

Mandel, 5 co-defendants seek refunds

SPARTANBURG, S.C. (AP) — The lawyer for former Maryland Gov. Marvin Mandel and five co-defendants argued yesterday that their fines and property should be returned because their mail fraud and racketeering convictions have been reversed.

Arnold M. Weiner argued before a three-judge panel of the 4th U.S. Circuit Court of Appeals that all the defendants had suffered from the convictions and were entitled to have their stocks and fines refunded.

In November, Judge Frederic N. Smalkin, of the U.S. District Court in Baltimore, threw out the convictions in the wake of a U.S. Supreme Court decision that voided mail fraud convictions based on the public's "intangible rights" to honest government.

The judge said he had "no choice" but to vacate the convictions of Mr. Mandel and co-defendants W. Dale Hess, Harry W. Rodgers III, William Rodgers, Irvin Kovens and Ernest N. Cory Sr. in light of the court's ruling in McNally vs. United States.

Federal prosecutors appealed Judge Smalkin's ruling in an effort to have the convictions reinstated.



THE SUN/AMY DAVIS

MARVIN MANDEL
Served 19 months

Judges H. Emory Widner, Donald F. Russell and K. K. Hall were the panel that heard yesterday's arguments.

In deciding the McNally case in June 1987, the Supreme Court ruled that the 115-year-old mail fraud law applies only to frauds conducted through the mail in which the government or citizens actually lose money or property.

Mr. Mandel and his associates claimed that federal prosecutors illegally used the "intangible rights" theory to convict them of racketeering and mail fraud.

Mr. Weiner said Judge Robert L. Taylor's charge to the trial jury had been "fundamentally unfair" and expanded the law outside its bounds.

Assistant U.S. Attorney Martin S. Himeles Jr. said yesterday that the case was representative of hundreds of others in which defendants convicted of mail fraud were attempting to get their property and fines returned.

Mr. Himeles argued that the scheme in which Mr. Mandel was charged with helping the others obtain extra racing days for Marlboro Race Track, which they secretly owned, was actually a case of bribery and that this would exclude it from the precedent set by the Su-

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MANDEL, from 1D

preme Court in the McNally case.

Mr. Himeles said the McNally case was decided five months before Judge Smalkin reversed the convictions. He said the trial judge's instructions clearly would have been in error under the McNally ruling, but that would not be a reversible error.

A new trial was "not an option because these events took place 15 years ago," Mr. Himeles said.

"We would not be able to assemble all the witnesses for a two-month

trial. Some would not be available, some would not recollect the facts."

If the appeals court orders the fines and property returned, Mr. Himeles said, the government and the defendants have agreed to the following amounts: \$157,500 each to both Mr. Rodgers and Mr. Hess for property, and \$40,000 each in fines; about \$11,000 to Mr. Cory for stocks; and \$40,000 in fines to Mr. Kovens.

Mr. Mandel would receive nothing, because he did not lose any stocks and was not fined.

The former governor and his co-

defendants have already served their jail sentences. Mr. Mandel, who was convicted of 17 counts of mail fraud and two counts of racketeering, served 19 months of a three-year sentence.

Appeals Court Judges Widner and Russell have twice participated in panels that have ruled in Mr. Mandel's favor, lawyers said after the hearing.

Attorneys said they expect a decision in about two months.

Reporter Karen E. Warmkessel contributed to this article.