



Skilling Fallout Doesn't Spring Ex-Gov From Prison

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The Supreme Court's June decision in *United States v. Skilling* doesn't give former Illinois Gov. George Ryan a "get out of jail free" card, a U.S. district judge has ruled.

Ryan was convicted in 2006 of a series of fraud, racketeering, and similar crimes growing out of his abuse of public office while he was governor and before that as the state's secretary of state. He has been in federal prison since November 2007.

Last August, Ryan filed a petition under 28 U.S.C. 2255, which allows a federal prisoner to challenge his conviction and try to have it set aside if it was imposed in violation of law. His lawyers pointed out that *Skilling* made a substantial change in federal fraud law, rejecting the concept of "honest services" fraud in cases other than "paradigmatic cases of bribes and kickbacks."

So the question before U.S. District Judge Rebecca Pallmeyer of the Northern District of Illinois was the nature of Ryan's convictions, which of course took place in the pre-*Skilling* period, and the nature of the jury instructions in his case.

Judge Pallmeyer, in a detailed 59-page opinion, turned aside all of Ryan's arguments. The "conduct for which [Ryan] was convicted – steering contracts, leases, and other governmental benefits in exchange for private gain – was well-recognized before his conviction as conduct that falls into the 'solid core' of honest services fraud," the judge wrote, noting that this conduct was exactly what the Supreme Court said in *Skilling* was the "proper target" of the "honest services" law.

But that was not the end of the judge's analysis. At Ryan's trial, prosecutors did not present solely a straightforward bribery theory. They also relied on the argument that Ryan, as a public official, did not disclose a conflict of interest between his public duty and his desire to bestow benefits and government contracts upon his friends. This was exactly the theory that the Supreme Court rejected in *Skilling*.



Judge Pallmeyer, in fact, found that several of the jury instructions were in error because they relied on legal theories that are now foreclosed by *Skilling*. But she also found them to be harmless error – and thus, that there were insufficient grounds to set aside Ryan’s convictions.

The judge had to look closely at exactly what facts the jury had found in each count of Ryan’s case and separate out a bribery theory (still fine after *Skilling*) and a conflict-of-interest theory (no longer acceptable). For each count, the judge held that the jury had found enough facts to establish a bribery theory that still survives after *Skilling*.

Even though the jury instructions included some legal errors, Judge Pallmeyer wrote that they still required the jury to find that Ryan “did not act in good faith, that he acted for private gain, and that the ‘stream of benefits’ ” that flowed between him and a business associate “were intended to influence him in his official duties.” That amounts to bribery under federal law, and that was enough to uphold Ryan’s convictions.

This case shows, at the very least, how complicated the application of *Skilling* is going to be. In a very precise, fact-intensive process, prosecutors, defense attorneys, and judges will need to sort out the facts of past white-collar cases and see what survives.

Crime in the Suites is authored by the [Ifrah Law Firm](#), a Washington DC-based law firm specializing in the defense of government investigations and litigation. Our client base spans many regulated industries, particularly e-business, e-commerce, government contracts, gaming and healthcare.

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