

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 01-2037

UNITED STATES OF AMERICA

v.

ABDUL LEE STEWART,
a/k/a LEE STEWART

Abdul Lee Stewart,

Appellant

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF PENNSYLVANIA

(Dist. Court No. 99-CR-00751)
District Court Judge: Anita B. Brody

Submitted Under Third Circuit LAR 34.1(a)
January 14, 2002

Before: ALITO, ROTH, Circuit Judges, and SCHWARZER, District Judge.

(Filed: February 6, 2002)

MEMORANDUM OPINION OF THE COURT

PER CURIAM:

Abdul Lee Stewart appeals from the District Court's imposition of two mandatory consecutive sentences under 18 U.S.C. 924(c)(1). Stewart pled guilty to charges of conspiracy, in violation of 18 U.S.C. 371; three counts of armed bank robbery, in violation of 18 U.S.C. 2113(d); and two counts of using or carrying a firearm during a crime of violence, in violation of 18 U.S.C. 924(c)(1). The District Court sentenced Stewart to a term of 572 months in prison, and imposed five years of supervised release, a special assessment of \$600.00, and restitution to the victim banks of \$16,249.00.

Stewart raises two issues on appeal. First, he argues that when multiple convictions are entered simultaneously, none of the convictions may be considered to be "second or subsequent" convictions for enhanced sentencing purposes under 18 U.S.C. 924(c)(1)(C). Second, he claims that the District Court erred by failing to consider his financial condition and to schedule restitution payments accordingly.

We review Stewart's challenge to his sentence for plain error since he failed to raise this objection below. See Fed. R. Crim. P. 52(b); United States v. Knight, 266 F.3d

203, 206 (3d Cir. 2001) ("[W]here a defendant has failed to object to a purported error before the sentencing court, our review on appeal is only to ensure that plain error was not committed.").

First, Stewart argues that his sentence was improperly enhanced by the "second or subsequent conviction" provision under 18 U.S.C. 924 (c)(1)(C). Stewart's claim is that the enhancement for a "second or subsequent conviction" should not apply to multiple 924(c) convictions that are entered simultaneously. Thus, although Stewart was convicted on multiple counts, he argues that the sentence enhancement should not apply because he was convicted on all counts simultaneously. It is true that Stewart was convicted on all counts at the same time, but this is insufficient to remove this case from the direct control of the Supreme Court's decision in *Deal v. United States*, 508 U.S. 129 (1993), in which the Court rejected an argument similar to Stewart's and held that "findings of guilt on several counts are necessarily arrived at successively in time." 508 U.S. at 133 n.1. This conclusion is consistent with this Court's precedent as well. See, e.g., *United States v. Coates*, 178 F.3d 681 (3d Cir. 1999); *United States v. Casiano*, 113 F.3d 420 (3d Cir. 1997).

Second, the Government concedes that the case should be remanded for the purpose of allowing the District Court to specify the manner in which and the schedule according to which Stewart must meet his mandatory restitution obligation.

Accordingly, the sentence imposed by the District Court is affirmed, but the case is remanded for the purpose of specifying how Stewart should meet his mandatory restitution obligation.

TO THE CLERK OF THE COURT:

Kindly file the foregoing Memorandum Opinion.