



Portfolio Media, Inc. | 111 West 19th Street, 5th floor | New York, NY 10011 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-Stanford Exec Gets Redo In Bid To Ditch 20-Year Sentence

By **Reenat Sinay**

Law360 (September 2, 2020, 5:09 PM EDT) -- The Fifth Circuit on Tuesday gave former Stanford Financial Group executive Gilbert Lopez another opportunity to challenge his 20-year prison sentence for his role in Robert Allen Stanford's \$7 billion Ponzi scheme, ordering a lower court to reconsider a bid claiming that Lopez's trial attorneys led him astray.

Lopez contends that his former counsel at Zimmermann Lavine Zimmermann & Sampson PC **botched a potential plea deal** by failing to fully explain the risk of being handed a much longer sentence if he went to trial.

A Texas federal court rejected his motion to vacate the sentence in 2018, saying the record indicated Lopez would not have accepted a plea deal if offered one, despite his sworn affidavit stating the opposite.

But a three-judge panel threw out the lower court's refusal of Lopez's motion in an unpublished opinion Tuesday, finding that it improperly denied the bid in ruling on a factual dispute without an evidentiary hearing.

"This was error," the panel said. "The record plainly reveals that Lopez was not deadset against pleading guilty; in fact, he authorized his attorneys to agree to a two- or three-year sentence. Accordingly, the question is not whether Lopez was willing to plead guilty — he was — but how long a sentence he would have accepted."

"To be sure, Lopez's attorneys deny that they failed to advise him, but that is precisely the sort of factual dispute that requires an evidentiary hearing," the judges added.

In his **initial motion to vacate the sentence** in 2018, Lopez said that his ex-counsel didn't lay out the consequences of rejecting a seven-year plea agreement, and the government **pounced in its response**, saying Lopez was never offered a deal of less than 10 years. Lopez then said he would have also accepted a 10-year deal if he had known the risks of turning it down.

The government's argument that Lopez's declarations lack credibility due to the discrepancy "mischaracterizes the record," the panel said Tuesday, holding that both of Lopez's declarations indicate that he would have taken a deal.

Lopez, the former chief accounting officer of Stanford Financial Group, was **convicted after a five-week jury trial** in 2012 on allegations that he helped structure sham transactions and write false annual reports to conceal loans that Stanford took from the Stanford Investment Bank.

This isn't the first time Lopez tried to dodge his 20-year sentence. Most recently, U.S. District Judge David Hittner rejected Lopez's bid for compassionate release from prison over COVID-19 concerns in July.

The former executive previously appealed his conviction to the Fifth Circuit, saying the lower court had blundered jury instructions. The Fifth Circuit in June 2015 **agreed that a district judge had erred** in asking the jury to consider whether the men deliberately ignored the fraud surrounding

them, but that the error was ultimately harmless.

The U.S. Supreme Court in March 2016 **declined to take on the appeal.**

Counsel for Lopez and a representative for the government did not immediately respond to requests for comment Wednesday.

Judges Carolyn Dineen King, Carl E. Stewart and Leslie H. Southwick sat on the panel for the Fifth Circuit.

The government is represented by Laretta Drake Bahry and Carmen Castillo Mitchell of the U.S. Attorney's Office for the Southern District of Texas.

Lopez is represented by Chris Flood of Flood & Flood.

The case is U.S. v. Gilbert Lopez, case number 18-20450, in the U.S. Court of Appeals for the Fifth Circuit.

--Editing by Alyssa Miller.

All Content © 2003-2020, Portfolio Media, Inc.