Government Uses Wrong Statute to Prosecute Ex-D.C. Employee

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On January 7, 2011, the D.C. Circuit threw out the conviction of former D.C. government employee Ikela Dean, noting that while she might be guilty of something, she was not guilty of the offenses for which she was indicted.

Dean, a former employee of the D.C. Department of Consumer and Regulatory Affairs, was involved with reviewing and processing license applications. In 2007, Dean began informing businesses that license fees could be paid by check, but that late fees had to be paid in cash. Dean submitted the checks for the licenses to the department but pocketed the cash submitted for the late fees.

Although Dean successfully kept the cash in the first seven applications that she processed, the eighth applicant was suspicious of the cash requirement for the late fees and notified the FBI, which set up a sting operation. The sting operation was successful, and Dean collected $1,275 from the "applicant" to cover the late fees. Dean was then arrested.

The trial court dismissed 12 of the 14 charges against Dean, but permitted the jury to consider two charges. The jury found Dean guilty of bribery and extortion. Dean was later sentenced to 27 months in prison.

The appellate court explained that bribery and extortion both require a quid pro quo, which the Supreme Court has defined as an agreement between the public official and a second person, in which the public official will perform an official act in exchange for a personal benefit. However, there was no evidence that Dean accepted the cash in exchange for being influenced to perform an official act like issuing a license. Rather, Dean accepted the money as payment for the license, the fees were required, and Dean did not promise any favorable processing of the application. There was no evidence of an agreement to pay an illicit benefit to in exchange for favorable treatment; therefore the bribery conviction was reversed.

Extortion, as elucidated by the Supreme Court, occurs when a public official "obtain[s] a payment to which he [is] not entitled, knowing that the payment [is] made in return for official acts." Extortion also requires a quid pro quo, which means "there must be an agreement between the public official and the other party that the official will perform an official act in return for a personal benefit to the official." Thus, Dean had to enter into an agreement to take the cash in return for performance of an official act. However, the agreement was for Dean to accept the cash on behalf of the DCRA and not to keep it personally.

As the appellate court pointed out, although "the evidence established that Dean intended to keep the $1,275 . . . the agreement was for Dean to accept the $1,275 on behalf of the DCRA. There is no evidence of an agreement between her and the undercover agent that the money was to go to her personally." Therefore, the extortion conviction was also reversed because there was "nothing in the record wherein Dean suggested to the agent that the money was going into her pocket."

The appellate court concluded: "We echo the sentiments of the trial judge who opined that the government mis-charged in this case; Dean may well be guilty of embezzlement or fraud, but not extortion or bribery as charged."

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