

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 09-3085

September Term, 2009

FILED ON: JUNE 4, 2010

UNITED STATES OF AMERICA,
APPELLEE

v.

CARL I. COLEMAN,
APPELLANT

Appeal from the United States District Court
for the District of Columbia
(No. 1:08-cr-00213-JDB-5)

Before: GINSBURG, BROWN, and KAVANAUGH, *Circuit Judges*.

J U D G M E N T

This appeal was considered on the record from the United States District Court for the District of Columbia and the briefs and oral arguments of the parties. For the reasons stated below, it is

ORDERED and **ADJUDGED** that the judgment of the District Court be affirmed.

Appellant Carl Coleman pled guilty to conspiracy to engage in a fraudulent check-cashing scheme. The financial losses caused by the conspiracy totaled more than \$1.6 million. At sentencing, the District Court held Coleman jointly and severally liable for restitution not in the full amount of \$1.6 million, but instead in the amount of \$146,022. The \$146,022 amount reflected fraudulent checks cashed by Coleman personally, as well as certain checks deposited in accounts opened in Coleman's name or in the name of his co-conspirator Matthews. In considering the conduct of his co-conspirators for which Coleman could be held responsible, the District Court explicitly acknowledged it needed to identify "the reasonably foreseeable acts in furtherance of jointly undertaken criminal activity." Sentencing Tr. at 31.

In this Court, Coleman argues that the District Court committed reversible error because

it failed to make a finding about the scope of the conspiracy. The Government responds that the law of restitution does not require the Court to make a finding about scope. The Government argues in the alternative that the District Court appropriately made such a finding. We agree with the Government's alternative argument and affirm on that basis.

“[T]here are two substantive limitations on a defendant's responsibility for acts undertaken by co-conspirators: Those acts must be ‘in furtherance of’ the same conspiracy to which the defendant has agreed, and they must be reasonably foreseeable to the defendant.” *United States v. Childress*, 58 F.3d 693, 722 (D.C. Cir. 1995). Both elements are necessary: “The extent of a defendant's vicarious liability under conspiracy law is always determined by the scope of his agreement with his co-conspirators. Mere foreseeability is not enough.” *United States v. Saro*, 24 F.3d 283, 288 (D.C. Cir. 1994).

After considering the arguments of counsel, the District Court ordered restitution in the amount of \$146,022 – “the full amount of the loss that . . . Coleman [was] responsible for.” Sentencing Tr. at 41. In so doing, the District Court expressly incorporated the pre-sentencing report's findings about the scope of the conspiracy – that is, about the acts that were in furtherance of the conspiracy.

In sum, the District Court expressly incorporated the pre-sentencing report's findings and ordered an appropriate amount of restitution. We find no reversible error. *See Saro*, 24 F.3d at 288.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or rehearing en banc. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Michael C. McGrail
Deputy Clerk