

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-10981
Non-Argument Calendar

D.C. Docket No. 3:17-cr-00225-WKW-WC-1

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

WILLIAM ANTHONY GOSHA, III,
a.k.a. Boo Boo,
a.k.a. Boo,
a.k.a. Gosh,

Defendant - Appellant.

Appeal from the United States District Court
for the Middle District of Alabama

(June 4, 2019)

Before MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

William Gosha appeals his 360-month total sentence for conspiracy to defraud the government, 18 U.S.C. § 286 (Count 1), mail fraud, 18 U.S.C. § 1341 (Counts 4-25), wire fraud, 18 U.S.C. § 1343 (Counts 26-28), and aggravated identity theft, 18 U.S.C. § 1028A(a)(1) and (c)(5) (Counts 31-55). Gosha argues that the district court procedurally erred by failing to make a “meaningful loss calculation” when it held him accountable for the entire intended loss amount proffered by the government, without independent calculation. Gosha says that, by adopting the government’s proffer that Gosha was responsible for 9,000 or more fraudulent tax returns claiming \$25 million in fraudulent refunds, the court “failed to ask the critical questions” of whether the returns were (1) within the scope of the conspiracy and (2) reasonably foreseeable.

We review a district court’s determination of the loss amount under the Sentencing Guidelines for clear error. *United States v. Baldwin*, 774 F.3d 711, 727 (11th Cir. 2014). We will conclude that a finding of fact is clearly erroneous only if we are “left with a definite and firm conviction that a mistake has been committed.” *United States v. Pierre*, 825 F.3d 1183, 1191 (11th Cir. 2016). A

district court can make factual findings for the loss amount based on undisputed facts in the Presentence Investigation Report (“PSI”), trial evidence, and evidence presented at sentencing. *Baldwin*, 774 F.3d at 727. That court need not make a “precise determination of loss,” only a “reasonable estimate of the loss, given the available information.” *Id.*

Section 2B1.1(b)(1)(L) of the Guidelines provides that a defendant is subject to a 22-level enhancement if the loss attributable to the defendant is more than \$25 million. U.S.S.G. § 2B1.1(b)(1)(L). The Guideline commentary states that “loss is the greater of actual loss or intended loss.” *Id.* § 2B1.1, comment. (n.3(A)). The Guidelines define “actual loss” as the “reasonably foreseeable pecuniary harm that resulted from the offense” and “intended loss” as the “pecuniary harm that the defendant purposely sought to inflict.” *Id.* § 2B1.1, comment. (n.3(A)(i)-(ii)).

We have concluded that a court’s failure to make an explicit finding about the scope of relevant conduct in a loss calculation is not reason for reversal, as long as the record otherwise supports the court’s determination. *United States v. Maitre*, 898 F.3d 1151, 1160 (11th Cir. 2018) (citing *Baldwin*, 774 F.3d at 727). The evidence must be sufficient for the court to have reasonably made a finding that the evidence supports the loss calculation. *See id.* But we said in *United States v. Medina* that the court’s lack of a factual finding constituted clear error

when it made its finding on the amount of loss with no explanation of what “reliable and specific evidence it used to calculate the loss amount”: which was insufficient for us to “determine what factual basis was used to reach the conclusion” made by the court, even upon our independent review of the record. 485 F.3d 1291, 1304 (11th Cir. 2007). We have also written that, in the context of multiple codefendants, the sentencing court need not make “individualized findings” on the scope of the defendant’s activity, as long as the record supports the court’s determinations. *Pierre*, 825 F.3d at 1198. A sentencing court “may hold participants in a conspiracy responsible for the losses resulting from the reasonably foreseeable acts of co-conspirators.” *Id.*

Here, the district court did not clearly err in its loss calculation because the court pointed to “reliable and specific evidence it used to calculate the loss amount,” and because the grand scale of this conspiracy and Gosha’s primary role in said conspiracy provide sufficient record evidence to support the court’s finding that Gosha was accountable for the entirety of the intended loss amount. *See Medina*, 485 F.3d at 1304; *Maitre*, 898 F.3d at 1160.

AFFIRMED.

**UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

ELBERT PARR TUTTLE COURT OF APPEALS BUILDING
56 Forsyth Street, N.W.
Atlanta, Georgia 30303

David J. Smith
Clerk of Court

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June 04, 2019

MEMORANDUM TO COUNSEL OR PARTIES

Appeal Number: 18-10981-DD
Case Style: USA v. William Gosha, III
District Court Docket No: 3:17-cr-00225-WKW-WC-1

This Court requires all counsel to file documents electronically using the Electronic Case Files ("ECF") system, unless exempted for good cause. Enclosed is a copy of the court's decision filed today in this appeal. Judgment has this day been entered pursuant to FRAP 36. The court's mandate will issue at a later date in accordance with FRAP 41(b).

The time for filing a petition for rehearing is governed by 11th Cir. R. 40-3, and the time for filing a petition for rehearing en banc is governed by 11th Cir. R. 35-2. Except as otherwise provided by FRAP 25(a) for inmate filings, a petition for rehearing or for rehearing en banc is timely only if received in the clerk's office within the time specified in the rules. Costs are governed by FRAP 39 and 11th Cir.R. 39-1. The timing, format, and content of a motion for attorney's fees and an objection thereto is governed by 11th Cir. R. 39-2 and 39-3.

Please note that a petition for rehearing en banc must include in the Certificate of Interested Persons a complete list of all persons and entities listed on all certificates previously filed by any party in the appeal. See 11th Cir. R. 26.1-1. In addition, a copy of the opinion sought to be reheard must be included in any petition for rehearing or petition for rehearing en banc. See 11th Cir. R. 35-5(k) and 40-1 .

Counsel appointed under the Criminal Justice Act (CJA) must submit a voucher claiming compensation for time spent on the appeal no later than 60 days after either issuance of mandate or filing with the U.S. Supreme Court of a petition for writ of certiorari (whichever is later) via the eVoucher system. Please contact the CJA Team at (404) 335-6167 or cja_evoucher@ca11.uscourts.gov for questions regarding CJA vouchers or the eVoucher system.

For questions concerning the issuance of the decision of this court, please call the number referenced in the signature block below. For all other questions, please call Cheyenne Jones, DD at 404-335-6174.

Sincerely,

DAVID J. SMITH, Clerk of Court

Reply to: Jeff R. Patch
Phone #: 404-335-6151

OPIN-1 Ntc of Issuance of Opinion