

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 00-20268

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UNITED STATES OF AMERICA

Plaintiff - Appellee

v.

MARK R SKELTON

Defendant - Appellant

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-97-CR-169-1

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April 4, 2001

Before KING, Chief Judge, and REAVLEY and JONES, Circuit Judges.

PER CURIAM:\*

The district court did not err in refusing to reconsider the four-level upward adjustment under the Sentencing Guidelines of the sentence of Defendant-Appellant Mark R. Skelton. See U.S. SENTENCING GUIDELINES MANUAL § 2F1.1(b)(7)(A) (1998). This court's

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\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

opinion in Skelton's initial appeal limited the district court on resentencing to recalculation of the special assessment and the amount of restitution. "[T]he resentencing court can consider whatever this court directs - no more, no less. All other issues not arising out of this court's ruling and not raised before the appeals court, which could have been brought in the original appeal, are not proper for reconsideration by the district court below." United States v. Marmolejo, 139 F. 3d 528, 531 (5<sup>th</sup> Cir. 1998). We are not persuaded that Skelton could not have raised in his initial appeal the issue of whether affirmance of his conviction on less than all counts required reconsideration of the determination that Skelton's offense substantially jeopardized the soundness of Westheimer Bank.

Skelton's further argument that, under the Supreme Court's decision in Apprendi v. New Jersey, 120 S. Ct. 2348 (2000), facts affecting his sentence were required to have been proved to a jury beyond a reasonable doubt is foreclosed by this court's opinions in United States v. Keith, 230 F.3d 784, 787 (5<sup>th</sup> Cir. 2000) (stating that Apprendi is "limited to facts which increase the penalty beyond the statutory maximum, and does not invalidate a court's factual finding for the purposes of determining the applicable Sentencing Guidelines"), and United States v. Meshack, 225 F.3d 556, 576-77 (5<sup>th</sup> Cir. 2000), cert. denied, 121 S. Ct. 834 (2001), amended on reh'g in part, --- F.3d ----, 2001 WL 224656 (2001).

Skelton's sentence is therefore AFFIRMED.