UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Alphas

785 F.3d 775 (1st Cir. 2015) · No. No. 14-2228 · Decided May 7, 2015

SUMMARY

The First Circuit held that the district court improperly calculated intended loss for sentencing purposes in an insurance fraud case by treating the full face value of the submitted claims as intended loss based on void-for-fraud clauses. The court ruled that the calculation should exclude amounts the insurers would have paid on legitimate claims absent the fraud, and it remanded for resentencing. The court also rejected the government's argument that the defendant waived his challenge to the restitution calculation.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Selya, Circuit Judge; Barron; Selya; Stahl
JURISDICTION	Federal
DECIDED	May 7, 2015
DOCKET	No. 14-2228
DISPOSITION	vacated
PROCEDURAL POSTURE	John S. Alphas appealed from a guilty-plea sentence for wire fraud, challenging the district court's calculation of intended loss for purposes of the Sentencing Guidelines and actual loss for purposes of restitution.
STANDARD OF REVIEW	The court reviewed the interpretation and application of the Sentencing Guidelines de novo. It reviewed the legal challenge to the restitution order plenarily.
PRECEDENTIAL VALUE	Published, precedential First Circuit opinion
PARTIES	John S. Alphas v. United States of America

TOPICS

sentencing · restitution criminal · insurance · standard of review · appellate procedure

PRACTICE AREAS

criminal sentencing | white-collar criminal law | criminal restitution | appellate procedure | insurance fraud

QUESTIONS PRESENTED

1. Whether the district court properly calculated intended loss under the Sentencing Guidelines by treating the aggregate face value of insurance claims as the loss despite the defendant's contention that some amounts represented legitimate losses.
2. Whether the district court properly calculated restitution under the Mandatory Victims Restitution Act by ordering restitution for the entire amount paid on the claims despite the possibility that some payments corresponded to legitimate losses.
3. Whether any error in calculating the Guidelines range was harmless because the district court imposed a below-range sentence.
4. Whether the defendant waived or forfeited his challenge to the restitution calculation.

HOLDINGS

1. An erroneous calculation of the defendant's Guidelines range was not harmless where the record left at least a possibility that the district court would have imposed a more lenient sentence had it begun with a lower range; a below-range sentence does not by itself make the error harmless.
2. For purposes of the Sentencing Guidelines, intended loss in an insurance-fraud case generally excludes amounts the insurer would have paid absent the fraud. The presence of a void-for-fraud clause does not make the entire face value of a claim the intended loss merely because the insurer could have refused payment upon discovering the fraud.
3. The government bears the burden of proving the amount of loss by a preponderance of the evidence. In a fraud case involving demonstrably fraudulent claims, the court may begin with the face value of the claims, after which the defendant bears a burden of production to identify legitimate amounts; the government retains the ultimate burden of proof, and the court need only make a reasonable estimate.
4. Restitution under the MVRA is limited to the insurer's actual pecuniary loss caused by the fraud. The district court erred by ordering restitution for the entire amount paid on the claims merely because the policies contained void-for-fraud clauses; it must determine what the insurer would have paid absent the fraud.
5. The defendant did not waive or forfeit his challenge to the restitution calculation because his written objections and sentencing memorandum raised the legal method of calculating loss, and his counsel's statements at sentencing were ambiguous rather than an intentional relinquishment of the issue.

KEY QUOTATIONS

> *"Intended loss is not synonymous with probable loss."* (785 F.3d at 783)

> *"Fraudsters do not expect to be found out but, rather, expect to reap the benefits of their contrivance."* (785 F.3d at 790)

> *"The best way to gauge the seriousness of a fraud offense is to determine how much the fraudster set out to swindle — and no fraudster sets out to swindle sums that he would have been paid anyway."* (785 F.3d at 791)

> *"Actual loss is widely (and correctly) thought to be limited to pecuniary harm that would not have occurred but for the defendant's criminal activity."* (785 F.3d at 798)

FACTUAL BACKGROUND

John S. Alphas operated a wholesale produce business and obtained insurance for produce shipments. Over approximately four and one-half years, he submitted at least ten fraudulent insurance claims for allegedly lost, stolen, or damaged produce, using fabricated or altered documents and false statements; the claims totaled more than $490,000, while insurers paid $178,568.41. Alphas maintained that portions of the paid claims represented legitimate losses that would have been reimbursed absent the fraud.

PROCEDURAL HISTORY

The United States charged Alphas by information with one count of wire fraud under 18 U.S.C. § 1343, and he pleaded guilty after waiving indictment. The district court calculated intended loss using the aggregate face value of the fraudulent insurance claims, imposed a 14-level enhancement, sentenced Alphas to 12 months and 1 day of imprisonment, and ordered $178,568.41 in restitution. The First Circuit held that the loss calculations were legally erroneous, vacated the sentence and restitution order, and remanded for resentencing.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The district court must resentence Alphas, reconsidering the appropriate amount of intended loss for the Guidelines enhancement and the appropriate amount of actual loss for restitution. It may compare the amount Alphas sought to obtain through fraud with the amounts insurers would have paid on bona fide claims, may use the face value of the claims as a starting point, and must apply the government's ultimate burden of proof. Only the loss amounts and the dimensions of the sentence remain open on remand.

CASES CITED

- United States v. Almonte-Nuñez, 771 F.3d 84, 86 (1st Cir. 2014)
- Gall v. United States, 552 U.S. 38, 51 (2007)
- United States v. Ramos-Paulino, 488 F.3d 459, 463-64 (1st Cir. 2007)
- United States v. Paneto, 661 F.3d 709, 715 (1st Cir. 2011)
- Williams v. United States, 503 U.S. 193, 203 (1992)
- United States v. Foley, No. 13-1048, slip op. at 31 n.13 (1st Cir. 2015)
- United States v. Prange, 771 F.3d 17, 35-36 (1st Cir. 2014)
- United States v. Innarelli, 524 F.3d 286, 290-91, 294-95 (1st Cir. 2008)

- United States v. McCoy, 508 F.3d 74, 79 & n.6 (1st Cir. 2007)
- United States v. Blastos, 258 F.3d 25, 30 (1st Cir. 2001)
- United States v. Smith, 951 F.2d 1164, 1167 (10th Cir. 1991)
- United States v. Evans, 155 F.3d 245, 253 (3d Cir. 1998)
- United States v. Parsons, 109 F.3d 1002, 1004-05 (4th Cir. 1997)
- United States v. Miller, 316 F.3d 495, 498-99 (4th Cir. 2003)
- United States v. Harms, 442 F.3d 367, 380 (5th Cir. 2006)
- United States v. Dawkins, 202 F.3d 711, 714-15 (4th Cir. 2000)
- United States v. Hamaker, 455 F.3d 1316, 1337 (11th Cir. 2006)
- Burrage v. United States, 134 S. Ct. 881, 887-88 (2014)
- United States v. Torlai, 728 F.3d 932, 935-36, 938, 940-43 (9th Cir. 2013)
- United States v. Sharma, 703 F.3d 318, 324-25 (5th Cir. 2012)
- United States v. Campbell, 765 F.3d 1291, 1304-05 & n.13 (11th Cir. 2014)
- United States v. Jimenez, 513 F.3d 62, 86 (3d Cir. 2008)
- United States v. Rodriguez, 311 F.3d 435, 437 (1st Cir. 2002)
- United States v. Eisom, 585 F.3d 552, 556 (1st Cir. 2009)
- Pike v. Guarino, 492 F.3d 61, 72 (1st Cir. 2007)
- United States v. Bradstreet, 207 F.3d 76, 79-80 (1st Cir. 2000)
- United States v. Theodore, 468 F.3d 52, 58 (1st Cir. 2006)
- United States v. Cutter, 313 F.3d 1, 6-7 (1st Cir. 2002)
- United States v. Vaknin, 112 F.3d 579, 590 (1st Cir. 1997)
- United States v. Hensley, 91 F.3d 274, 277 (1st Cir. 1996)
- United States v. Petruk, 484 F.3d 1035, 1038-39 (8th Cir. 2007)
- United States v. Feldman, 338 F.3d 212, 220-21 (3d Cir. 2003)
- United States v. Burdi, 414 F.3d 216, 221 (1st Cir. 2005)