

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

Nos. 09-15522 & 09-15561

FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT MARCH 6, 2012 JOHN LEY CLERK
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D. C. Docket Nos. 09-10025-CR-KMM,
09-10016-CR-KMM

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LARKIN BAGGETT,

Defendant-Appellant.

Appeals from the United States District Court
for the Southern District of Florida

(March 6, 2012)

Before DUBINA, Chief Judge, FAY, and KLEINFELD,* Circuit Judges.

* Honorable Andrew J. Kleinfeld, Judge of the Ninth Circuit Court of Appeals, sitting by designation.

PER CURIAM:

Based upon the agreement of counsel and our review of the record, we vacate the sentences and the order of restitution imposed by the district court and remand with instructions. The Florida indictment did not charge a violation of 18 U.S.C. § 924(c) in Count I, and thus there was no plea of guilty to such a crime. In addition, although the court had the authority to impose discretionary restitution as a condition of supervised release pursuant to 18 U.S.C. §§ 3563(b)(2), 3583(d) and U.S.S.G. § 5E1.1, it lacked the authority to order immediate restitution.

Counsel agree that the defendant/appellant should be resentenced without regard to § 924(c). It is also agreed that the issue of restitution must be revisited under the appropriate statutes and sentencing guideline.

Convictions affirmed; sentences of imprisonment and order of restitution vacated; and, matter remanded with instructions.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.