



Lawyers Ask That Judge Not Retry

Hialeah Mayor On Extortion Charges

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Hialeah Mayor Raul Martinez sidestepped a federal conviction for public corruption once.

In 1991, Martinez was convicted on six racketeering and extortion charges. He was sentenced to 10 years in prison, but a federal appeals court reversed the verdict in February because it said the judge had improperly instructed the jury.

The U.S. Attorney's Office wants to retry Martinez. But the mayor, who won a controversial re-election bid in November by 273 votes, is trying to avoid a new trial.

Martinez's lawyers asked U.S. District Judge James Kehoe by telephone on Monday not to retry Martinez, claiming that a second trial would constitute double jeopardy. Under the Fifth Amendment to the U.S. Constitution, a person cannot be tried for the same charge twice.

The lawyers also asked Kehoe to determine whether the evidence prosecutors presented during the first trial was sufficient to warrant a conviction. If the judge determines there was not sufficient evidence, Martinez would not have to face a second trial.

In overturning Martinez's conviction, the three-judge panel from the 11th U.S. District Court of Appeal said that Kehoe failed to explain clearly to the jury what prosecutors had to prove before jurors could convict Martinez.

However, the appeals court did not determine whether there was enough evidence to warrant a conviction. If Kehoe rules that there was enough evidence, a decision on a new trial could be delayed for months, while Martinez appeals.

In their motions against a new trial, Martinez's attorneys - James Jay Hogan, Evelyn Greer and Richard Strafer - said that Martinez should have been acquitted at the end of the first trial.

Martinez's lawyers say that federal prosecutors never proved that Martinez illegally operated "quid pro quo" by extorting land from developers at bargain prices before granting them favorable zoning that shot up the price of the properties.

"There is not any evidence that the mayor exercised any influence over department heads to get back at anybody," Strafer said.

Prosecutors, however, said they had delivered enough evidence to justify a conviction, and the appeals court's action proves it.

"The Court of Appeals believed the evidence to be sufficient, otherwise they would not have remanded it for a new trial," assistant U.S. Attorney Barbara Ward said. "If the Court of Appeals had believed the government's evidence to be thoroughly insufficient, I believe it would have said that."

Ward also said that if Martinez wants to complain that the appellate court didn't address his claim that the evidence was insufficient, he should address that issue with that court.

She said the U.S. Supreme Court has ruled that a court of appeals doesn't have to determine whether the evidence was sufficient in cases where there has been a mistrial, but it's uncertain whether the ruling would also apply in cases of trial error.