

NBA Fraudsters Face Choice: Team Up Or Point The Finger

By **Elliot Weld**

Law360 (February 23, 2023, 5:20 PM EST) -- A sweeping case alleging former NBA players defrauded the league's health care plan spotlights the balance defense counsel must strike between working together to downplay the alleged conspiracy and arguing their client is less culpable than others during sentencing, experts said.

That is the challenge facing the numerous defense attorneys working the case, where a total of 24 defendants — including 18 former players — are accused of participating in a plot to submit fake medical and dental claims. So far, 15 of the defendants have pled guilty, while nine are scheduled to go to trial later this year.

Attorneys in these kinds of large cases will want to coordinate with each other to a degree, but strategically, they'll also want the defendants with the most mitigated sentencing factors to plead guilty and be sentenced first, to set a floor for sentencing of future defendants, said Doug Berman, a professor at Moritz College of Law at The Ohio State University.

"Then I, as a defense attorney, can go next and say, 'Maybe my guy is a little worse but not a lot worse,'" Berman said.

That strategy appears to have paid off since the first five of the ex-basketball pros to be sentenced after pleading guilty — Eddie Robinson, Anthony Wroten, Jamarion Moon, Christopher Douglas-Roberts and Milt Palacio — were all sentenced to time-served by U.S. District Judge Valerie E. Caproni.

At Robinson's sentencing in October, Judge Caproni noted that the former Chicago Bulls forward was the first defendant to plead guilty and to face judgment.

"This whole NBA case is a bit of a one-of-a-kind case, and you're at the beginning," Judge Caproni told Robinson. "So you're pegging where the sentences are going to be in this case."

Judge Caproni has noted that some of the defendants, most of whom spent their careers bouncing from team to team, fell upon hard times once their time in the NBA was over, despite making millions while in the league. The judge has directed some of the defendants to take financial literacy classes.

At a sentencing hearing for Wroten in December, the judge noted that Wroten was "a nice guy" whom she viewed as unlikely to reoffend.

"You fell into a lot of money when you were very young. That can be a bad combination. It's important that you figure out how to manage money. There's a lot of ways to waste money, but there's a lot of ways to save money," Judge Caproni said.

Once that no-prison sentence floor was set through the first five defendants, it presented a challenge for defense attorneys to toe the line between working together and working toward the best outcome for their client, according to Berman.

"There's some tension and risk of some attorneys trying to point the finger. They also have to work together and say, 'Well, none of this is that bad,'" Berman said. "I can imagine all of the players wanting to point their fingers at the doctors and say, 'We wouldn't have done this without them.'"

The "doctors" were Washington-state based physician William Washington, chiropractor Patrick Khaziran and dentist Aamir Wahab, who allegedly supplied fraudulent invoices to the players for work that was never performed through the scheme's ringleaders, ex-players Terrence Williams and Keyon Dooling.

Khaziran pled guilty and was sentenced to 2½ years by Judge Carponi, while Dooling, who allegedly recruited several other players into the scheme and served in somewhat of a leadership role, was sentenced to two years.

Robert Fisher, a former assistant U.S. attorney who is now a partner at Nixon Peabody LLP, agreed that a time-served sentencing floor can be helpful for the defense in a case with a large number of defendants. He recalls how a similar phenomenon occurred in the sprawling "Varsity Blues" case when his client John Vandemoer, a former sailing coach at Stanford University, avoided prison in the case's first sentencing.

In such cases where there are many defendants with similar levels of culpability, it can be difficult for defense attorneys to "differentiate your client's background or role," Fisher said, but the onus will be more on the government.

"In the exact same case, it will make it difficult for prosecutors," Fisher said. "Now they have to explain why this person is different."

Berman was not surprised to see prosecutors argue for jail time even for the most mitigated defendants in the case, since setting the bar with no prison time early on will make it more difficult to secure jail time for the scheme's leaders.

Compared to other federal fraud cases, the scope and severity of the alleged NBA health care scheme "isn't massive," Berman said. The players are alleged to have bilked about \$5 million total. Prosecutors will still be motivated to ask for jail time for most defendants since "they especially don't want a lot of reporters talking to a lot of professors about how lenient the sentences were," Berman said.

Michael Weinstein, a defense attorney at Cole Schotz PC, said that facts and evidence against each defendant will drive their counsel's ability to play down their role.

"Sometimes you have to dice pretty thin to make a distinction, whether defendants were not at certain meetings or on critical phone calls," Weinstein said. "Sometimes you argue that they weren't aware of certain aspects of criminal activity or that they have some mitigating circumstances or justification for activity."

Todd Haugh, a professor of business law and ethics at the University of Indiana, said a defense attorney might not always want to distance themselves from the co-defendants, only the scheme's ringleaders. They could argue that a defendant was "presented with an opportunity by someone looking to take advantage of them," Haugh said.

"If you go later, you know the judge has already given non-custodial sentences," Haugh said. "That's kind of where delay can be your friend here."

The guilty pleas and sentences so far could play into the strategy going forward for the several defendants sticking with not guilty pleas, some of whom are scheduled to go to trial in May. According to Weinstein, that can depend on whether any of the defendants who struck deals with the government agree to testify in the case.

Furthermore, according to Haugh, going to trial risks the judge hearing all the explicit details of the case laid bare for days or weeks.

"Sometimes judges hear over and over about the bad stuff, and it's less likely they'll give you a super low sentence," Haugh said.

Berman, who in his career has written extensively about sentencing in the American justice system, conversely said that some defense attorneys might feel emboldened to go to trial after seeing the no-prison sentences. Still, a good defense attorney will convey to their client that the reasons other defendants got such low sentences was because they accepted responsibility and avoided a trial where the judge is shown the "grier" details of the alleged crime, Berman said.

Prosecutors will want to lump most or all of the defendants into one group that participated in an overarching scheme, Weinstein said. Arguing the same thing across sentencing memorandums isn't making an argument stale, he said, but rather showing consistency in the defendants' behavior.

A case such as this also presents the complicated question of how to deal with celebrity in the criminal justice system. While the ex-players charged in the case are not Hall of Famers, many are familiar names for sports fans.

"There's a lot of debate and lots of uncertainty among defense attorneys, among prosecutors and judges, about where celebrity fits in," Berman said. "I think there's a very strong inclination to not give special treatment to celebrities. We're all equal under the law."

The "equal under the law" adage, however, can be used as a "sword or a shield," according to Carrie Cohen, a former Southern District of New York prosecutor who is now a partner at Morrison Foerster LLP. The government will use it for deterrence, saying even the rich and famous will be prosecuted for crimes, but "the criticism is out there that this case would not have happened if they weren't famous basketball players," Cohen said.

Haugh remarked that he was "really struck" by how low the loss amounts were for some of the individual defendants, such as Robinson, who was accused of bilking \$65,000 through two phony chiropractic invoices. On one hand, Haugh said he can see how the high-profile case presents an opportunity for deterrence to prosecutors.

"In another way, it's a weird situation where you have guys who are not doing a whole lot, the loss

amounts are pretty low, and you've got this very specific type of healthcare plan that is kind of over the top in what it allows," Haugh said. "It's very different than the vast majority of the plans that you or I would be involved in."

--Additional reporting by Rachel Scharf, Pete Brush and Grace Elletson. Editing by Dave Trumbore.

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