

APPENDIX A

United States Court of Appeals for the Fifth Circuit

No. 22-20025
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED
February 3, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANURAG DASS,

Defendant—Appellant.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:17-CR-649-2

Before SMITH, SOUTHWICK, and DOUGLAS, *Circuit Judges.*
PER CURIAM:*

Per a written agreement, Anurag Dass pleaded guilty of aiding and abetting the receipt of a \$7,710 healthcare kickback, in violation of 42 U.S.C. § 1320a-7b, and money laundering, in violation of 18 U.S.C. § 1957. The district court ordered forfeiture of a \$928,621.16 money judgment and \$500,000 seized from a bank account. Dass contends that her appeal waiver does not

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

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bar review of her challenge to the forfeiture order, and she challenges the forfeiture of the money judgment while contending that the money seized from the bank account was not subject to forfeiture.

The parties dispute whether the appeal waiver in Dass's plea agreement precludes us from addressing the merits of some of her arguments on appeal. The issue whether a waiver bars an appeal is not jurisdictional. *United States v. Story*, 439 F.3d 226, 230-31 (5th Cir. 2006); *see also United States v. Smith*, 528 F.3d 423, 424 (5th Cir. 2008). Therefore, we pretermit that issue.

Because Dass did not challenge the forfeiture of the \$500,000 seized from the bank account, we review for plain error. *See United States v. Omigie*, 977 F.3d 397, 403 (5th Cir. 2020). For plain error, an appellant must show a forfeited error that is clear or obvious and that affects her substantial rights. *Puckett v. United States*, 556 U.S. 129, 135 (2009). If the appellant makes such a showing, we have the discretion to correct the error, but only if it seriously affects the fairness, integrity, or public reputation of judicial proceedings. *Id.*

For forfeiture of property, "we 'must determine whether the government has established the requisite nexus between th[at] property and the [charged] offense' under the applicable statute." *United States v. Ayika*, 837 F.3d 460, 469 (5th Cir. 2016) (quoting FED. R. CRIM. P. 32.2(b)-(1)(A)). "The Government must establish the requisite nexus between the property and the offense by a preponderance of the evidence." *United States v. Juluke*, 426 F.3d 323, 326 (5th Cir. 2005).

Dass maintains that the money seized from the bank account was not subject to forfeiture. An individual convicted of money laundering under § 1957 must "forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property." 18 U.S.C. § 982(a)(1). Despite Dass's assertions to the contrary, she expli-

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citly admitted in her plea agreement that the \$500,000 seized from the bank account was involved in her money-laundering offense. Because a forfeiture determination “may be based on evidence already in the record, including any written plea agreement,” the government demonstrated the requisite nexus between the money from the account and Dass’s money-laundering offense. *See FED. R. CRIM. P.* 32.2(b)(1)(B). Accordingly, the district court did not err in ordering the forfeiture.

By contrast, the government concedes that the \$928,621.16 money judgment includes proceeds from criminal activity outside the scope of Dass’s convictions and requests that the judgment of sentence be vacated and remanded for recalculation. For this issue, we need not decide the standard of review because the appellant is entitled to relief even under the plain-error standard. *See United States v. Rodriguez*, 602 F.3d 346, 361 (5th Cir. 2010).

For an individual convicted of a federal healthcare offense, courts “shall order the person to forfeit property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense.” 18 U.S.C. § 982(a)(7); *see* 18 U.S.C. § 24. Criminal forfeiture by virtue of the civil-forfeiture statute would have essentially the same limitation. *See* 18 U.S.C. § 981(a)(1)(C); 28 U.S.C. § 2461(c); *see also* 18 U.S.C. §§ 24, 1956(c)(7)(F).

The government admits, and the record supports, that the imposition of the \$928,621.16 money judgment was a clear and obvious error because it included proceeds that were not traceable to Dass’s \$7,710 healthcare kick-back offense. Moreover, but for the error, there is a reasonable probability that the money judgment would have been substantially less than \$928,621.16. *See United States v. Escalante-Reyes*, 689 F.3d 415, 424 (5th Cir. 2012) (en banc). Finally, because the error resulted in forfeiture of a substan-

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tial amount of money without statutory authorization, the error seriously affects the fairness, integrity, and public reputation of judicial proceedings. *See United States v. Sanjar*, 876 F.3d 725, 750 (5th Cir. 2017). Therefore, we exercise our discretion to correct this error.

Based upon the foregoing, we AFFIRM the forfeiture of the \$500,000 seized from the subject bank account, but because part of the \$928,621.16 money judgment lacks the required statutory nexus, we VACATE the forfeiture order and REMAND for recalculation of the money judgment and entry of a corrected order.

APPENDIX B

DEFENDANT: **ANURAG DASS**
CASE NUMBER: **4:17CR00649-002**
DISTRICT **SOUTHERN DISTRICT OF TEXAS**

STATEMENT OF REASONS

(Not for Public Disclosure)

Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony and Class A misdemeanor cases.

I. COURT FINDINGS ON PRESENTENCE INVESTIGATION REPORT

As a result of the Court's findings to the Chapter Two and Chapter Three determinations reflected below, the guideline calculations in Paragraphs 54, 59, 60, 62, 90 and 101 are revised as set forth in the COURT DETERMINATION OF ADVISORY GUIDELINE RANGE (BEFORE DEPARTURES).

A. The court adopts the presentence investigation report without change.

B. The court adopts the presentence investigation report with the following changes: (Use Section VIII if necessary)
(Check all that apply and specify court determination, findings, or comments, referencing paragraph numbers in the presentence report.)

1. Chapter Two of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to base offense level, or specific offense characteristics)
As to Paragraph 54, the Court finds the offense did not involve 10 or more victims, pursuant to USSG § 2B1.1(b)(2)(A)(i); therefore, the offense level was decreased by 2-levels.
2. Chapter Three of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to victim-related adjustments, role in the offense, obstruction of justice, multiple counts, or acceptance of responsibility)
As to Paragraph 60, the Courts finds the defendant does qualify for acceptance of responsibility, pursuant to USSG 3E1.1(a) and (b); therefore, a 3-level decrease is warranted.
3. Chapter Four of the United States Sentencing Commission Guidelines Manual determinations by court: (briefly summarize the changes, including changes to criminal history category or scores, career offender status, or criminal livelihood determinations)
4. Additional Comments or Findings: (include comments or factual findings concerning any information in the presentence report, including information that the Federal Bureau of Prisons may rely on when it makes inmate classification, designation, or programming decisions; any other rulings on disputed portions of the presentence investigation report; identification of those portions of the report in dispute but for which a court determination is unnecessary because the matter will not affect sentencing or the court will not consider it)

C. The record establishes no need for a presentence investigation report pursuant to Fed.R.Crim.P. 32.

Applicable Sentencing Guideline: (if more than one guideline applies, list the guideline producing the highest offense level) _____

II. COURT FINDING ON MANDATORY MINIMUM SENTENCE (Check all that apply)

A. One or more counts of conviction carry a mandatory minimum term of imprisonment and the sentence imposed is at or above the applicable mandatory minimum term.

B. One or more counts of conviction carry a mandatory minimum term of imprisonment, but the sentence imposed is below a mandatory minimum term because the court has determined that the mandatory minimum term does not apply based on:
 findings of fact in this case: (Specify) _____
 substantial assistance (18 U.S.C. § 3553(e))
 the statutory safety valve (18 U.S.C. § 3553(f))

C. No count of conviction carries a mandatory minimum sentence.

III COURT DETERMINATION OF GUIDELINE RANGE: (BEFORE DEPARTURES OR VARIANCES)

Total Offense Level: 22

Criminal History Category: I

Guideline Range: (after application of §5G1.1 and §5G1.2) 41 to 51 months

Supervised Release Range: 1 to 3 years

Fine Range: \$15,000 to \$150,000

Fine waived or below the guideline range because of inability to pay.

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IV. GUIDELINE SENTENCING DETERMINATION (Check all that apply)

- A. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range does not exceed 24 months.
- B. The sentence is within the guideline range and the difference between the maximum and minimum of the guideline range exceeds 24 months, and the specific sentence is imposed for these reasons: _____ (Use Section VIII if necessary)
- C. The court departs from the guideline range for one or more reasons provided in the Guidelines Manual. (Also complete Section V)
- D. The court imposed a sentence otherwise outside the sentencing guideline system (i.e., a variance). (Also complete Section VI)

V. DEPARTURES PURSUANT TO THE GUIDELINES MANUAL (If applicable)

A. The sentence imposed departs: (Check only one)

- above the guideline range
- below the guideline range

B. Motion for departure before the court pursuant to: (Check all that apply and specify reason(s) in sections C and D)

1. **Plea Agreement**
 - binding plea agreement for departure accepted by the court
 - plea agreement for departure, which the court finds to be reasonable
 - plea agreement that states that the government will not oppose a defense departure motion
2. **Motion Not Addressed in a Plea Agreement**
 - government motion for departure
 - defense motion for departure to which the government did not object
 - defense motion for departure to which the government objected
 - joint motion by both parties
3. **Other**
 - Other than a plea agreement or motion by the parties for departure

C. Reasons for departure: (Check all that apply)

<input type="checkbox"/> 4A1.3 Criminal History Inadequacy <input type="checkbox"/> 5H1.1 Age <input type="checkbox"/> 5H1.2 Education and Vocational Skills <input type="checkbox"/> 5H1.3 Mental and Emotional Condition <input type="checkbox"/> 5H1.4 Physical Condition <input type="checkbox"/> 5H1.5 Employment Record <input type="checkbox"/> 5H1.6 Family Ties and Responsibilities <input type="checkbox"/> 5H1.11 Military Service <input type="checkbox"/> 5H1.11 Charitable Service/Good Works <input type="checkbox"/> 5K1.1 Substantial Assistance <input type="checkbox"/> 5K2.0 Aggravating/Mitigating Circumstances	<input type="checkbox"/> 5K2.1 Death <input type="checkbox"/> 5K2.2 Physical Injury <input type="checkbox"/> 5K2.3 Extreme Psychological Injury <input type="checkbox"/> 5K2.4 Abduction or Unlawful Restraint <input type="checkbox"/> 5K2.5 Property Damage or Loss <input type="checkbox"/> 5K2.6 Weapon <input type="checkbox"/> 5K2.7 Disruption of Government Function <input type="checkbox"/> 5K2.8 Extreme Conduct <input type="checkbox"/> 5K2.9 Criminal Purpose <input type="checkbox"/> 5K2.10 Victim's Conduct <input type="checkbox"/> 5K2.11 Lesser Harm	<input type="checkbox"/> 5K2.12 Coercion and Duress <input type="checkbox"/> 5K2.13 Diminished Capacity <input type="checkbox"/> 5K2.14 Public Welfare <input type="checkbox"/> 5K2.16 Voluntary Disclosure of Offense <input type="checkbox"/> 5K2.17 High-Capacity, Semiautomatic Weapon <input type="checkbox"/> 5K2.18 Violent Street Gang <input type="checkbox"/> 5K2.20 Aberrant Behavior <input type="checkbox"/> 5K2.21 Dismissed and Uncharged Conduct <input type="checkbox"/> 5K2.22 Sex Offender Characteristics <input type="checkbox"/> 5K2.23 Discharged Terms of Imprisonment <input type="checkbox"/> 5K2.24 Unauthorized Insignia <input type="checkbox"/> 5K3.1 Early Disposition Program (EDP)
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Other Guideline Reason(s) for Departure, to include departures pursuant to the commentary in the Guidelines Manual: (see "List of Departure Provisions" following the Index in the Guidelines Manual.) (Please specify)

D. State the basis for the departure. (Use Section VIII if necessary)

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VI. COURT DETERMINATION FOR A VARIANCE (*If applicable*)

A. The sentence imposed is: (*Check only one*)

above the guideline range
 below the guideline range

B. Motion for a variance before the court pursuant to: (*Check all that apply and specify reason(s) in sections C and D*)

1. Plea Agreement

binding plea agreement for a variance accepted by the court
 plea agreement for a variance, which the court finds to be reasonable
 plea agreement that states that the government will not oppose a defense motion for a variance

2. Motion Not Addressed in a Plea Agreement

government motion for a variance
 defense motion for a variance to which the government did not object
 defense motion for a variance to which the government objected
 joint motion by both parties

3. Other

Other than a plea agreement or motion by the parties for a variance

C. 18 U.S.C. § 3553(a) and other reason(s) for a variance (*Check all that apply*)

The nature and circumstances of the offense pursuant to 18 U.S.C. § 3553(a)(1)
 Mens Rea Extreme Conduct Dismissed/Uncharged Conduct
 Role in the Offense Victim Impact
 General Aggravating or Mitigating Factors: (*Specify*) _____

The history and characteristics of the defendant pursuant to 18 U.S.C. § 3553(a)(1)
 Aberrant Behavior Lack of Youthful Guidance
 Age Mental and Emotional Condition
 Charitable Service/Good Works Military Service
 Community Ties Non-Violent Offender
 Diminished Capacity Physical Condition
 Drug or Alcohol Dependence Pre-sentence Rehabilitation
 Employment Record Remorse/Lack of Remorse
 Family Ties and Responsibilities Other: (*Specify*) _____
 Issues with Criminal History: (*Specify*) lack of prior criminal history.

To reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense (18 U.S.C. § 3553(a)(2)(A))
 To afford adequate deterrence to criminal conduct (18 U.S.C. § 3553(a)(2)(B))
 To protect the public from further crimes of the defendant (18 U.S.C. § 3553(a)(2)(C))
 To provide the defendant with needed educational or vocational training (18 U.S.C. § 3553(a)(2)(D))
 To provide the defendant with medical care (18 U.S.C. § 3553(a)(2)(D))
 To provide the defendant with other correctional treatment in the most effective manner (18 U.S.C. § 3553(a)(2)(D))
 To avoid unwarranted sentencing disparities among defendants (18 U.S.C. § 3553(a)(6)) (*Specify in section D*)
 To provide restitution to any victims of the offense (18 U.S.C. § 3553(a)(7))
 Acceptance of Responsibility Conduct Pre-trial/On Bond Cooperation Without Government Motion for Departure
 Early Plea Agreement Global Plea Agreement
 Time Served (*not counted in sentence*) Waiver of Indictment Waiver of Appeal
 Policy Disagreement with the Guidelines (*Kimblough v. U.S.*, 552 U.S. 85 (2007)): (*Specify*) _____
 Other: (*Specify*) _____

D. State the basis for a variance. (*Use Section VIII if necessary*)

The Court considered the defendant's personal history and characteristics, specifically her lack of criminal history, as well as her role in the offense and the sentence imposed on her co-defendant Anukul Dass. The Court finds a downward variance to impose a sentence of 24 months imprisonment is sufficient, but not greater than necessary, to meet the sentencing objectives under 18 U.S.C. § 3553(a).

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VII. COURT DETERMINATIONS OF RESTITUTION

A. Restitution Not Applicable.

B. Total Amount of Restitution: \$2,242,899

C. Restitution not ordered: *(Check only one)*

1. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because the number of identifiable victims is so large as to make restitution impracticable under 18 U.S.C. § 3663A(c)(3)(A).
2. For offenses for which restitution is otherwise mandatory under 18 U.S.C. § 3663A, restitution is not ordered because determining complex issues of fact and relating them to the cause or amount of the victims' losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim would be outweighed by the burden on the sentencing process under 18 U.S.C. § 3663A(c)(3)(B).
3. For other offenses for which restitution is authorized under 18 U.S.C. § 3663 and/or required by the sentencing guidelines, restitution is not ordered because the complication and prolongation of the sentencing process resulting from the fashioning of a restitution order outweigh the need to provide restitution to any victims under 18 U.S.C. § 3663(a)(1)(B)(ii).
4. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s)' losses were not ascertainable (18 U.S.C. § 3664(d)(5)).
5. For offenses for which restitution is otherwise mandatory under 18 U.S.C. §§ 1593, 2248, 2259, 2264, 2327 or 3663A, restitution is not ordered because the victim(s) elected to not participate in any phase of determining the restitution order (18 U.S.C. § 3664(g)(1)).
6. Restitution is not ordered for other reasons: *(Explain)*

D. Partial restitution is ordered for these reasons (18 U.S.C. § 3553(c)):

VIII. ADDITIONAL BASIS FOR THE SENTENCE IN THIS CASE *(If applicable)*

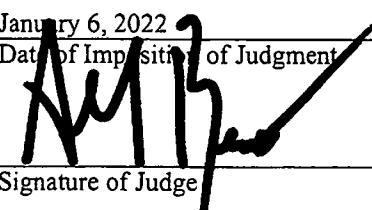
Sections I, II, III, IV, and VII of the Statement of Reasons form must be completed in all felony cases.

Defendant's Soc. Sec. No.: XXX-XX-2816

Defendant's Date of Birth: 05/29/1971

January 6, 2022

Date of Imposition of Judgment


Signature of Judge

ALFRED H. BENNETT
UNITED STATES DISTRICT JUDGE

Name and Title of Judge

January 10, 2022

Date

**Additional material
from this filing is
available in the
Clerk's Office.**