

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60030

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILMER OLIVER ROWE, JR.,

Defendant-Appellant.

No. 94-60031

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

WILMER ROWE,

Defendant-Appellant.

No. 94-60032

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

PLAS-CHEM COATINGS, INC.,

Defendant-Appellant.

Appeal from the United States District Court for the
Southern District of Mississippi
(CR-1:92-0040(P)(R), CR-1:93-36(P)(R) & CR 1:93-36-02-PR)

(May 11, 1995)

Before JOLLY, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

After a review of the briefs, the record, and the arguments of counsel, we are unpersuaded that the district court erred in sentencing the defendants, Wilmer O. Rowe and Plas-Chem Coatings, Inc. With regard to case number S92-00040PR, the district court was not clearly erroneous in calculating the "amount of loss" attributed to Rowe as \$656,000 under section 2F1.1 of the United States Sentencing Guidelines. Furthermore, Rowe was given adequate

*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 Pursuant to that Rule, the court has determined that this opinion should not be published.

opportunity at the sentencing hearing to challenge this calculation. See United States v. Chappell, 6 F.3d 1095, 1101 (5th Cir. 1993) (reviewing district court's determination of "amount of loss" for clear error). We additionally are not persuaded that the government breached any agreement regarding sentencing. Rowe had not agreed to any specific amount for use in calculating his sentence and no specified amount was part of the plea agreement. As to restitution, we hold that the district court properly considered the ability of Rowe to pay and the actual losses sustained by the victim, Ingalls Shipbuilding, Inc., when ordering Rowe to pay restitution of \$201,273.48. As to case number 93-CR-36-PR, Rowe and Plas-Chem agreed as part of the plea agreement to waive the right to appeal their sentences, except for an upward departure from the Sentencing Guidelines. Because the district court did not upwardly depart from a sentence specifically authorized by the guidelines in sentencing either defendant and because the government did not breach the plea agreement when the court enhanced the defendants sentences under section 2Q1.2(b)(1)(A), we find that the defendants waived the right to appeal any issue relating to sentencing under case number 93-CR-36-PR, including sentence enhancement and restitution. For these reasons, the judgment of the district court is

A F F I R M E D.