

UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

United States v. Nygren

United States v. Nygren, 933 F.3d 76 (1st Cir. 2019) · No. No. 18-1548 · Decided August 6, 2019

SUMMARY

The First Circuit held that feigned incompetency can constitute obstruction of justice under USSG §3C1.1, joining other circuits. The court found no clear error in the district court's finding that the defendant deliberately malingered during competency evaluations to delay or avoid prosecution, and that such conduct warranted the two-level enhancement. The court also upheld the denial of an acceptance-of-responsibility reduction under USSG §3E1.1, noting that the obstruction enhancement normally precludes such credit absent extraordinary circumstances.

CASE DETAILS

COURT	United States Court of Appeals for the First Circuit
WRITING FOR THE COURT	Selya; Torruella; Kayatta
JURISDICTION	Federal
DECIDED	August 6, 2019
DOCKET	No. 18-1548
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Maine, challenging the district court's imposition of a two-level obstruction-of-justice enhancement under USSG §3C1.1 and denial of an acceptance-of-responsibility reduction under USSG §3E1.1.
STANDARD OF REVIEW	Abuse of discretion for overall sentence; clear error for factual findings; de novo for interpretation and application of the sentencing guidelines.
PRECEDENTIAL VALUE	Published
PARTIES	Steven Nygren v. United States of America

TOPICS

- criminal procedure
- sentencing
- standard of review
- fraud
- expert testimony
- evidence

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether feigned incompetency can serve as the basis for an obstruction-of-justice enhancement under USSG §3C1.1.
2. Whether the district court erred in denying an acceptance-of-responsibility reduction under USSG §3E1.1.

HOLDINGS

1. Feigned incompetency may comprise the basis for an obstruction-of-justice enhancement under USSG §3C1.1.
2. The district court's finding of feigned incompetency was not clearly erroneous.

KEY QUOTATIONS

“We hold, therefore, that feigned incompetency may comprise the basis for an obstruction-of-justice enhancement.” (17)

“The instances in which the two may go hand in hand are 'hen's-teeth rare.’” (24)

“a defendant who feigns incompetency misrepresents his psychiatric condition to his examiners, intending that they will believe him and convey their inaccurate impressions to the court.” (9)

FACTUAL BACKGROUND

During the summer of 2014, Steven Nygren was hired as CFO of Brooklin Boat Yard. Over the next year, he forged at least 63 checks totaling over \$732,000 and made unauthorized credit card purchases exceeding \$83,000. He admitted to stealing in a recorded conversation. After being charged with bank fraud, unauthorized device use, and tax evasion, Nygren suffered a stroke. He sought a competency evaluation, and his own expert initially found him incompetent. However, subsequent testing by a BOP evaluator revealed that Nygren was malingering—feigning or exaggerating cognitive deficits. The district court found him competent and accepted his guilty plea. At sentencing, the court found that Nygren had feigned incompetency to obstruct justice, imposing a two-level enhancement under USSG §3C1.1, and denied an acceptance-of-responsibility reduction under USSG §3E1.1.

PROCEDURAL HISTORY

The defendant pleaded guilty to 63 counts of bank fraud, one count of unauthorized device use, and one count of tax evasion. After a competency evaluation, the district court found him competent. At sentencing, the court applied an obstruction-of-justice enhancement based on feigned incompetency and denied an acceptance-of-responsibility reduction. The defendant appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Santiago-Rivera, 744 F.3d 229, 232 (1st Cir. 2014)
- United States v. Flores-Machicote, 706 F.3d 16, 20 (1st Cir. 2013)
- United States v. Emery, 991 F.2d 907, 912 (1st Cir. 1993)
- United States v. Dunnigan, 507 U.S. 87, 97 (1993)
- United States v. Quirion, 714 F.3d 77, 79 (1st Cir. 2013)
- United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)
- United States v. Ruiz, 905 F.2d 499, 505 (1st Cir. 1990)
- Daubert v. Merrell Dow Pharm., Inc., 509 U.S. 579, 592-93 (1993)
- United States v. Batista, 483 F.3d 193, 195 (3d Cir. 2007)
- United States v. Aldawsari, 740 F.3d 1015, 1021 (5th Cir. 2014)
- United States v. Santos, 357 F.3d 136, 141 (1st Cir. 2004)
- United States v. Moreno, 947 F.2d 7, 10 (1st Cir. 1991)
- United States v. Cates, 897 F.3d 349, 354 (1st Cir. 2018)
- United States v. Voccola, 99 F.3d 37, 46 (1st Cir. 1996)
- United States v. Maccado, 225 F.3d 766, 771 (D.C. Cir. 2000)
- United States v. Wahlstrom, 588 F.3d 538, 544 (8th Cir. 2009)
- United States v. Greer, 158 F.3d 228, 235 (5th Cir. 1998)
- United States v. Owolabi, 69 F.3d 156, 164 (7th Cir. 1995)
- United States v. Cline, 332 F. App'x 905, 910-11 (4th Cir. 2009)
- United States v. Patti, 337 F.3d 1317, 1320, 1325 (11th Cir. 2003)
- Rosenthal v. O'Brien, 713 F.3d 676, 684 (1st Cir. 2013)
- Dusky v. United States, 362 U.S. 402, 402 (1960) (per curiam)
- United States v. Bonnett, 872 F.3d 1045, 1046-47 (9th Cir. 2017) (per curiam)
- United States v. Wilbourn, 778 F.3d 682, 684-85 (7th Cir. 2015)
- United States v. Binion, 132 F. App'x 89, 93 (8th Cir. 2005) (per curiam)
- United States v. White, 335 F.3d 1314, 1319 (11th Cir. 2003)
- United States v. Biyaga, 9 F.3d 204, 205 (1st Cir. 1993)
- United States v. Feldman, 83 F.3d 9, 13 (1st Cir. 1996)
- United States v. Franky-Ortiz, 230 F.3d 405, 408 (1st Cir. 2000)
- United States v. Ocasio-Rivera, 991 F.2d 1, 4 (1st Cir. 1993)
- United States v. Maguire, 752 F.3d 1, 6 (1st Cir. 2014)
- Teamsters Union, Local No. 59 v. Superline Transp. Co., 953 F.2d 17, 21 (1st Cir. 1992)

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