

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

United States v. Constantine

No. 18-93, United States Court of Appeals for the Second Circuit (February 11, 2019)

SUMMARY

The Second Circuit affirmed a wire fraud sentence, holding that the district court's loss calculation under U.S.S.G. § 2B1.1 was reasonable and properly included a promissory note as relevant conduct under § 1B1.3. Any error in calculating loss from a fraudulently obtained vehicle lease was harmless because the district court stated it would impose the same sentence regardless. The court also upheld the assignment of two criminal history points under § 4A1.1(b) for a prior "time served" sentence of 339 days, which exceeded the 60-day threshold.

CASE DETAILS

COURT	United States Court of Appeals for the Second Circuit
WRITING FOR THE COURT	GUIDO CALABRESI; DEBRA ANN LIVINGSTON; LORNA G. SCHOFIELD
JURISDICTION	Federal
DECIDED	February 11, 2019
DOCKET	18-93
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the judgments of the United States District Court for the Northern District of New York (D'Agostino, J.) sentencing defendant to 37 months and restitution following guilty plea to wire fraud, and denial of motion to reduce sentence.
STANDARD OF REVIEW	We review the reasonableness of the sentence imposed by the district court for abuse of discretion. We review a district court's factual findings as to loss amount for clear error and its legal conclusions de novo.
PRECEDENTIAL VALUE	Unpublished
PARTIES	Bobbi A. Constantine v. United States of America

TOPICS

criminal procedure

sentencing

fraud

harmless error

standard of review

PRACTICE AREAS

Criminal Law

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Fraud

QUESTIONS PRESENTED

1. Whether the district court erred in its loss calculation for the automobile leases and promissory note.
2. Whether the district court erred in assigning two criminal history points for a prior conviction for giving a false statement.

HOLDINGS

1. The district court did not commit procedural error in its loss calculation; any error regarding the Chrysler lease was harmless.
2. The district court properly assigned the points because the sentence of time served exceeded the sixty-day threshold.

KEY QUOTATIONS

“We review the reasonableness of the sentence imposed by the district court for abuse of discretion.” (at 2)

“A sentence is procedurally unreasonable where the district court 'fails to calculate the Guidelines range,' 'makes a mistake in its Guidelines calculation,' 'treats the Guidelines as mandatory,' 'does not consider the [18 U.S.C.] § 3553(a) factors,' 'rests its sentence on a clearly erroneous finding of fact,' or 'fails adequately to explain its chosen sentence.'” (at 2-3)

“Under the Guidelines, the offense level for fraud offenses is linked explicitly to the harm caused to victims, measured in terms of monetary loss.” (at 3)

“Actual loss, in turn, is defined as 'the reasonably foreseeable pecuniary harm that resulted from the offense . . .’” (at 3)

“we take comfort in the district court's emphatic statement that it would have imposed the same sentence regardless of the loss amount, which renders any error in the loss calculation harmless.” (at 5-6)

“A sentence of 'time served' is treated as 'an unambiguous pronouncement of a specific term of imprisonment — the amount of time actually served.’” (at 6)

FACTUAL BACKGROUND

Over a two-year period, Constantine falsely represented herself as the beneficiary of a \$12.5 million trust that produced thousands of dollars of monthly income in order to secure a variety of mortgages, loans and leases. She thereby secured a two-year lease on a 2015 Toyota RAV4, a three-year lease on a 2016 Jeep Renegade, and a \$25,000 loan in exchange for a promissory note from the seller of a property in South Carolina (E.W.).

PROCEDURAL HISTORY

Defendant appealed from the district court's judgment of conviction and sentence, and from the denial of her motion for reduction of sentence. The Second Circuit affirmed.

DISPOSITION

affirmed

CASES CITED

- United States v. Verkhoglyad, 516 F.3d 122 (2d Cir. 2008)
- United States v. Cavera, 550 F.3d 180 (2d Cir. 2008) (en banc)
- United States v. Byors, 586 F.3d 222 (2d Cir. 2009)
- United States v. Bindow, 804 F.3d 558 (2d Cir. 2015)
- United States v. Certified Envtl. Servs., Inc., 753 F.3d 72 (2d Cir. 2014)
- United States v. D'Oliveira, 402 F.3d 130 (2d Cir. 2005)

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