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## Federal judge dismisses mine safety convictions

OWENSBORO, Ky. (AP) — Some of the convictions against a Muhlenberg County coal mine and its top employees for violating federal mine safety laws have been dismissed by a judge.

U.S. District Judge Joseph H. McKinley Jr., of Owensboro, in an order entered Wednesday, set aside one of two felony convictions against KenAmerican Resources Inc., the company that operates the Paradise No. 9 mine. McKinley also set aside five felony convictions involving three employees, leaving only the company and mine superintendent Bobby Gibson convicted of the single felony of conspiring to violate mine-safety laws.

Defense lawyers hailed

McKinley's order as a victory for the defendants in the case in which federal prosecutors alleged flagrant cheating on measures required to control dust at the underground mine from 1996 to March 2000, when a flood triggered an investigation of conditions at the mine.

Coal dust causes pneumoconiosis, or black lung, a disease that kills hundreds of miners a year.

"We're very pleased," said Clyde Bennett II, a lawyer for KenAmerican. "I believe the judge's decision further demonstrates that the charges against KenAmerican were the product of an overzealous prosecution."

But Assistant U.S.

Attorney Terry Cushing, one of the prosecutors, said KenAmerican and its superintendent remain convicted of a felony and the company and four employees remain convicted of misdemeanor charges involving mine-safety laws. Cushing said prosecutors could appeal McKinley's ruling, but no decision has been reached.

"I don't see it as a real victory for KenAmerican and Gibson," he said.

In his ruling throwing out one felony count, McKinley found that the charge used by prosecutors is not allowed by federal law. McKinley threw out felony convictions of the company and three employees for concealing information about hazardous condi-

tions by alerting employees underground whenever federal mine inspectors came on the property. Prosecutors alleged mine officials alerted employees with the code words "company's comin'," giving them time to correct violations before inspectors could make the lengthy trip underground.

McKinley ruled that federal law does not require mine officials to disclose hazardous conditions to inspectors and, therefore, the action alleged is not an offense. He also ruled that the actions of two employees did not constitute felonies in the other count of conspiring to violate federal mine safety laws.

He reduced the charges against those two to misde-

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*KenAmerican lawyer*

meanors while upholding the felony conviction against the company and superintendent.

Sentencing is scheduled for Nov. 3-4 at U.S. District Court in Owensboro.