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Where Trump's 4 Criminal Cases Could Stand On Election Day

By **Phillip Bantz**

Law360 (July 31, 2024, 4:52 PM EDT) -- A landmark U.S. Supreme Court decision on presidential immunity, a dismissal order from a trial judge in Florida and scandal in Georgia threaten to derail state and federal criminal cases that had been moving full steam ahead against former President Donald Trump just a few months ago.

It's a stunning turn of events for Trump, who has sought to delay his criminal cases until after the Nov. 5 presidential election. If he returns to the Oval Office, Trump could have the U.S. Department of Justice drop the federal charges against him.

The recent developments have all but guaranteed that Trump will avoid being dragged into court for another criminal trial before the election — and have given him an opening to challenge his conviction in New York's porn star hush money and bogus business records case, or at least delay his sentencing in the matter.

"In the criminal cases, Trump has been born under a lucky star," Jon Sale, co-chair of the white collar practice at Nelson Mullins Riley & Scarborough LLP, told Law360.

Still, Trump is far from in the clear. Here's a look at the current state of his four criminal cases and how they could develop over the next three months:

New York Conviction

Trump and Manhattan District Attorney Alvin Bragg are squaring off in New York state court over whether Trump's hush money conviction should be vacated in the wake of the Supreme Court's July 1 decision that presidents have **presumptive immunity** for official acts.

A Manhattan jury found Trump guilty in May of 34 felony counts of falsifying business records to cover up payments to porn star Stormy Daniels as part of a scheme to keep her quiet about an alleged extramarital affair and protect his 2016 presidential campaign.

Trump **argues** that his conviction should be tossed because the prosecution built its case on evidence tied to official acts he took as president, while Bragg **contends** that the conviction should stand because the charges hinge on unofficial or personal acts.

Justice Juan M. Merchan is expected to rule on the matter by early September and is slated to sentence Trump on Sept. 18, after postponing the initial July 11 sentencing date to give both sides time to argue the immunity issue.

The judge will likely deny Trump's motion to vacate his conviction, experts told Law360, noting that a federal judge **ruled** a year ago that the charges against Trump were related to his personal conduct, rather than a president's official duties.

If Trump's motion is denied, he could be sentenced in September to anything from jail time to home confinement or community service and fines. But whatever the sentence, it's likely to be stayed or deferred pending the outcome of any appeal of Justice Merchan's ruling on Trump's motion to vacate.

The judge also could put Trump's sentencing on ice until after Nov. 5 to avoid the perception that he's

"putting his foot on the scales of the election" by imposing a sentence on a presidential candidate in the thick of a campaign, according to Kevin O'Brien, a partner at Ford O'Brien Landy LLP in New York and a former federal prosecutor in Brooklyn.

However Trump's sentencing shakes out, his case in New York is expected to be tangled in the appellate process for months and could end up at the Supreme Court, because it involves an issue of federal law based on the immunity argument.

"This case will be tied up in appeals well beyond November," Sale said.

DC Election Interference

The Supreme Court's immunity decision has imperiled special counsel Jack Smith's federal election interference case against Trump in Washington, D.C., over his efforts to reverse President Joe Biden's win in the 2020 election.

But experts say the prosecution isn't completely sunk.

U.S. District Judge Tanya A. Chutkan could receive the case back from the Supreme Court as early as Friday, according to Sandeep Prasanna, a senior adviser at Miller & Chevalier Chtd. and former investigative counsel for the House select committee that probed the Jan. 6, 2021, insurrection.

Judge Chutkan will have to work out a schedule with prosecutors and Trump's attorneys, who have repeatedly sought to delay all of Trump's criminal cases, before she's expected to hold an extensive evidentiary hearing to decide whether certain claims in Trump's indictment qualify as official acts that trigger presidential immunity.

"Unlike the New York case, this will be a very difficult burden for the prosecution to show that there are sufficient personal acts that are not tainted by off-limits official acts," Sale said.

But charges tied to Trump's **alleged scheme** to pressure state officials to change 2020 electoral votes for Biden could survive the Supreme Court's decision, if Judge Chutkan determines that Trump's communications with state officials were not official acts, according to Sale.

"That's the strongest area to save part of the case, but it's going to be an uphill battle," he said.

The hearing, which experts said would essentially be a mini-trial and might involve the testimony of Trump's former vice president, Mike Pence, who is referenced dozens of times in Trump's indictment, could be held before the election.

But Judge Chutkan's ruling will almost certainly be appealed, and the case could ultimately find its way back to the Supreme Court.

"The criminal case might take time, but the American people are owed full and fair closure, regardless of how long it takes to wind through our justice system," Prasanna said.

Even if he wins the election, Trump could still be tried on federal charges until he's inaugurated as president on Jan. 20, 2025, according to former Bronx County prosecutor Roger Stavis, co-head of the white collar defense and investigations practice at Mintz & Gold LLP.

"He might be elected president, but he isn't president until Jan. 20," Stavis said.

Florida Classified Documents

Trump-appointed U.S. District Judge Aileen Cannon in Florida dealt a blow to prosecutors on July 15, when she found that Smith's appointment as special counsel in the classified documents case was unconstitutional and **tossed** the matter.

Smith is **appealing** Cannon's dismissal order to the Eleventh Circuit, teeing up an issue of first impression for the court to decide — whether the appointments clause of the U.S. Constitution gives the attorney general authority to tap Smith, a former federal prosecutor, to serve as a special counsel

acting as an independent officer.

Smith has filed a notice of appeal with the Eleventh Circuit and has until Aug. 27 to file his brief with the appellate court. Trump will have 30 days to respond and then Smith gets 21 days to reply to Trump's response.

The case could be briefed by October, but the court would still have to hear arguments before issuing a decision, which would potentially spur either Trump or the government to ask the Supreme Court to review the ruling.

"So the trial level is sidelined absent some miracle where a local U.S. attorney in Florida or another venue decides to have a grand jury issue a new indictment," Marc Scholl of Lewis Baach Kaufmann Middlemiss PLLC told Law360.

It's unclear how the Supreme Court might decide the issue, although Justice Clarence Thomas signaled his stance in a concurring opinion in the immunity decision that questioned whether Smith's appointment was constitutional.

Georgia Racketeering

Fulton County District Attorney Fani Willis' state racketeering and election meddling case against Trump started strong with prosecutors exerting enough pressure to persuade four of Trump's co-defendants to plead guilty and agree to cooperate with the state.

But the case took a dramatic turn in January, when Willis **admitted** that she had a personal relationship with special prosecutor Nathan Wade, whom she hired.

A judge rejected motions from Trump and his co-defendants to disqualify Wade, Willis and her office from prosecuting the case, but ruled that either Wade or Willis had to step down for the case to continue. Wade **resigned** in March.

Willis and Wade have denied any wrongdoing.

Now, Trump is **appealing** the trial judge's refusal to remove Willis from the case, arguing in a June 24 brief with the Georgia Court of Appeals that the trial judge based his ruling on a misapplication of the legal standard for forensic misconduct.

The bottom line at this point is that the Georgia case is essentially stalled, pending the outcome of the appeals.

"You were sailing a boat, moving along and then the winds die and you're just sitting out there getting sunburned and hungry," said O'Brien, the white collar partner at Ford O'Brien Landy. "That's what has happened here."

--Additional reporting by Carolina Bolado, Katie Buehler, Kelcey Caulder, Hailey Konnath and Elliot Weld. Editing by Jay Jackson Jr.