

The charges arose out of a scheme to supply substandard or out-of-specification concrete to the federally financed project. The project specifications required that the concrete be installed within 90 minutes of being mixed and that “batch reports” be submitted recording the times of mixing and pouring to comply with this requirement. Approximately 500,000 concrete loads were delivered by Aggregate Industries during the period covered by the indictment, and the jury found that the defendants delivered about 5,000 of these loads knowing that they failed to conform to contract specifications.

The U.S. attorney’s office in Boston estimated that the government’s losses associated with the defendant’s fraud were nearly \$5.2 million, and the judge in the case accepted that calculation.

The judge, however, sentenced Prospero and Stevenson to three years’ probation with six months’ electronic home monitoring and 1,000 hours of community service. Prospero was also fined \$15,000 plus a \$13,500 special assessment. Stevenson was fined \$5,000.

The government had asked for 70-month sentences for each defendant. The guideline range for the defendants was a range of 87 to 108 months.



Explaining the lenient sentences, the district judge stated that although the value of the loss is important, the conduct at issue did not fit the usual white-collar crime profile. The judge said he did not think there was any intent on the defendants' part to enrich themselves personally or to do harm to the project or the taxpaying public. The judge wrote, "What appears to have been at play was a corporate culture in which pressure, much of it self-generated, was exerted on defendants to perform service for the short-term benefit of the organization without heed to the moral consequences or public harm."

Two other defendants — Gerard McNally, a former quality control manager, and Keith Thomas, a former dispatch manager — pleaded guilty before trial to 12 charges, including two conspiracy counts, five mail fraud counts, and five counts of filing false reports in connection with a federal highway project. Those defendants received probation and community service. They also agreed to testify against the other four defendants.

Two other defendants — John Farrar and Marc Blais, former dispatch managers — were sentenced to probation, community service, and fines. Farrar was convicted of one count of conspiracy to commit highway project fraud and mail fraud, 13 counts of false statements, and 37 counts of mail fraud. Blais was convicted of five counts of false statements and three counts of substantive mail fraud. The government only appealed the sentences handed out to Prosperi and Stevenson.

In 2007, the Supreme Court held in *Gall v. United States* that courts need to review reasonableness of sentences under a deferential abuse of discretion standard, regardless of whether that sentence is inside or outside the guidelines range. In *Gall*, the Supreme Court upheld a sentence of 36 months' probation for a defendant who pleaded guilty to conspiracy to distribute ecstasy when the recommended guidelines range was 30-37 months imprisonment.

It will be interesting to see what the First Circuit will decide. In a post-*Booker* world, the sentencing judge has a great deal of discretion to determine the appropriate sentence. Here, the First Circuit will have the opportunity to define the broad outlines of what constitutes an abuse of discretion in sentencing.

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The commentary and cases included in this blog are contributed by Jeff Ifrac and firm associates Rachel Hirsch, Jeff Hamlin, Steven Eichorn and Sarah Coffey. These posts are edited by Jeff Ifrac and Jonathan Groner, the former managing editor of the *Legal Times*. We look forward to hearing your thoughts and comments!