

2nd Circuit Upholds Attorney's Conviction for Forgery

Tom Perrotta -- New York Law Journal, March 5, 2007

Perry Reich, the Long Island, N.Y., attorney who forged a federal magistrate judge's order, will remain in prison after a federal appeals court denied a bid to overturn his conviction.

A unanimous panel of the 2nd U.S. Circuit Court of Appeals upheld on Friday all aspects of Reich's conviction for forgery and obstructing a judicial proceeding, as well as his 27-month sentence.

The ruling in *United States v. Reich*, 06-CR-1445, written by Judge Sonia Sotomayor, put an end to a case that surprised and saddened many in the New York legal community who knew Reich as an accomplished appellate lawyer.

Reich's appellate attorney, Mark M. Baker of Brafman & Associates, said he was disappointed in the decision. He added that Reich, 57, had adjusted to life in a federal prison in Otisville, about 70 miles northwest of New York City. Reich began his sentence last June and could be eligible for release in a little more than one year.

While the circuit did nothing to reduce Reich's sentence, it used his case as an opportunity to resolve an issue of first impression: whether a forgery charge under 18.U.S.C. §505 requires proof of intent to defraud.

The statute contains no specific requirement, but Reich argued that Eastern District Judge Nicholas G. Garaufis should have instructed the jury about intent because §505 should be informed by common-law forgery, which requires intent.

Reich based his argument on a 1931 ruling from the Sixth Circuit, *Levinson v. United States*, 47 F.2d 470. However, the Tenth Circuit found that an intent to defraud was not required in *United States v. Cowan*, 116 F.3d 1360.

The Second Circuit sided with the Tenth Circuit and Judge Garaufis. Judge Sotomayor wrote that historically, "to defraud" has referred to an attempt to deprive a person of something of value. She said §505 had a different purpose: to protect the integrity of federal judicial proceedings.

"When an individual forges a judge's signature in order to pass off a false document as an authentic one issued by the courts of the United States, such conduct implicates the interests protected by §505 whether or not the actor intends to deprive another of money or property," Judge Sotomayor wrote.

Reich was convicted of faxing a fake order, purportedly rendered by Magistrate Judge Roanne L. Mann, to an adversary in a civil suit between a brokerage firm and two former clients.

Reich had a similar dispute with the brokerage, which he said had lost his life's savings of \$2 million. In the fake order, Magistrate Judge Mann reversed one of her previous rulings and recused herself from the suit. Prosecutors contended that Reich intended to embarrass the adversary by making the order seem as if the adversary were responsible for the forgery.

Judge Amalya L. Kearse and Southern District Judge John G. Koeltl, sitting by designation, concurred on the circuit ruling.

Amy Busa, an assistant U.S. attorney in the Eastern District, represented the government on appeal.

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