

JUDGE REJECTS BAUER DEAL AS TOO WEAK EXPERTS QUESTION IF JURIST BROKE RULE

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Start Page: 1

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A federal judge Wednesday rejected Dean Bauer's plea deal with prosecutors, calling the agreed 6-month prison term too lenient and proposing to double the sentence to 1 year of incarceration.

The ruling by U.S. District Judge Charles Norgle Sr. took defense lawyers and prosecutors by surprise and threw open the possibility that Bauer could go to trial despite his well-publicized guilty plea in January to obstructing justice.

Bauer is the highest-ranking former official charged in the Operation Safe Road probe of wrongdoing in the secretary of state's office during Gov. George Ryan's tenure there. Bauer was indicted on charges of scuttling several investigations into internal wrongdoing while he was Ryan's inspector general.

Norgle's intervention was extraordinary for two reasons. First, it is highly unusual, especially in such a high-profile case, for a judge to reject a sentence worked out between prosecutors and defense lawyers. Second, the judge took it another step, announcing he would accept a plea deal calling for Bauer, 72, to be sentenced to a year in prison.

Although Norgle may have been trying to be helpful by letting both sides know exactly where he stood on the prison term, some legal experts said the judge technically violated federal rules of evidence by interjecting himself in the plea-bargaining process. Others saw Norgle's pronouncement as harmless, noting that the rules allow a judge who rejects a plea deal to warn the defendant that his sentence "may be less favorable" if he persists in pleading guilty.

Still, Norgle may have raised a potential issue on which Bauer's lawyers could seek to remove the judge from the case.

Bauer's lawyers, Edward Genson and Marc Martin, declined to comment on Wednesday's developments.

Norgle's rejection of the plea agreement represented a rebuke for U.S. Atty. Scott Lassar, who had defended the proposed 6-month prison term as "appropriate" given Bauer's age and ill health.

Lassar also had said the government case against Bauer raised novel, though risky, legal issues, charging mail fraud in matters in which Bauer had discretion on whether to pursue investigations of employee wrongdoing.

Prosecutors had little to say Wednesday about Norgle's decision.

But if Bauer decides to forgo the guilty plea, "we're ready to go to trial," said Assistant U.S. Atty. Patrick Collins, lead prosecutor in Operation Safe Road. A trial could occur perhaps as soon as June.

The turn of events created a dilemma for Bauer's lawyers.

Do they accept a tougher sentence than the one they bargained for with prosecutors over three weeks of often-intense negotiations?

Or do they risk going to trial after the publicity over Bauer pleading guilty to obstruction of justice and facing an even stiffer prison term?

A significant factor in former Chicago city Treasurer Miriam Santos' decision to plead guilty to mail fraud in October was that her prior conviction--later overturned on appeal--had been so publicized that prospective jurors would likely know she had once been convicted.

Norgle gave Bauer's lawyers one week to decide if they would accept his terms--the 1-year prison term--or go to trial.

Under the deal reached earlier this year between Bauer's lawyers and prosecutors, Bauer was to serve 9 months of home confinement after completing the 6-month prison term--a combined 15 months of custody.

Under Norgle's proposal, if Bauer receives credit for good time, he faces less time in custody, though more of it in prison. He would serve just under 10 1/2 months in prison, the last few months possibly in a halfway house. But he wouldn't have to do any home confinement.

The judge also said he would recommend Bauer serve his time in a prison-medical facility, such as the ones at Rochester, Minn., or Springfield, Mo.

In court, his lawyers detailed Bauer's health problems--including recurring battles with bladder cancer and repeated surgeries for blood clots and hernias. But Norgle said he wasn't convinced that Bauer needed constant care or that the U.S. Bureau of Prisons couldn't adequately care for him.

In rejecting the plea deal, Norgle said, "The reason ... is that to impose less of a sentence would tend to deprecate the seriousness of what has occurred here, and it would not serve as a deterrent to others."

Looking on in court were Rev. Duane "Scott" Willis and his wife, Janet, the parents of six children killed in a fiery 1994 crash involving a trucker who prosecutors say was licensed through a bribery scheme at the secretary of state's office during Ryan's tenure.

In pleading guilty a week before his scheduled trial earlier this year, Bauer admitted that in 1999 he tried to persuade his former secretary to destroy a memo showing he suspected within a week of the Willis crash that the trucker, Ricardo Guzman, had illegally obtained his commercial driver's license.

As part of the plea deal, Bauer acknowledged prosecutors had the evidence to prove him guilty of derailing the Guzman investigation and several other internal probes of wrongdoing by employees in order to protect Ryan while he headed the secretary of state's office. But Bauer didn't admit that he in fact impeded those investigations.

In another Operation Safe Road case Wednesday, prosecutors revealed for the first time that John Spahn, a former employee at the secretary of state facility in Elgin who was charged with extorting bribes, is cooperating and is expected to plead guilty. Spahn is accused of reinstating the licenses of several drivers who had two or more convictions for drunken driving.

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Abstract (Document Summary)

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