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United States v. Baird

Precedential or Non-Precedential:

Docket 96-1342

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IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 96-1342

UNITED STATES OF AMERICA,

Appellee

v.

JOHN BAIRD,

Appellant

On Appeal From the United States District Court
For the Eastern District of Pennsylvania
(D.C. Crim. No. 95-cr-00092-1)

Argued: November 6, 1996

Before: BECKER, McKEE, and GARTH, Circuit Judges.

ORDER AMENDING OPINION

The opinion filed in the above case on March 19, 1997 is hereby amended as follows:

A new footnote shall be placed on p. 13 of the slip opinion, just after the sentence that reads "To be related conduct, the conduct need not, however, fit the definition of relevant conduct

under § 1B1.3," which will read as follows:

Our textual statement might appear inconsistent with the statement in United States v. Kikumura, 918 F.2d 1084 (3d Cir. 1990) that "[o]ffense-related departures may consider only conduct that is relevant to the offense of conviction, within the limitation set forth in Guidelines § 1B1.3. See

id. § 5K2.0." Id. at 1105 n.24. But that statement in Kikumura rests on language previously but no longer contained in § 5K2.0 stating that "[h]arms identified as a possible basis for departure from the guidelines should be taken into account only when they are relevant to the offense of conviction, within the limitations set forth in § 1B1.3." However, a 1990 amendment to the Sentencing Guidelines struck that language from § 5K2.0. See 1991 U.S.S.G. app. C, amend. 358. The basis for the statement in Kikumura having been eliminated, the statement no longer has any force.

BY THE COURT:

/s/ Edward R. Becker

Edward R. Becker
Circuit Judge

Dated: April 7, 1997