

Supreme Court Ruling Further Delays Dentist's Sentencing

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ABINGDON, Va. – If dentist Roy Shelburne's conviction by a federal jury was swift, the sentencing phase is turning out to be a slow slide toward justice.

A June 2 ruling by the U.S. Supreme Court regarding the federal statute for money laundering is the latest in a string of delays – ranging from a late-arriving transcript of the trial, to the defense attorney's computer crashing at the 11th hour – to push back the sentencing.

On Monday, Judge James P. Jones of the U.S. Western District of Virginia said the high court's split decision in *United States v. Santos* "may be significant" in sentencing Shelburne.

Jones called the decision "complicated," and "something I need to study further."

It is unclear what if any bearing the high court's decision will have on the sentencing.

Shelburne was convicted on March 6 of racketeering, health care fraud and money laundering, and faces up to 120 years in prison and a \$1.25 million fine.

Defense attorney Dennis Jones has asked the judge to set aside the jury's verdict and grant a new trial, arguing that the government did not meet its burden of proof in the two-week trial.

At issue in the Supreme Court ruling is the definition of "proceeds" in the federal money laundering statute. The justices split over whether the term should mean the "gross receipts" from an illegal transaction, or just its profits.

The ruling effectively allows for both interpretations, which means that the government could in some cases be held to the higher burden of proof of demonstrating that a defendant profited from an illegal enterprise and funneled the surplus back into the business.

Jones, Shelburne's attorney, has pointed out that any revenues that resulted from overcharging patients cannot be extricated from revenues for legitimate services he performed.

Further, Jones argued, any amount Shelburne overcharged was not significant enough to promote his business' operation – the standard for money laundering under federal law.

U.S. Assistant Attorney Tony Giorno on Monday argued that federal law on money laundering does not deal with the amount of unlawful proceeds, but rather the intent to promote an illegal activity.

Even if the government were held to the higher burden of demonstrating Shelburne's profits, Giorno said, the dentist's salary alone would satisfy that standard, since a proprietor could only pay himself after taking care of "essential operating expenses."

Judge Jones did not set a trial date on Monday. Shelburne's license remains current and active, according a database kept by the Virginia Board of Dentistry; withstanding a motion by the government to prohibit him from practicing by amending his probationary conditions.

"It appears state regulatory agencies have not restricted the defendant's ability to practice dentistry or his ability to bill government agencies for dental procedures," wrote then-U.S. Attorney John Brownlee in March, after the Herald Courier reported that the convicted dentist was still treating patients.

The Virginia Department of Health Professions has the authority to suspend a practitioner's license, and is required to do so immediately when one is convicted of a felony.

The state agency does not consider a conviction to be final until after sentencing, officials said.

Giorno on Tuesday said he did not believe the judge would amend Shelburne's probationary status before sentencing him.

Judge Jones, responding to a Herald Courier query, wrote that he would not take up the motion "unless the government requests me to."

As he left court Monday, Shelburne's attorney, Dennis Jones, said that his client continues to practice, but on a "dramatically reduced" level.

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