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Former President Donald Trump. Photo: Diego M. Radzinski/ALM

'Not Your Typical Conviction': Past Fraud, Contempt Findings Against Trump Likely to Inform Sentencing, Experts Say

This may be Donald Trump's first criminal conviction, but observers say his past fraud and contempt findings make a non-carceral sentence far from assured.

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White Collar Crime



Emily Saul

Donald Trump may be a first-time offender [following his criminal conviction](#) on Thursday, but his contact with the civil justice system will likely be considered at sentencing as well, according to legal observers.

At the forefront could be a February decision from another New York judge finding the former president [liable for a civil fraud scheme](#) to deceive banks and insurers and ordering Trump to pay some \$355 million in penalties. That decision is under appeal.

"This is not your typical conviction for an E felony by a first-time offender," said longtime defense attorney Robert Gottlieb, who has practiced in both state and federal courts. "The judge certainly is permitted to consider all of the recent civil lawsuits and the findings of fraud."

A Manhattan jury found the former president guilty of 34 felony counts of falsifying business records as part of a plot to suppress information from voters during the 2016 election cycle. Trump maintains his innocence and has decried the proceeding as rigged.

Under New York law, Class E nonviolent felonies are punishable by up to four years in prison. The presumed Republican nominee could also face a non-carceral sentence including community service and fines, or a split or deferred carceral sentence.

As a legal principle, a sentencing judge can consider anything and everything brought to their attention, Gottlieb explained.

Veteran defense attorney Stacey Richman said that would likely include Trump's service to the nation as Commander in Chief, while former prosecutor John Moscow said the judge would also likely consider past frauds.

Acting Supreme Court Justice Juan Merchan set sentencing for July 11. Prosecutors never sought bail and Trump remains out on his own recognizance.

Manhattan District Attorney Alvin Bragg has not yet indicated if his office will seek a carceral sentence.

In the days since the jury returned their guilty verdict, many have made much about Trump's lack of contact with the criminal justice system thus far—inferring that connotes a non-carceral sentence.

Yet it's not so straightforward, observers opined.

Moscow, now senior counsel at Lewis Baach Kaufmann Middlemiss, said he would urge Merchan to look at Trump as a "serial bad actor" with a history of "using money to intimidate and silence other people."

"I would say this is a man who has used his inherited wealth, bluster and force to keep people from complaining about the systemic frauds he's been engaging in for many, many years," Moscow stated. "He's been found to have engaged in fraud through which he gained hundreds of millions of dollars. He's been found to have engaged in fraud against students."

While Trump was found guilty of falsifying business records, prosecutors allege the falsification was done as part of a scheme to defraud U.S. voters ahead of the 2016 presidential election by suppressing negative information about the then-candidate.

"I don't have any doubt that Judge Merchan will consider anything including past findings and recent findings of fraud by the Trump Organization," said Gottlieb, of Robert C. Gottlieb & Associates. "That doesn't guarantee that factor and that factor alone will compel Judge Merchan to compel a jail sentence, but it goes to the issue of specific deterrence to prevent Donald Trump from committing future frauds."

Manhattan Supreme Court Justice Arthur Engoron earlier this year found Trump, his company, and various co-defendants liable for repeated and persistent fraud and ordered disgorgement. That case was brought by New York Attorney General Letitia James, and decried by Trump as politically motivated.

Merchan previously oversaw the trial and conviction of two of Trump's companies, The Trump Corporation and The Trump Payroll Corporation—as well as ex-Trump Organization CFO Allen Weisselberg—for what prosecutors said was a long-running scheme to defraud state tax authorities. The jurist [fined the companies](#) the maximum possible amount of \$1.61 million.

In 2018, Trump also agreed to settle three fraud lawsuits brought against him by former students of his since-shuttered Trump University. Plaintiffs alleged they had been defrauded through false advertising. Trump did not admit wrongdoing but [settled the cases for \\$25 million](#). That case was also brought by the AG's Office, though it was then helmed by Eric Schneiderman.

Gottlieb said he expected Trump's [status as a contemnor](#) to also come into play. Both Merchan and Engoron found Trump in contempt of court orders limiting his extrajudicial statements and imposed fines.

"He does not need to be reminded of the contempt findings," the attorney said of Merchan. "If any of my clients behaved in the same manner and committed the same flagrant disrespect for the court and our system of justice, there is no way in hell they would not have spent at least a few hours in the lockup behind the courtroom. There's zero chance."

Gottlieb said the repeated violations by Trump showed "a mockery of the sacred principles of our system in both civil and criminal court."

While Merchan will consider many things at sentencing—including deterrence, public safety, Trump's personal history—Richman said she expected the judge to also factor in that this is a "pivotal, historic moment at a contested and cantankerous time."

"This question is being applied to an extremely unique character in the context of history," she said of sentencing. "It's a heavy burden for a judge to sentence anyone, let alone under these circumstances"

Richman, of Law Offices of Richman Hill & Associates, noted that Merchan oversees one of Manhattan’s mental health courts—meaning he’s accustomed to thoughtfully tailoring outcomes in the face of distinctive and challenging circumstances.

“He’s a just man,” she said of Merchan. “He’s going to fashion something he believes is reasonable, just, fair and speaks to the moment that is before him.”

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