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## Probation official seeks to stay out of prison pending appeal



JESSICA RINALDI/GLOBE STAFF

**Elizabeth Tavares (right) was ushered into Boston's Moakley Courthouse for her sentencing in November.**

By Milton J. Valencia |

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Elizabeth Tavares, one of the probation department officials who was convicted in July of corruption, asked a federal appeals court Friday to stay her prison sentence pending an appeal, confident she will succeed in overturning her conviction.

“She’s not a risk of flight, she’s clearly not a danger, and the issues raised by this unprecedented trial are significant enough” to postpone her prison sentence, her lawyer, Martin Weinberg, said Friday.

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“Her appeal to this court will present a number of serious and substantial issues which amply satisfy the standard for bail pending appeal,” he argued in the court filing.

Tavares, 57, the former first deputy of the probation department, was sentenced in November to three months in prison on charges of racketeering and mail fraud, for helping to create a fraudulent hiring system that favored politically connected candidates.

John J. O’Brien, the former commissioner, was sentenced to 18 months in prison, and William Burke III, a former deputy, was sentenced to probation.

The sentences were far less than the years the defendants faced in prison under federal sentencing guidelines, but US District Court Judge William G. Young said in handing out the sentence that the three of them should not be the scapegoats of a state judicial system that was riddled with fraudulent patronage hiring.

Federal prosecutors had identified more than 30 unindicted coconspirators who took part in the scheme but were not charged, and the trial also implicated stop state legislators, including House Speaker Robert DeLeo. He was never charged with any crime.

O’Brien and Tavares are slated to report to prison on Jan. 12.

In a 33-page brief filed Friday, Weinberg asked the US Court of the Appeals for the First Circuit to stay Tavares’s sentence pending the appeal of the case, saying there are several legal questions surrounding a trial that stretched state and federal laws “beyond the breaking point.”

The brief argues that federal prosecutors went too far in criminalizing patronage hiring, what they called a “long-entrenched patronage hiring system for judicial branch employees.” Weinberg argued that Young himself pointed out that the defendants were “fundamentally decent people” who were caught up in the patronage hiring system.

Weinberg also argued in the brief that he has legitimate challenges to some of Young's legal rulings before and during the trial, including the judge's decision to let jurors ask witnesses questions. The jury then submitted 281 questions over the trial.

The appeals court has already approved the practice of letting jurors ask questions if proper safeguards are put in place, but Weinberg argued that Young let some of the questions go too far, essentially letting jurors become inquisitors.

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