

Blog from the ABC News Medical Unit

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# Health Issue a Crutch for White Collar Crook?

*ABC News' Carrie Gann reports:*

Raj Rajaratnam was sentenced to 11 years in prison for insider trading on Thursday, the longest prison sentence ever handed down for that crime.

Federal prosecutors had asked to put the Galleon Group hedge fund founder in jail for 24 1/2 years, but Rajaratnam's lawyers said because their client was in poor health, sending him to prison for the long term would be "a death sentence."

It seems that U.S. District Court Judge Richard Holwell took those pleas into his sentencing considerations. When announcing his decision, he noted that the 54-year-old Rajaratnam had advanced diabetes that was causing kidney failure, and said "prison is a more intense experience for people with serious health conditions."

During the trial, Rajaratnam wore a protective boot on his right foot for a bacterial infection, but otherwise showed no visible signs of illness. His lawyers, led by John Dowd of Akin, Gump, Strauss, Hauer and Feld, would not comment on his medical condition.

"The evidence before the court can leave no doubt: Mr. Rajaratnam is not a healthy man, and his death will be hastened by a term of imprisonment," the lawyers wrote in an August sentencing memo.

A defendant's health condition is one factor that judges can consider when handing down sentences. A 2005 decision from the U.S. Supreme Court mandated that federal judges adhere to specific sentencing calculations, which can be influenced by other factors, such as a defendant's health.

Marshall Kapp, director of the Center for Innovative Collaboration in Medicine and Law at Florida State University, said lawyers will often bring up their clients' health problems in the hope that these concerns will lead to a lighter sentence.

"That's part of the advocate's job, to bring up mitigating factors, including health," Kapp said.

When it comes to pleading for leniency for white-collar crimes because of health conditions, Rajaratnam is in good company.

Bernard Madoff's lawyers asked for a lighter sentence when he was convicted for his orchestration of the largest Ponzi scheme in history. Madoff was sentenced to 150 years in prison.

John Rigas, one of the founders of Adelphas Communications Corp., was 80 years old and suffered from heart problems and bladder cancer during his 2005 trial for accounting fraud. The U.S. District Judge sentenced him to 15 years in prison, instead of the 18 years prosecutors wanted.

"They're all about the right age for health problems, I guess. So I don't know if it's a sinister coincidence or not," Kapp said. "I wouldn't fault the attorneys for bringing these things up as a mitigating factor."

The U.S. Bureau of Prisons assigns inmates to specific facilities if health problems are a concern. In 2009, the Bureau committed \$865 million for inmate health care.

Rajaratnam's lawyers asked that he be sent to the Federal Medical Center in Butner, N.C., where Madoff is currently serving his sentence and was briefly treated for hypertension.