

OPINION: Why Didn't McDonnell Plead Guilty?

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Now that the verdict is in, the plea offer that Robert McDonnell received last December looks like a sweetheart deal he should have grabbed. Prosecutors reportedly offered McDonnell the chance to plead guilty to one count of bank fraud, with Maureen McDonnell avoiding charges altogether. That's a far cry from the combined 20 counts on which the jury convicted them earlier this month.

Based on the numbers, it's a fair bet that most people facing similar charges would have pleaded guilty. According to the Bureau of Justice Statistics, the convictions of the vast majority of defendants convicted in federal court in 2010 — 97 percent — resulted from a guilty plea. Only 2.8 percent of criminal defendants charged in federal court that year opted for trial. Trials are enormously expensive; prison sentences are typically much shorter for defendants who plead guilty; and, in the overwhelming number of cases, the government prevails in the courtroom. This may speak to larger problems in our criminal justice system, but the decision of whether or not to plead guilty often involves a brutal cost-benefit analysis.



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Given the price of defeat and the strength of the government's evidence against the McDonnells, why didn't Robert McDonnell plead guilty when he had the chance?

There are three common reasons why white collar criminal defendants choose to fight instead of admit guilt. One, they have an unshakeable belief in their innocence. They think they are the victim of overzealous prosecution, and their conscience tells them to fight despite the disastrous consequences of losing.

Two, they fear that pleading guilty will ruin their life. They believe that admitting to a felony would wreak substantially the same havoc on their career and reputation as would a trial conviction. Thus, no matter how strong the government's case, they view trial as the only viable option.

Three, they hope excellent lawyers can win no matter how much evidence the government has collected. They believe that if they invest in legal fees, they, like O.J. Simpson, will go free.

McDonnell may have been motivated by some combination of reasons two and three. He had been a

Lieutenant Colonel in the Army, the Attorney General of Virginia, and the state's 71st governor. Whether or not he was convinced of his innocence, he likely believed, and for good reason, that others perceived him as a man of unshakeable integrity. He was a model of rectitude, a potential vice presidential candidate. He had been the enforcer his entire career, never the defendant. With this background, the prospect of admitting to a federal crime might well have seemed abhorrent.

In addition, the McDonnells hired lawyers from some of the best law firms in the country. With the legal team they assembled, he may have hoped and believed they would find a way out — as others had before.

Given how easily the jury found the McDonnells guilty — jurors reportedly found the decision painful but not difficult to reach — it appears that Robert McDonnell made a very poor calculation. He incurred millions of dollars more in legal fees by going to trial than he would have in pleading guilty — not an insignificant consideration given that much of the case revolved around the McDonnells' financial straits. He subjected himself and his family to weeks of humiliating press coverage. And, convicted on 11 corruption counts, he will be sentenced to prison, which he might have avoided with a guilty plea. So will Maureen McDonnell, who, under the deal, would have avoided prosecution altogether. Furthermore, even if the McDonnells prevail on appeal, the best they can hope for is a second trial. If their convictions are overturned in the Fourth Circuit, their case will be sent back to the district court, where -- given how convincingly the government won — you can bet the Justice Department will be waiting to retry them all over again.

It's clear, then. He should have taken the deal prosecutors offered him late last year. On the other hand, you never know. The McDonnells could have been acquitted after all.

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