

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-1878
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

VERSUS

WILLIAM H. LOTT,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:91 CR 381 T)

June 16, 1993

Before JOLLY, DUHÉ, and BARKSDALE, Circuit Judges.

PER CURIAM:¹

Appellant, William H. Lott, pleaded guilty to one count of bank fraud pursuant to a plea agreement. In exchange, the government dropped sixteen other bank fraud counts. As part of his sentence, Appellant was ordered to make restitution of \$290,217. He complains on appeal of the restitution order. We find no error and affirm.

As part of the plea agreement signed by both Appellant and his counsel, Appellant recognized that he was responsible for losses of

¹ Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

\$290,000 plus interest to the Federal Deposit Insurance Corporation as successor of Metropolitan National Bank of Dallas, and agreed that the court could order restitution in that amount as part of his sentence. At sentencing, he objected to the portion of the presentence investigation report which showed that amount as having been lost by the bank as a result of its dealings with Appellant, and he reasserts those arguments on appeal. Appellant contends that all of the bank's loss was not the result of his illegal activity. Some of it, he argues, was the result of the bank having made legitimate loans which the bank lost when his company entered bankruptcy.

The restitution amount was awarded pursuant to the Victim and Witness Protection Act. 18 U.S.C. § 3579 et. seq. Restitution under this act is usually limited to losses caused by the specific conduct underlying the offense of conviction. Hughey v. United States, 495 U.S. 411, 414 (1990). However, the law has changed since Hughey. United States v. Arnold, 947 F.2d 1236, 1237 (5th Cir. 1991). The date of sentencing determines the applicable law. Id. Appellant pleaded guilty and was sentenced after the effective date of the Crime Control Act of 1990 which is, therefore, controlling. Under this act, the sentencing court may order restitution in any criminal case to the extent agreed to by the parties in a plea agreement. 18 U.S.C. § 3663(a)(3) (West Sup. 1991); United States v. Arnold, 947 F.2d 1236, 1237-38 (5th Cir. 1991). Since Appellant and his counsel signed the plea agreement specifying that he was responsible for the \$290,000 plus interest,

and that the court could order restitution in that amount the
restitution award is proper. AFFIRMED.