

December 2, 2010

<http://detnews.com/article/20101202/METRO01/12020450>

Court rejects appeal over drug trial at which judge, officials allegedly lied

DOUG GUTHRIE
The Detroit News

Detroit— Michigan's Supreme Court has rejected the appeal of a Riverview bar-owner whose 2005 drug conviction came after a trial in which the judge, prosecutor and two police officers are alleged to have allowed or told lies under oath.

The state's highest court voted 4-2 against intervention in the case of Alexander Aceval. The order — based on oral arguments the court heard in November from Aceval's attorney, David L. Moffitt — was released today without explanation.

Retired Wayne County Circuit Judge Mary Waterstone, former top Wayne County drug prosecutor Karen Plants, Inkster Police Sgt. Scott Rechtzigel and Officer Robert McArthur face felony charges of misconduct in office, which carries a sentence of up to five years. Plants, Rechtzigel and McArthur also are charged with perjury, a life felony.

"The high court's failure to summon a majority to review whether judicial and prosecutorial misconduct can be a basis to convict may relegate Michigan's justice system to one worthy of a third world dictatorship," Moffitt said today. "To do this without comment or explanation is a disservice to the public. Any time you tacitly approve public corruption as a means to convict, it deserves at least a full explanation."

Moffitt said he will ask for reconsideration from the high court while he also prepares an appeal to U.S. District Court.

Allegations against the four arise from the prosecution of Aceval, in which a paid undercover informant led police to more than 100 pounds of high-quality cocaine delivered to his bar and nightclub, J Dubs. Aceval's first trial ended in a hung jury. He pleaded guilty during his second trial in June 2006, after being accused of tampering with a witness, and is now serving 10 to 15 years in prison. His earliest release would come in March 2015.

The role of the informant was hidden from jurors and lawyers representing Aceval with fictional accounts of his activities, according to William Rollstin, an assistant with the Michigan Attorney General's Office, which took over prosecution of the four when Wayne County Prosecutor Kym Worthy stepped aside and four other Michigan prosecutors also declined to take the complicated case.

Justices Diane Hathaway and Stephen Markman voted against the one paragraph order issued by the Supreme Court. Hathaway wrote that she would have granted a full hearing of the "significant" issues of the case before rendering a decision.

Markman said he would have voted to reverse Aceval's conviction, calling the case "extraordinary" and "without precedent" in Michigan judicial history. He said both of the man's trials were flawed and unconstitutional. He recalled an earlier Court of Appeals review of the case that determined the actions of Waterstone, Plants and the police officers was, "disgraceful," and "plainly reprehensible."

Markman said he hopes "never again to see such a case within our criminal justice system."

Justice Maura Corrigan abstained from voting on Aceval's appeal. She has in the past told The Detroit News she declined to vote on matters involving Aceval because she plans to testify as a character witness on behalf of Waterstone, if her friend ever comes to trial.

Former Justice Elizabeth Weaver in June questioned the appropriateness of Corrigan's recusal in orders issued in both the Waterstone and Aceval matters. Corrigan's explanation for declining to vote appears to conflict with Michigan's rules for judicial conduct, which state no judge shall volunteer to testify without first being subpoenaed.

Although the charges against Waterstone were issued March 2009, lengthy pretrial challenges, including questions about Michigan Attorney General Mike Cox authority to prosecute Waterstone that went all the way to the Supreme Court, have delayed proceedings. No trial date or witness list has been issued. More pretrial motions are to be argued on Dec. 17 before Wayne County Circuit Judge Timothy Kenny.

dguthrie@detroitnews.com

© Copyright 2010 The Detroit News. All rights reserved.