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States Court of Appeals
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12-19-1995

United States of America v. Neadle

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 94-7417

UNITED STATES OF AMERICA

v.

LAWRENCE NEADLE, JR.,

Appellant.

On Appeal from the District Court of the Virgin Islands,
Division of St. Croix
(D.C. Criminal Action No. 92-cr-00113-2)

Argued April 17, 1995

Before: BECKER, NYGAARD and ROTH,
Circuit Judges

O R D E R

IT IS ORDERED that the slip opinion in the above case, filed on December 19, 1995, be amended as follows (all page references are to the slip opinion):

On page 6, line 2, after the word "version", insert the following: "which the parties had accepted as being" . . .

On page 6, change footnote 2 to read as follows:

In fact, since the date of the mail fraud offense was January 5, 1988, the date of the mailing, see *United States v. Seligsohn*, 981 F.2d 1418, 1425 (3d Cir. 1992), the 1987 edition of the Sentencing Guidelines was in effect at the date of the offense. The parties have accepted the 1988 edition as applicable, and Neadle has not raised any *ex post facto* issue. Because we are confident that the result is the same under either the

1988 or 1987 version, and because the 1988 guidelines contain several useful clarifying amendments, we refer to that version in this opinion.

The district court would properly apply the version of the Guidelines in effect at the date of the offense because, at that time of

sentencing, § 2F1.1 of the Guidelines had been amended by adding four new offense level increases for losses exceeding 10, 20, 40 and 80 million dollars. This amendment would call for a 16 level increase over the base offense level for the loss as calculated here, rather than the 11 level increase which had been in effect until November, 1989. See, e.g., United States v. Corrado, 53 F.3d 620, 622-23 (3d Cir. 1995) (if application of guidelines in effect at sentencing results in more severe penalty than that in effect at time of offense, earlier version controls; applying a guideline amendment that enhances the penalty offends the ex post facto clause of the United States Constitution).

By the Court,

/s/ Jane R. Roth

Circuit Judge

Dated: January 29, 1996

Footnotes

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