

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States of America v. Sidney D. Furst

918 F.2d 400 (3d Cir. 1990) · No. No. 90-5222 · Decided November 5, 1990

SUMMARY

Sidney D. Furst appealed his sentence following the Third Circuit's reversal of several convictions and remand for resentencing. The court held that the district court failed to comply with Federal Rule of Criminal Procedure 32(c)(3)(D) because it neither resolved disputed factual information in the presentence report nor expressly disclaimed reliance on it. The court also held that the district court inadequately explained the factual and legal basis for its restitution order, vacated the sentence, and remanded for further proceedings.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	Hutchinson, Circuit Judge; Nygaard, Circuit Judge; Edward D. Re, Chief Judge of the United States Court of International Trade, sitting by designation
JURISDICTION	Federal
DECIDED	November 5, 1990
DOCKET	No. 90-5222
DISPOSITION	vacated
PROCEDURAL POSTURE	Defendant appealed from a judgment of sentence imposed after remand for resentencing following reversal of three of his convictions.
STANDARD OF REVIEW	Compliance with Federal Rule of Criminal Procedure 32(c)(3)(D) and the alleged due-process violation were reviewed plenary. The legality of the restitution award was reviewed plenary, while the particular restitution award was reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published precedential opinion of the United States Court of Appeals for the Third Circuit.
PARTIES	Sidney D. Furst v. United States of America

TOPICS

- criminal procedure
- sentencing
- restitution criminal
- appellate procedure
- standard of review

PRACTICE AREAS

criminal procedure

sentencing

restitution

QUESTIONS PRESENTED

1. Whether the district court complied with Federal Rule of Criminal Procedure 32(c)(3)(D) by resolving disputed factual allegations in the presentence investigation report or expressly disclaiming reliance on them.
2. Whether the district court violated due process by relying on materially erroneous information in sentencing.
3. Whether the district court's restitution order complied with the Victim and Witness Protection Act and applicable case law.

HOLDINGS

1. When a defendant alleges factual inaccuracies in a presentence investigation report, the district court must either make findings concerning each disputed matter or expressly state that it will not rely on the disputed information. Characterizing the disputed matters as arguments, or stating that sentencing guidelines are inapplicable, is insufficient.
2. The court did not reach the constitutional due-process claim because the Rule 32(c)(3)(D) violation independently required vacation of the sentence and the rule protects the same right asserted by the defendant.
3. A restitution order must be limited to losses caused by the specific conduct underlying the offenses of conviction, and the sentencing court must make specific findings explaining the identity of the victims and how the amount ordered relates to those losses.

KEY QUOTATIONS

“once he informed the district court that he disputed facts contained in the PSI report, it was required, pursuant to Rule 32(c)(3)(D), either to make findings concerning the alleged factual inaccuracies or expressly to disclaim reliance upon them.” (918 F.2d 404)

“the loss caused by the conduct underlying the offense of conviction establishes the outer limits of a restitution order.” (918 F.2d 407)

FACTUAL BACKGROUND

Furst, a bank vice president, controlled accounts belonging to an employee pension plan and a foundation. After substantial losses in commodities investments, he engineered internal stock transactions that generated purported gains used to cover or conceal those losses. He was convicted on false-statement offenses, while his embezzlement convictions were later reversed because the government failed to prove that the relevant accounts paid more than market value. At resentencing, the district court relied on disputed presentence-report material and ordered \$150,000 in restitution without making specific findings connecting the amount to losses caused by the remaining offenses.

PROCEDURAL HISTORY

A jury convicted Furst of embezzlement and false-statement offenses. In his prior appeal, the Third Circuit reversed two embezzlement convictions and one false-statement conviction, ordered judgments of acquittal on those counts, vacated the original sentence and restitution order, and remanded for resentencing on the remaining five counts. After resentencing, Furst appealed, challenging the district court's treatment of disputed presentence-report information, its alleged reliance on erroneous information, and its restitution order.

DISPOSITION

vacated

REMAND INSTRUCTIONS

The district court must either make findings on each disputed presentence-report fact or expressly disclaim reliance on the disputed information before imposing sentence. If it imposes restitution, it must make specific findings showing how the amount relates to losses caused by the conduct underlying the remaining offenses of conviction, consistent with Hughey and Palma. Restitution may not be based on the reversed embezzlement convictions or the uncharged commodities-investment losses.

CASES CITED

- United States v. Furst, 886 F.2d 558 (3d Cir. 1989)
- Furst v. United States, 493 U.S. 1029, 110 S. Ct. 878, 107 L. Ed. 2d 961 (1990)
- United States v. Blanco, 884 F.2d 1577, 1579-80 (3d Cir. 1989)
- United States v. Gomez, 831 F.2d 453, 455, 457 (3d Cir. 1987)
- United States v. Rosa, 891 F.2d 1063, 1070 (3d Cir. 1989)
- United States v. Rosa, 891 F.2d 1071, 1073 (3d Cir. 1989)
- United States v. Fatico, 603 F.2d 1053 (2d Cir. 1979)
- United States v. Cifuentes, 863 F.2d 1149, 1150 (3d Cir. 1988)
- United States v. McDowell, 888 F.2d 285, 290-91 (3d Cir. 1989)
- Townsend v. Burke, 334 U.S. 736, 741 (1948)
- United States v. Pollak, 844 F.2d 145, 152 (3d Cir. 1988)
- United States v. Palma, 760 F.2d 475, 480 (3d Cir. 1985)
- Hughey v. United States, 495 U.S. 411, 110 S. Ct. 1979, 109 L. Ed. 2d 408 (1990)
- United States v. Felder, 744 F.2d 18, 19 (3d Cir. 1984)