

Court upholds ruling clearing Mandel

By Karen E. Warmkessel

The 4th U.S. Circuit Court of Appeals in Richmond, Va., yesterday upheld last year's lower court ruling throwing out the 1977 mail fraud and racketeering convictions of former Gov. Marvin Mandel and his five co-defendants.

By a 2-to-1 vote, a three-judge panel affirmed U.S. District Judge Frederic N. Smalkin's Nov. 12, 1987, decision vacating the convictions on the basis of a 1987 Supreme Court decision that restricted the use of the 115-year-old mail fraud statute.

Federal prosecutors said yesterday they intend to ask the full 11-member court to reconsider the panel's decision.

Breckinridge L. Willcox, the U.S. attorney, said he was heartened that one of the judges, K. K. Hall, concluded that the defendants' actions "were and are patently illegal."

"We hope that further appellate review of this case will support that view and vindicate the rights of the citizens of this state to honest government," Mr. Willcox said.

The majority decision was written by Judge H. Emory Widener Jr. with Judge Donald S. Russell concurring.

Last summer, the appeals court rejected a request by Mr. Mandel's lawyers that the full court decide the case, but Mr. Willcox said yesterday that request had not been filed in time.

Arnold M. Weiner, one of Mr. Mandel's attorneys, disputed that contention, saying Mr. Willcox "ought to check the rules."



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MARVIN MANDEL

"I'm confident that the majority opinion will prevail," Mr. Weiner said.

Mr. Weiner said the decision should be "very helpful" in Mr. Mandel's efforts to have the Maryland Court of Appeals reinstate him to practice law. He was disbarred in 1982 as a result of the conviction.

Judge Smalkin ruled that Mr. Mandel and his associates, W. Dale Hess, Harry W. Rodgers III, William A. Rodgers, Irvin Kovens and Ernest N. Cory Jr., were convicted of using the mail to defraud citizens of their "intangible right" to good government, which the Supreme Court said in June 1987 is not a crime under federal law.

He said the 1987 Supreme Court decision, *McNally vs. United States*, applied retroactively.

Yesterday, Judges Russell and Widener agreed with him. Without the relief granted by Judge Smalkin, they "would face the remainder of their lives branded as criminals simply because their federal trial occurred before rather than after the Supreme Court's ruling in *McNally*," they said.

The judges said that if the case had come to them on a "direct appeal" they would be required to overturn all the convictions.

But in his dissent, Judge Hall said there was enough evidence to satisfy a conviction under the *McNally* ruling.

He said Mr. Mandel took bribes totaling at least \$380,000 "to manipulate the workings of state government, which had been entrusted to him by the people of Maryland, to divert extremely valuable [horse] racing days to his cohorts."

In addition to vacating the convictions a year ago, Judge Smalkin ordered the government to return \$160,000 in fines paid by Mr. Kovens, the Rodgers brothers and Mr. Hess.

The former governor and the others have already served their prison terms. Mr. Mandel served 19 months of a three-year sentence.

Mr. Mandel allegedly accepted \$350,000 to \$400,000 in gifts and bribes from his co-defendants for allegedly using his influence to push legislation that helped his associates obtain extra racing days at Marlboro Race Track, a track his friends secretly bought in 1971.