Appendix A

A.) Apprendi V. New Jersey, 530 U.S. 466 (2000)

Appendix B

No. 01-10645
United States Court of Appeals, Ninth Circuit

U.S. v. Begay

43 F. App'x 63 (9th Cir. 2002)
Decided Jul 29, 2002

63 *63 **43 Fed.Appx. 63 (9th Cir. 2002) UNITED STATES of America, Plaintiff--Appellee, v. Ivan Ray BEGAY, Defendant--Appellant. No. 01-10645. D.C. No. CR-00-01222-PGR. United States Court of Appeals, Ninth Circuit. July 29, 2002**

Submitted on July 22, 2002. *

* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a)(2).

NOT FOR PUBLICATION. (See Federal Rule of Appellate Procedure Rule 36-3)

Defendant was convicted in the United States District Court for the District of Arizona, Paul G. Rosenblatt, J., after pleading guilty to eight counts of aggravated sexual abuse on two women on a Navajo Indian reservation, and he appealed his 382-month sentence. The Court of Appeals held that two-level enhancement of defendant's base offense level for restraining his victims was not impermissible double counting on ground that it was assessed for conduct already accounted for in four-level enhancement based on his use of force.

Affirmed.

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Appeal from the United States District Court for the District of Arizona, Paul G. Rosenblatt, District Judge, Presiding.

Before BROWNING, KOZINSKI, and BERZON, Circuit Judges.

MEMORANDUM **

** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as may be provided by Ninth Circuit Rule 36-3.

Ivan Ray Begay appeals his 382-month sentence following his guilty plea to eight counts of aggravated sexual abuse on two women on a Navajo Indian reservation, in violation of 18 U.S.C. § 2241(a)(1). We have jurisdiction under 28 U.S.C. § 1291 and 18 U.S.C. § 3742. We affirm.

Begay contends that the district court improperly enhanced his base offense level under U.S. S.G. § 3A1.3 by two levels for restraining his victims during the commission of the offense. According to Begay, the two-level enhancement amounted to impermissible double counting because it was assessed for conduct already accounted for in the district court's four-level enhancement for the use of force during a sexual assault under U.S. S.G. § 2A3.1(b)(1). We review de novo a district court's interpretation and application of the Sentencing Guidelines. *United States v. Bowman,* 215 F.3d 951, 968 n. 11 (9th Cir.2000).

Because restraint of the victim is not an element of the offense of aggravated sexual abuse, *see* 18 U.S.C. § 2241, was not incorporated in the aggravated sexual abuse offense guideline applied here, *see* U.S. S.G. §§ 2A3.1, and was not otherwise taken into account in calculating Begay's base offense level, the district court did not err by increasing Begay's base offense level

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two levels under U.S. S.G. § 3A1.3. *See* U.S. S.G. § 3A1.3 comment. 2; *United States v. Parker,* 136 F.3d 653, 654 (9th Cir.1998) (per curiam).

AFFIRMED.

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