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## Snyder Charges Ordered Dismissed; AG Vows Appeal

The misdemeanor charges against former Governor Rick Snyder related to the Flint water crisis were dismissed this week by a Genesee Circuit Court judge, who chided the prosecution for improperly indicting the former official and others using a one-person grand jury system.

In an order signed Wednesday, Circuit Judge Kay Behm remanded the case back to the 67th District Court and took yet another step toward ending a years-long attempt to try the former governor and others for high levels of lead in the city's drinking water and other ailments that transpired after a Snyder-appointed emergency manager switched the city's water source to the Flint River in a cost-saving move.

The order holds that 67th District Judge William Crawford must reconsider a denied motion to dismiss from the Snyder defense team at Warner Norcross + Judd. The firm, along with defense attorneys for additional former state actors charged with crimes related to Flint, filed motions to dismiss before Mr. Crawford last year and have been working since to appeal that decision. Unlike the others, like former Department of Health and Human Services Director Nick Lyon — who faced felony charges prior to having them recently dismissed — Mr. Snyder faced a misdemeanor charge.

The decision was first reported by The Associated Press. Although the order was signed Wednesday, it was released sometime this week and is still in transit to the parties.

"After years of desperate attempts at political persecution veiled in amateurish and unethical prosecutorial efforts, we're pleased to see that Judge Behm followed the unanimous Michigan Supreme Court and her former Circuit Court colleague by dismissing this fatally flawed case against Governor Rick Snyder," said Snyder attorney Brian Lennon of Warner Norcross + Judd in a statement. "The state has already wasted millions of taxpayer dollars pursuing meritless misdemeanor charges and this case should now be considered closed. The prosecution team's statement saying it will appeal this ruling is further proof that they intend to continue their efforts to weaponize the court system against their political enemies."

The decision was called unsurprising by the Flint water prosecutorial team housed in the Department of Attorney General, who knew for months that this could be an inevitable conclusion after the Michigan Supreme Court unanimously ruled against its use of a one-person grand jury system in the case.

It also vowed to appeal the decision.

"We anticipated that this ruling would be similar to other outcomes that only considered process. Our team has been preparing for this and looks forward to addressing these issues in court," the team said in statement. "As we have reiterated time and again, rulings up to this point have been on process alone — not on the merits of the case. We are confident that the evidence clearly supports the criminal charges against Rick Snyder, and we will not stop until we have exhausted all possible legal options to secure justice for the people of Flint."

Despite that vow, a legal source who spoke with Gongwer News Service for this story said that the appellate window has likely closed as it would be hard to convince the same appellate judges and justices of the high court to change their minds after repeatedly disagreeing with the department's reasoning.

Mr. Snyder's attorneys also confirmed with Gongwer that the defense team has not yet been able to argue the merits of the charges because it was locked up in appeals as it tried to get the circuit court to overrule the district court's denial of its motions.

The defense team for Mr. Snyder sought to have the charges dismissed on two grounds, that the judge issuing the indictment lacked jurisdiction to do so and challenging the one-person grand jury system itself. The tool was used by the Department of Attorney General to seek indictments in the matter, and the Snyder defense team at Warner Norcross + Judd had worked to have those indictments dismissed.

Ms. Behm's order only addressed the one-person grand jury aspect of the case, which had been dismantled by the Michigan Supreme Court earlier this year. The decision was unanimous, and the justices had accused the department and the indicting grand jury (made up of just one local judge) of engaging in a type of unconstitutional, backroom Star Chamber.

A year prior, in 2021, the defense team had challenged both aspects, but those orders had been denied by Mr. Crawford, and the firm appealed the circuit court on the matter.

Since then, the high court had ruled and called for charges to be either reexamined with a chance for those accused to receive a preliminary examination to develop probable cause or be dismissed.

Genesee Circuit Judge Elizabeth Kelly dismissed the cases in the matter of Mr. Lyon and those also charged with felonies. Now Ms. Behm has added Mr. Snyder's charges to the list of dismissals, ordering Mr. Crawford to issue an order in line with her own on remand. The case was stayed before the district court pending appeal.

Ms. Behm reasoned that while a one-person grand jury has authority to conduct formal investigations of certain crimes, offenses and misdemeanors, the language of the one-person grand jury statute does not explicitly give that entity the power and authority to issue an indictment.

The prosecutorial team had argued that unlike the dismissals for Mr. Lyon and others, the rules one-person grand jury rules applied differently to misdemeanors and in the case of Mr. Snyder.

Not so, Ms. Behm wrote, noting that "there is no evidence in the language of *Peeler* or the statutes to suggest that (they) should apply differently to misdemeanor and felony indictments."

"Therefore, Judge Newblatt lacked the statutory authority to issue any misdemeanor indictments against (Mr. Snyder)," she wrote. "The 'indictment' issued against (Mr. Snyder) was not signed or approved in any way by the (local) prosecutor's office. Because this document is different in title, form and substance from a complaint, it cannot now be considered a complaint."

That is a key aspect of the department's potential calculus on appeal, as Wayne County Prosecutor Kym Worthy, who was appointed to lead the prosecutorial team along with Solicitor General Fadwa Hammoud, has since the high court's ruling that they can fashion the indictment into an actual complaint — one that could be ripe for a do over on the preliminary examination aspect and could leave open the window for the case to move forward outside of an appeal.

Ms. Behm's order may very well put a nail in that argument's coffin and goes on in her order to address the issue.

"Finally, the people argue that, even if this court rules that the indictment against (Mr. Snyder) is invalid and cannot proceed as a complaint, the charges against (him) still should not be dismissed. The people interpret this language to mean that an arrest warrant is sufficient to proceed with a case — especially a misdemeanor for which a defendant does not have a right to a preliminary examination," the judge wrote. "However, the people fail to account for the continued discussion in *Peeler*, which describes how the process works where a formal complaint has been filed. ... This court finds no support for the people's argument that an arrest warrant can independently serve as a charging document, whether in the context of one-person grand jury proceedings or otherwise."

As an appeal remains imminent from the team, it appears that Ms. Hammoud may very well still oversee even as she is promoted in the coming year to chief deputy attorney general after [Attorney General Dana Nessel](#) made changes to her office staff. A spokesperson with the department said that criminal matters are housed in the chief deputy's office and that Ms. Hammoud was essentially wearing many hats as she previously handled the case and her solicitor general duties.

That said, Honigman attorney and former U.S. attorney Matthew Schneider in an interview with Gongwer News Service said his read of the ruling and its predecessors is that a new appeal may not bode well for the attorney general's office.

"The problem is they're going to be running up the chain and the same appellate system that has said no before," Mr. Schneider said. "I think that's going to be a really difficult row to hoe and makes you wonder, if you're a prosecutor, whether you decide to say, 'I'm not sure that's going to work out for me. Should I stop now?'"

Ms. Nessel made holding state actors to account for Flint's water and public health a campaign promise and, even though she's not involved with the criminal prosecution, she has an interest in seeing some sort of justice for the city's residents. The prosecutorial team has galloped forward with that same zeal in light of the problems facing the case then and now.

"They've already issued a statement saying that they're going to pursue every avenue that they can go. I think they're locking themselves into that commitment. They're committing to some sort of an

appeal, but it's kind of like, 'why are we doing this?'" he said. "It's a good question and there are a lot of legal experts out there who are saying this doesn't look like it's going to be successful."

Mr. Schneider further pondered whether such a move would be a good use of taxpayer resources given the certain difficulties of overturning the procedural-based rulings.

"You're going to be spending a lot of taxpayer resources and money to get an answer to a question that has already been answered," he added.

In his read of the ruling and the prosecutorial team's arguments, the former federal prosecutor said the department has been adamant that the rulings only address snags in the process and not the merits of the case. That has given the department some hope to address those merits and continue on with its case.

"But the issue is — exactly, the process (of using a one-person grand jury to issue an indictment), the Supreme Court said, is unconstitutional," Mr. Schneider added. "The office is right now saying, we're concerned about the process, and we want a chance at the merits, but you never get a chance at the merits unless you properly follow the process. And that's really what the courts have said. They're trying to argue Step 2, but you never argue Step 2 if you can't pass Step 1."

Some have posited that the department is now well past the statute of limitations on charging Mr. Snyder and others yet again, and in his view, Mr. Schneider said the case is likely over.

"My reading on the statute of limitations is that we've passed that stage, and that should really be another consideration," he said.

— By Ben Solis

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