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Why were Gabe Leland, André Spivey sentences treated so differently?



James David Dickson

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Detroit — Two of the nine Detroit City Council members who began 2021 in elected office resigned in corruption probes by the end of it, but their punishments differed.

Gabe Leland, who is White, served no time in jail or prison in a state case for misconduct in office. André Spivey, who is Black, was sentenced Wednesday to two years in federal prison.

Why were the two cases treated so differently?

According to observers, federal prosecutors and U.S. District Judge Victoria Roberts, who sentenced Spivey, the varying treatment is based on different facts, different venues and different evidence. They include a compromised star witness in Leland's case that left the feds unable to pursue a bribery investigation against him, but the lack of such a weakness enabled them to coax a guilty plea out of Spivey.

Roberts said in the hundreds of pages of letters from Spivey's supporters, two themes emerged. The first is that the former councilman had been punished enough, through the loss of his position and status in the community. The second is that he shouldn't do any more time than Leland, who got parole but no time behind bars.

She differentiated between the two cases from the bench Wednesday before handing down Spivey's sentence.

"It's important to keep in mind that Mr. Spivey pleaded guilty," Roberts said.

The longtime councilman's guilty plea to bribery in federal court gained him a two-year sentence in federal prison. Leland's guilty plea to misconduct in office in state court got him two and a half years of probation.

John Freeman, a Troy-based criminal defense attorney, said the difference between state and federal sentencing guidelines, and what the two ex-councilmen were charged with explains the differing outcomes.

"Most of the time, these public corruption cases end up in federal court, not so much in state court," Freeman said.

Spivey's scheme involved significantly more money: \$36,000 compared with Leland's \$7,500, the attorney noted. Spivey's bribery payments took place over five years, and involved wiretaps and a federal agent, while Leland's case involved a single incident with a single witness, Freeman said.

While Spivey will serve more time than Leland, his sentence is 60% of what federal prosecutors wanted, and it's lower than other local cases, he said.

Sentencing guidelines ran between 37 and 46 months, or more than three years but less than four years. Federal prosecutors sought 40 months.

At 24 months, Spivey "got a better deal than he might have bargained for," Freeman added. Roberts also allowed him to report to prison on July 1, so Spivey can see his daughter graduate high school.

'Not a mild case of corruption'

Roberts on Wednesday compared Spivey's case with others that she felt were more fairly aligned than Leland's case.

Former Detroit City Council President Monica Conyers got a 37-month sentence in federal prison after pleading guilty to corruption charges in 2010, she noted. Conyers admitted to accepting money in exchange for her vote on a \$1 billion sludge-hauling deal.

In 2007, former Detroit City Council member Alonzo Bates got 33 months in a payroll fraud case dating to 2005, and former Troy City Manager Brian Kischnick was sentenced to 30 months for bribery in 2019 for soliciting and accepting more than \$20,000 worth of cash and meals from a city contractor.

Roberts argued that Spivey's misdeeds — collecting eight payments totaling \$36,000 during the five-year bribery scheme — were not the "one-off" Spivey's defense attorney Elliott Hall portrayed them to be.

"This was not a mild case of corruption or a single incident," the judge said.

Assistant U.S. Attorney David Gardey stressed that Leland's case was exactly that, a single incident, and that the two cases are "simply not comparable."

Leland accepted a \$7,500 cash donation from Detroit businessman Robert Carmack for his 2017 reelection campaign and free car repairs, in exchange for his vote on a land deal.

Roberts asked why the feds did not prosecute Leland in a case that "seems very similar on the surface."

"Unlike Spivey's case, with a source and an undercover federal agent, with Mr. Leland there was one single bribe, one single payment," Gardey answered prior to Spivey's sentencing. "There was a difference of strength in the cases."

The Leland case was built around a single witness, the assistant prosecutor said: Carmack.

"There were a series of actions that damaged (Carmack's) credibility," Gardey said, including a "bitter public feud" with Detroit Mayor Mike Duggan, a drunken driving case and an accusation of a \$1 million fraud in a land deal.

In the end, the federal government believed a guilty plea — albeit in state court — and Leland's resignation was the "best way to resolve the case," the assistant prosecutor said.

But Steve Fishman, Leland's attorney in the misconduct case, said the federal bribery charges were dismissed with prejudice, meaning they could not be presented again.

"This case belonged in state court from the start," Fishman said. "(Leland) accepted a campaign contribution in cash. That's a violation of state law. There was no bribery."

Spivey pleaded guilty to bribery, but Hall has referred to the money exchange as mere "payments" in a sentencing memo.

The "distinguishing difference" between Spivey and the eight other public corruption cases the government cited, Hall said, is that "they actually did the quid pro quo," and Spivey did not.

"They got the money and they did the act," Hall argued. "(Spivey) took it with the intention, but it never ripened into reality."

In the memo, Hall wrote that Spivey voted 30 times against legislation that would've benefited the person bribing him.

Roberts further noted Spivey's signed plea agreement, admitting to bribery.

"It does fit the definition of a bribe," the judge added.

The former council member admitted as much in his statement before the sentencing.

"I broke the law, and I was wrong," Spivey said. "I didn't have bad luck. No one was out to get me."

Leland witness upended case

Gardey and Assistant U.S. Attorney Frances Carlson also noted in a sentencing memo that there "were substantial changes in the strength of the government's case that caused the United States to resolve the Leland case as it did."

"None of those circumstances are present here," it reads.

Leland was indicted by a federal grand jury in October 2018 on bribery conspiracy and two counts of bribery on allegations he agreed to accept \$15,000 and free car repairs from Carmack.

That case was resolved in May when Leland resigned from office and pleaded guilty to a state felony count of misconduct in office. As part of that deal, the federal case was dismissed.

Carmack's conduct "substantially weakened" the government's case against Leland, the federal prosecutors noted.

"Given the vast panoply of new charges against, and questionable conduct by, the key government witness against Leland, the government was forced to reevaluate the strength of its case," according to the sentencing memo reads.

"In a federal trial against Leland, there was a real danger that a trial would be turned into a circus concerning Carmack's credibility and his various actions, rather than being focused on Leland's conduct."

'More to give'

Back at the Detroit City Council, President Pro Tem James Tate said he did not want to compare and contrast the sentences of his two former colleagues because he didn't have all the details on their cases.

"This is sad," Tate said of his former colleague's sentencing. "I love and respect André, and it hurts from a professional level, but also from a personal level."

"We grew together, prayed together," he said. "This is certainly not what I had envisioned at the end of two terms."

Spivey, in his statement to the court, told Roberts that when he looks in the mirror, he still believes in himself. He asked the court to believe in him, too.

"I have more to give," Spivey said. "And I want the chance to do that."

Roberts told him "this court is charged with a responsibility. Not to forgive you, as God has, but to sentence you as similar defendants have been sentenced."

Spivey embraced supporters as he left the courthouse, but he took no questions.

Hall said Spivey was "relieved" to have clarity on what will happen next.

"I felt he was going to get some time," Hall said. "She (Roberts) had to make the sentence consistent with all the other people who came before him."

Duggan said the sentencing marked "a sad day for Detroit and a sad day for André Spivey and his family."

"The case is now closed, and the city will recover and move forward," the mayor said.

jdickson@detroitnews.com

Staff Writer Sarah Rahal contributed.