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Judge dismisses federal indictment of former stockbroker

Dena Aubin REUTERS LEGAL (Approx. 4 pages)

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Judge dismisses federal indictment of former stockbroker

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(Reuters) - A New Jersey federal judge has dismissed an indictment accusing former New York stock broker Guy Gentile of securities fraud for running an alleged stock manipulation scheme, ruling that the government waited too long to charge the man.

In a decision on Monday, U.S. District Judge Jose Linares rejected the government's argument that its 2016 indictment was timely because the deadline for filing securities fraud charges was extended from five to six years by the 2010 Dodd Frank Wall Street financial reform law.

Changes in statutes of limitation cannot be applied retroactively unless Congress clearly stated that intention, and lawmakers did not do so with the Dodd Frank Act, Linares said.

The court's decision "not only protects Mr. Gentile's constitutional rights in this case, but resolves significant ambiguities regarding the reach of Dodd-Frank, so as to prohibit stale criminal prosecutions by the government," lawyers for Gentile said in a statement.

"This is the first decision in the country to rule Dodd Frank is not retroactive in this regard," lawyers Adam Ford, Chad Seigel and Joe Tacopina said.

Justice Department spokesman Matthew Reilly declined comment.

Gentile, then owner of his own broker-dealer, Stock USA Execution Services, was first arrested in July 2012 and accused of participating in a stock manipulation scheme involving two public companies, Raven Gold Corp and Kentucky USA Energy. Gentile was accused of pumping up the prices of their shares with misleading promotional mailers so the shares could be sold at profit.

Shortly after his arrest, the government released him and withdrew its complaint after Gentile agreed to cooperate on other securities fraud probes, according to briefs filed by his lawyers.

In exchange for cooperating, government agents assured Gentile orally that felony charges would not be filed against him, his lawyers said. Gentile later signed two agreements extending the statute of limitations for one-year each to give him more time to cooperate, his lawyers said.

Gentile continued cooperating until July 2015, when the government told him it intended to reinstate his 2012 felony charges, his lawyers said. He was indicted in March 2016.

In a motion last year to dismiss the indictment, Gentile's lawyers said it was unquestionably time-barred because federal law sets a five-year statute of limitations for noncapital criminal offenses.

Gentile's wrongful conduct ended in 2008, and with the two one-year extensions he agreed to, the statute of limitations expired in 2015, his lawyers said. The untimely indictment also violated Gentile's Sixth Amendment right to a speedy trial, the lawyers said.

In a motion opposing dismissal, lawyers for the Justice Department denied that the government promised not to prosecute Gentile and said Gentile had no speedy trial right while no charges were pending.

Courts have ruled against retroactive application of laws that affect substantive rights, but not laws that regulate rules of procedure such as a statute of limitations, the government's lawyers said.

Without addressing the Sixth Amendment question, Linares on Monday found that the indictment was untimely because Dodd Frank contains no language that could possibly be construed to mean it applies retroactively.

The case is United States of America v Guy Gentile, U.S. District Court, District of New Jersey, No 16-cr-155

For the plaintiff: Nicholas Grippo, Paul Murphy and Mark Coyne at New Jersey Office of U.S. Attorney

For the defendant: Adam Ford of Ford O'Brien, and Chad Seigel and Joe Tacopina of Tacopina & Seigel

---- Index References ----

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