

The Boston Globe

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Prison delayed for O'Brien, Tavares in probation scandal

Corruption case sentences put on hold for appeals



JESSICA RINALDI/GLOBE STAFF

John O'Brien, the former head of the state's Probation Department, left the courthouse in Boston after being sentenced to 18 months in prison in November.

By [Travis Andersen](#) and [Milton J. Valencia](#) | GLOBE STAFF JANUARY 09, 2015

In an eleventh-hour reprieve, a federal appeals court on Friday allowed former state probation commissioner John J. O'Brien and a codefendant to remain free while their appeal of corruption convictions is pending, a process that probably will take more than a year.

O'Brien and his former deputy, Elizabeth V. Tavares, both 57, had been slated to report to federal prison on Monday to serve sentences of 18 months and three months, respectively, after they were convicted in July 2014.

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But on Friday night, a three-judge panel of the US Court of Appeals for the First Circuit ruled that “the court is persuaded of a sufficient probability that the appeals present a ‘substantial question’ ” of law, and that the pair’s sentences will be stayed pending the outcome of their appeals.

Dates for filing appellate briefs and for hearing oral arguments have not been scheduled. With Friday’s decision, O'Brien and Tavares will not enter prison as scheduled next week.

A spokeswoman for US Attorney Carmen M. Ortiz, whose office secured convictions against O'Brien, Tavares, and a third defendant, William Burke III, in US District Court in Boston, declined to comment.

Burke, who was sentenced to probation, is also appealing his conviction.

Lawyers for O'Brien and Tavares lauded Friday’s ruling.

“We will pursue the appeal vigorously and maintain that Mr. O'Brien committed no crime,” said federal public defender William Fick, one of O'Brien’s lawyers. “Whatever one may think about the so-called ‘culture of patronage’ in state government, Mr. O'Brien worked honorably and tirelessly for decades to serve and protect the citizens of the Commonwealth.”

Martin G. Weinberg, a lawyer for Tavares who joined the defense team after the trial and spearheaded the appeal, also welcomed the news.

“Today’s decision reinforces our position that the appeal of the probation conviction presents important, substantial, and in some cases unprecedented issues to the court of appeals,” Weinberg said. “I’m excited for Liz Tavares and greatly satisfied by this

decision.”



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Elizabeth Tavares (center) left the Moakley Courthouse in Boston following her sentencing this past November.

The three were convicted after a sweeping indictment alleged they conspired to dole out jobs to the friends of state legislators over more qualified candidates, in exchange for regular increases to the Probation Department budget, turning it into a sprawling agency where more patronage jobs would be available.

Defense attorneys argued at trial that there was nothing illegal with what they described as political patronage typical of Beacon Hill. They pointed out that some judges who were critical of O’Brien had themselves been sponsored by politicians and in turn handed out jobs to the politically connected.

But prosecutors said that O’Brien went further, by creating a rigged system to make it look as if he was following the protocol that required all hiring to be based on merit.

In arguing for O’Brien’s release pending appeal, his lawyers wrote in a motion filed Dec. 22 with the appeals court that at the time of the alleged scheme, there was no law or regulation “that gave the Massachusetts legislature or populace any reason to expect

that probation officers would be hired in a certain manner or that those officers would be the ‘most qualified’ under any metric. The statute in effect at the time gave the Commissioner the absolute authority to hire as he deemed fit.”

But prosecutors insisted in a brief filed Monday that the legal basis for the indictment and convictions was sound.

“In plain English, the Indictment alleged one fraudulent hiring scheme that took place ‘between 2000 and 2010,’ ” prosecutors wrote. “As part of that scheme, the Indictment alleged that the defendants created a sham hiring system in order to conceal the true nature of their hiring decisions and create the aura of a legitimate, merit-based hiring process. The sham hiring system was essential to the longevity and continuity of the alleged hiring scheme.”

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