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Thompson v. Atty Gen USA

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NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 04-1242

ABIODUN O. THOMPSON,

Petitioner

v.

JOHN ASHCROFT, ATTORNEY GENERAL OF THE UNITED STATES

On Petition for Review from the Board of Immigration Appeals
Agency No. A43-355-871

Submitted Under Third Circuit LAR 34.1(a): November 19, 2004

Before: SCIRICA, *Chief Judge*, and McKEE and CHERTOFF, *Circuit Judges*.

(Filed December 6, 2004)

OPINION

Chertoff, *Circuit Judge*.

Appellant Abiodun O. Thompson was ordered removed to Nigeria because he was convicted of an aggravated felony, namely theft of government funds in an amount over

\$10,000, in violation of 18 U.S.C. § 641. See 8 U.S.C. § 1227(a)(2)(A). The Board of Immigration Appeals affirmed the removal. Our jurisdiction to review that decision is limited to the legal question whether the crime of which Thompson was convicted is an aggravated felony under the statute. See Drakes v. Zimski, 240 F.3d 246, 247 (3d Cir. 2001).

The aggravated felony which was applied to Thompson was 8 U.S.C. § 1101(a)(43)(M), covering an “offense that . . . involves fraud or deceit in which the loss to the victim or victims exceeds \$ 10,000.” On this appeal, Thompson concedes that he violated 18 U.S.C. § 641, and that § 641 is an offense involving fraud or deceit. He also acknowledges that he was ordered to pay restitution of \$ 17,547 as part of his sentence, which exceeds the required \$ 10,000 loss of the victim under subsection (43)(M). But Thompson argues that he was charged in an indictment which alleged two offenses, 18 U.S.C. § 641 and § 642, and that since he only pled guilty to § 641, it is impossible to determine whether the restitution amount applied to § 641 or § 642.

This argument rests entirely on a false premise. Thompson was not charged with violating 18 U.S.C. § 641 and § 642. He was charged with violating 18 U.S.C. § 641 and § 2 – the latter, of course, being not a separate offense but merely the statute that allows aiders and abettors to be punished as if they were principals. The charging information, plea, and judgment are completely consistent that Thompson was accused of, and pled guilty to a single offense: violation of 18 U.S.C. § 641. The restitution amount applied to

that single count. The decision of the Immigration Judge and the Board are completely correct and consistent on this point. Petitioner's claim that there is some ambiguity in the criminal proceedings is entirely the product of his own confusion.

Since Petitioner was convicted of an aggravated felony, we lack jurisdiction to conduct any further review, and we will dismiss the petition.

