

United States Court of Appeals For the First Circuit

Nos. 24-1592
24-1716

UNITED STATES,

Appellee,

v.

GUSTAVO KINRYS,

Defendant, Appellant.

APPEALS FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

[Hon. Denise J. Casper, U.S. District Judge]

Before

Montecalvo, Thompson, and Aframe,
Circuit Judges.

Judith H. Mizner, Assistant Federal Public Defender, for the
appellant.

Alexia R. DeVincentis, Assistant United States Attorney, with
whom Leah B. Foley, United States Attorney, was on brief, for the
appellee.

September 21, 2026

AFRAME, Circuit Judge. In this sentencing appeal, Gustavo Kinrys challenges the intended loss and restitution calculations resulting from his conviction for committing health insurance fraud. We affirm the district court's decisions in both respects.

I.

Kinrys worked as a licensed psychiatrist, operating his own private practice in Massachusetts. During the charged conduct period, between 2015 and 2018, Kinrys defrauded private and public health insurers, including Blue Cross Blue Shield ("BCBS"), Tufts, Aetna, Optum, Beacon, and Medicare. For example, he billed for over a thousand sessions while either he or the purported patient was out of the country. For at least some of the defrauded insurers, Kinrys was an "in-network" provider, which means that he had a contract with the insurer that detailed the amount that it would pay for a given service.

Starting in 2017, Kinrys's conduct caught up with him. Over the next two years, at least two insurers asked him to provide more detailed billing records. Kinrys delayed responding by directing the insurers to a fictitious office manager. He also created false records indicating that he had provided services that he had not actually rendered. Eventually, at least one insurer informed Kinrys that it would stop paying his invoices until he complied with its records request. And another insurer

paid Kinrys contingent on his obtaining preauthorization for a submitted service.

A couple of years later, the federal government indicted Kinrys for fraud. And in October 2023, a jury convicted Kinrys on fourteen of fifteen counts arising from his scheme.

At sentencing, the district court calculated Kinrys's base offense level to be seven and then added twenty-eight levels-worth of enhancements, including a twenty-level enhancement for the loss amount. This yielded a recommended guideline range of 168 to 210 months for the first seven counts of conviction, and sixty months for the remaining counts. The district court sentenced Kinrys to ninety-nine months in prison on the first seven counts and sixty concurrent months in prison on the remaining counts. It also required Kinrys to pay \$6,537,309.59 in restitution and \$6,527,391.19 in criminal forfeiture.

II.

Kinrys appeals the loss calculation for his sentencing enhancement and the restitution amount imposed. Kinrys preserved both challenges. Accordingly, for these issues, we review findings of fact for clear error, interpretations of law de novo, and judgment calls for abuse of discretion. See United States v. Yoon, 167 F.4th 556, 564 (1st Cir. 2026) (application of enhancement); United States v. Cardozo, 68 F.4th 725, 733 (1st Cir. 2023) (restitution calculation).

A.

We start with the loss amount under the sentencing guidelines. In this context, the loss amount is the greater of actual or intended loss. U.S.S.G. § 2B1.1(b)(1)(A).¹ The district court pegged Kinrys's intended loss to the amount he billed and so, based on the presentence report's accounting of Kinrys's billing, determined that he intended to steal a little over nineteen million dollars. As we indicated above, this yielded a twenty-level sentencing enhancement. See U.S.S.G. § 2B1.1(b)(1)(K). Kinrys argues that the amount he billed does not accurately reflect his intended loss. He contends that a more appropriate measure of his intended loss is the amount he anticipated receiving pursuant to the contract reimbursement rates, which, at roughly \$8.3 million, would yield an eighteen-level enhancement. Id. § 2B1.1(b)(1)(J).

¹ Generally, courts use the version of the sentencing guidelines in effect at the time of sentencing. See Yoon, 167 F.4th at 564 n.6. At the time of Kinrys's sentencing in June 2024, a commentary to the guidelines defined loss as the greater of actual or intended loss. See U.S.S.G. § 2B1.1 cmt. n.3(A) (2023). The level of deference that courts owe to commentary notes in the guidelines is an issue currently before the Supreme Court. See Beaird v. United States, ___ S. Ct. ___, 2026 WL 1052007 (Apr. 20, 2026) (Mem.) (granting certiorari). But we may avoid the question of whether we must apply this note because the United States Sentencing Commission amended the guidelines so that the definition of loss now appears in the guidelines' main text. See U.S.S.G. § 2B1.1 amend. 827. As Kinrys concedes, this amendment "clarif[ies]" the guidelines and thus applies retroactively to his sentencing. Unites States v. Cates, 897 F.3d 349, 358 n.4 (1st Cir. 2018).

The government bears the burden to prove that a sentencing enhancement applies by a preponderance of the evidence. United States v. Alphas, 785 F.3d 775, 784 (1st Cir. 2015). In cases like this one, where the defendant's scheme was "rife with fraud," courts may calculate intended loss using the burden-shifting framework derived from Alphas. Id.; see also Yoon, 167 F.4th at 565-66. That approach permits a sentencing court to use the billed amount as prima facie evidence of intended loss. Alphas, 785 F.3d at 784. The burden then shifts to the defendant, who may "rebut" the face value of the bills by "proffering evidence establishing that he intended to reap some lesser amount." Yoon, 167 F.4th at 565; see also United States v. Iwuala, 789 F.3d 1, 14 (1st Cir. 2015). Once both parties have put forth their competing loss amounts and the record is fully formed, the district court must make a "reasonable estimate of the loss," bearing in mind that the government retains the ultimate burden of proving the applicability of the enhancement. Yoon, 167 F.4th at 565 (quoting U.S.S.G. § 2B1.1, cmt. n.3(C)). The court determines reasonable loss based on the defendant's subjective intent, that is, the "pecuniary harm that the defendant purposely sought to inflict." United States v. Carrasquillo-Vilches, 33 F.4th 36, 42-43 (1st Cir. 2022) (quoting U.S.S.G. § 2B1.1 amend. 792).

The district court applied the Alphas framework here. After the court indicated that it would start with the face value of Kinrys's claims, Kinrys attempted to rebut the presumption that he intended to be reimbursed for the full billed amount by contending that as an "in-network" provider, he expected to obtain the contract amount for the given claim, regardless of the billed amount. He further argued that his inaction in collecting co-pays from his patients was proof that he intended to obtain only the contract amount.

The district court was unpersuaded. It provided two reasons that supported its decision to stick with the billed amount as the appropriate metric. First, in 2023, as his criminal trial was approaching, Kinrys filed two pro se civil suits -- one against BCBS and another against Optum -- alleging, inter alia, that the insurers had breached their contract with him for services he alleged to have rendered between 2017 and 2021, largely after the charged conduct. He asserted that the insurers had refused to reimburse him for "billed charges," rather than the negotiated in-network amount, and requested damages that exceeded the amount he had billed.² Second, during the offense period, Kinrys sometimes received the full amount that he billed and kept that full payment. Based on these facts, the district court found that

² Kinrys's civil suits were subsequently removed to federal court and have since been dismissed.

Kinrys had intended to "scoop" as much as he could from the insurers. (Quoting Iwuala, 789 F.3d at 14).

On appeal, Kinrys repeats his arguments that intended loss is captured better by the amounts he anticipated receiving under his agreements with the insurers as compared to the amount he billed. Kinrys's subjective intent is a factual question, so we review the district court's decision for clear error. See United States v. Arif, 897 F.3d 1, 11 (1st Cir. 2018). Surmounting the clear error standard is difficult because it requires us to have a "definite and firm conviction" that there has been a mistake. United States v. Gonzalez, 68 F.4th 699, 703 (1st Cir. 2023) (quoting United States v. Centeno-González, 989 F.3d 36, 50 (1st Cir. 2021)). We are not so convinced.

To begin, Kinrys's decision to refrain from collecting co-pays from his patients does not move us to conclude that he clearly intended to accept only the contract amounts. Had Kinrys sought to supplement payment for services never rendered, he would have drawn his patients' attention to his fraud scheme. Moreover, many doctors choose not to pass along excess costs to their patients as it can discourage those patients from returning to the provider. So Kinrys's decision to write off co-pays from patients does not show that he intended to obtain from insurers less than he billed them.

The other fact that Kinrys cites -- his status as an in-network provider -- has more force. The insurance contracts that Kinrys signed established predictable amounts that Kinrys would receive in return for the claims he submitted. They support his assertion, then, that he expected to take only the amounts contemplated by the agreements, regardless of the amount that he billed. Indeed, that Kinrys was an in-network provider distinguishes this case from our recent decision in Yoon, which also applied the Alphas framework to a health insurance fraud scheme. 167 F.4th at 565-67. There, the defendant was an out-of-network provider. Id. at 566. And based on that fact, we affirmed the district court's determinations that he would not have known how much he would receive in response to each bill and, because he failed to detail the amount he expected, it was fair to assume that he intended to take as much as he could get. Id. at 566-67. Here, by contrast, Kinrys's assertion that he intended to obtain only the contract amounts is stronger, given that his contracts with the insurers dictated that he would receive an amount that was less than the amount he billed. See United States v. Singh, 390 F.3d 168, 193 (2d Cir. 2004) (rejecting use of billed amount by acknowledging that providers often are familiar with the fixed rates that insurers pay for medical services).

Nevertheless, considering all the information before the district court, Kinrys's status as an in-network provider does not

demonstrate that the court clearly erred in determining, as a factual matter, that Kinrys intended to take from the insurers as much as he could, up to the billed amounts. As the court pointed out, Kinrys filed multiple pro se civil lawsuits on the eve of his criminal trial. In the complaints for these suits, Kinrys asserted that the insurers had breached their respective contracts and owed him for the amounts he billed. Moreover, he sought damages that reflected even greater amounts. Though these suits covered payments that occurred largely after his charged conduct, they still shed light on Kinrys's intent when he submitted claims throughout his scheme, particularly because he wrote and filed his complaint pro se.

Kinrys acknowledges these facts but responds that the civil complaints also refer to the "negotiated contract rates" he had with each insurer. He argues that these references suggested that he had the contracted amounts in mind when he submitted the claims. Kinrys's reading of the complaint is plausible and could have supported a decision to rely on the contract amount instead of the billed amount to determine intended loss. But, on this question, we do not step into the district court's shoes; we determine only whether it committed a clear error. The court conducted a full trial and sentencing hearing, where it heard firsthand the evidence and the respective parties' case presentations. Indeed, the district court's view of Kinrys's

complaints is buttressed by the other fact it relied on, namely, that the insurers sometimes paid Kinrys the full amount billed and that he did not reimburse the insurers for payments that exceeded the contract rate.

Kinrys may have had evidence that the civil suits and his acceptance of overpayments were not probative of his intent. But if he did, he failed to present it at his sentencing hearing. Instead, he chose to rely exclusively on argument by his counsel. "Attorney argument or embellishment cannot substitute for missing evidence." Rios v. Centerra Grp. LLC, 106 F.4th 101, 118 n.5 (1st Cir. 2024) (affirming summary judgment where the plaintiff failed to produce record evidence supporting his employment retaliation claim). That is particularly true here: Because Kinrys submitted claims rife with fraud and because the Alphas framework allows the sentencing court to use the billed amount as prima facie evidence of intended loss, the burden shifted to Kinrys to demonstrate that he intended to receive a lesser amount than the amount he billed. See Yoon, 167 F.4th at 565. Between the evidence relied upon by the district court and Kinrys's failure to proffer contrary evidence, we see no clear error in the court's determination that Kinrys intended to take as much as he could from the insurers, even up to the billed amounts.

B.

Kinrys also challenges the district court's restitution calculation. Under the Mandatory Victims Restitution Act of 1996, defendants convicted of certain crimes -- including "any offense committed by fraud or deceit" -- are required to pay restitution to their victims. 18 U.S.C. § 3663A(c)(1)(A)(ii). In the criminal context, restitution is a non-punitive process through which a defendant compensates victims for actual losses caused by the defendant's criminal actions. United States v. Simon, 12 F.4th 1, 64 (1st Cir. 2021); United States v. De Jesús-Torres, 64 F.4th 33, 44 (1st Cir. 2023). The goal of restitution is to make the victims "whole again." Carrasquillo-Vilches, 33 F.4th at 46 (quoting United States v. Innarelli, 524 F.3d 286, 293 (1st Cir. 2008)). But restitution orders should "not . . . confer a windfall upon a victim." Id. (quoting United States v. Naphaeng, 906 F.3d 173, 179 (1st Cir. 2018)).

On appeal, Kinrys argues that his roughly \$6.5 million restitution order should be offset by claims for legitimate services that went unpaid by the victims. In the past, we have vacated and remanded restitution calculations when they include both fraudulent and legitimate claims, explaining that only fraudulent claims may serve as the basis for a restitution calculation. See, e.g., Alphas, 785 F.3d at 786-87. But Kinrys does not argue that the district court included legitimate claims

in its restitution calculation. Rather, he concedes that the court's restitution calculation was based only on fraudulent claims. Instead, Kinrys asserts that a separate set of claims -- ones he submitted for which he was never paid -- are legitimate. He contends that the court should have offset the restitution amount by the sum claimed in these bills and that its failure to do so afforded the insurers a windfall. We disagree.

A restitution hearing is not a place to bring civil claims against victims, which is effectively what Kinrys seeks to do here. See United States v. Maurer, 226 F.3d 150, 152 (2d Cir. 2000) (per curiam). Kinrys's allegedly legitimate claims implicate a distinct set of reimbursement requests from those that serve as the basis for the restitution amount. And it is unclear whether Kinrys is entitled to payment for these allegedly legitimate claims.

Kinrys appears to have submitted all these claims toward the end of his scheme, in circumstances where an insurer had made payment contingent on either preauthorization (which Kinrys failed to obtain) or Kinrys's production of requested documents (which he failed to complete).³ Whether those claims were properly withheld (and whether they may now be owed) is a question to be resolved

³ No party indicates that Kinrys submitted legitimate unpaid claims in circumstances where the insurers did not require preauthorization or the production of billing records.

through a civil suit or an administrative process with the insurer, avenues that Kinrys may attempt. See United States v. Cupit, 169 F.3d 536, 540 n.3 (8th Cir. 1999) (per curiam). But a criminal restitution hearing, where distinct, unrelated, and contested billing is not before the court, is not the proper venue to resolve such claims. See Maurer, 226 F.3d at 152. Accordingly, we affirm the district court's decision to decline offsetting the restitution order based on Kinrys's allegedly legitimate claims.

Affirmed.