



White-Collar Crime

Bulletin

September / 2025

Lefosse

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Higher Courts Case Law

Higher Courts

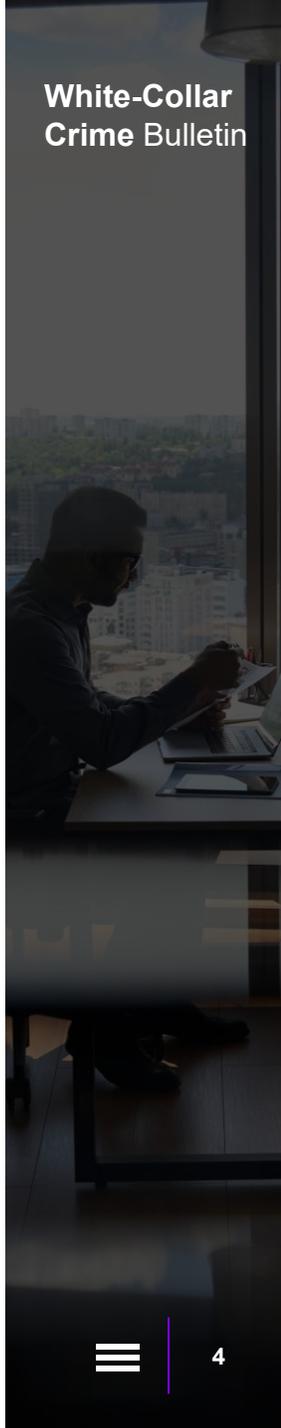
STJ: Application of the Mitigating Factor of Spontaneous Confession: Precedent Theme 1194/STJ

The Superior Court of Justice, when ruling on Precedent Theme No. 1194, established a precedent regarding the application of the generic mitigating factor of spontaneous confession provided for in Article 65, III, d, of the Brazilian Penal Code. The Court defined that the defendant's confession, even if not used to form the judge's conviction, is capable of mitigating the sentence, provided it has not been validly retracted or, if retracted, has contributed to the investigation of the facts. The confession must be treated as an objective fact, detached from subjective intentions, and its effectiveness does not depend on probative value.

It was also established that qualified or partial confessions should result in a lesser degree of mitigation compared to a full confession, with the judge being responsible for providing the reasoning behind this sentencing calculation. An extrajudicial confession, even if not ratified in court, may produce favorable effects for the defendant, provided it was useful to the investigation. On the other hand, if the confession is validly retracted and did not influence the investigation of the facts, it cannot lead to mitigation, as an invalid act is not permitted to generate future legal effects.

Due to this understanding, the STJ proposed the revision of Precedents 545 and 630, aligning them with the new jurisprudential orientation. Furthermore, it determined that the prejudicial effects of the established thesis will only apply to facts occurring after the publication of the ruling, in accordance with the modulation provided for in Article 927, § 3º, of the Brazilian Code of Civil Procedure.

Source: REsp 2.001.973-RS



Higher Courts

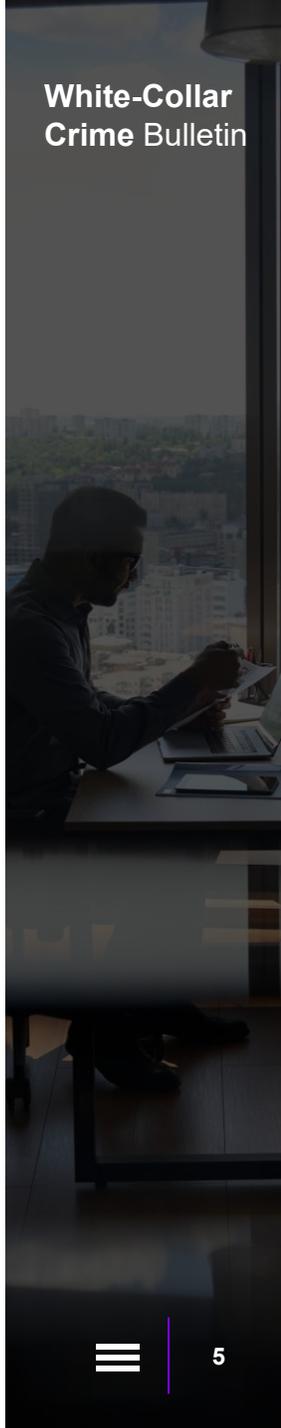
STJ: Qualified Receiving of Stolen Goods and the Imputation of the Qualifying Element to Co-Defendants Who Are Not Owners

The Superior Court of Justice analyzed the possibility of applying the offense of qualified receiving of stolen goods (Article 180, § 1º, of the Brazilian Penal Code) to co-defendants who, although not owners of the commercial establishment, participated in the receipt of stolen goods carried out therein. In the specific case, the lower court had upheld the conviction for the simple form of the offense, arguing that the co-defendants were not engaged in commercial activity. However, it was proven that the accused acted in concert with the co-defendant who was the owner, who committed the crime habitually and in the course of commercial activity.

Based on the monistic theory adopted by the Brazilian legal system, the STJ understood that all individuals involved are liable for the same criminal offense, regardless of whether they are merchants or not. Thus, once the elements of the qualified offense are proven in relation to one of the agents, the other participants must also be held liable for this qualified offense, provided they contributed to the crime, even if occasionally or on a one-off basis.

Consequently, the STJ established the precedent that the qualifying element of "engaging in commercial activity" must be imputed to the co-defendants, in accordance with Article 30 of the Brazilian Penal Code. The qualified receiving of stolen goods, being an autonomous offense, does not require that all agents individually meet the criteria for the qualification; it suffices to prove the habitual nature and the commercial activity in relation to one of the individuals involved for it to apply to all who contributed to the crime.

Source: AREsp 2.712.504-MG



Higher Courts

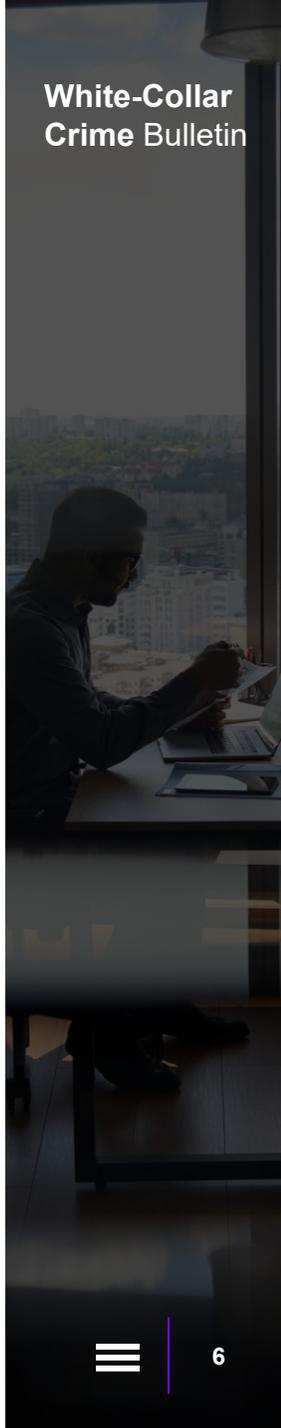
STJ: Embezzlement by a Court-Appointed Custodian: Asset Partition and Criminal Liability of a Managing Partner

The Superior Court of Justice analyzed the characterization of the crime of qualified embezzlement (Article 168, § 1º, II, of the Brazilian Penal Code) committed by a managing partner of a business entity, who was appointed as a court-appointed custodian of assets belonging to the legal entity itself. The Court rejected the lower court's reasoning, which had acquitted the defendant based on the alleged absence of the element "property belonging to another," arguing that the assets were part of the corporate estate of which the defendant was a partner. According to the STJ, this confusion of assets lacks legal support, especially in light of the autonomy granted to legal entities by Article 49-A of the Brazilian Civil Code.

The decision emphasized that the possession exercised by a court-appointed custodian stems from a state imposition and not from ordinary administrative powers, making the defendant's status as a managing partner irrelevant for criminal purposes. The act of misappropriating assets entrusted by court order constitutes a breach of fiduciary duty and undermines the effectiveness of judicial protection. The offense of embezzlement, in this specific form, aims to protect the State's trust in its officers of the court, thereby reinforcing compliance with judicial decisions.

In the judgment of RHC 58.234/PR, the Sixth Panel of the STJ reaffirmed that the appointment of a managing partner as a court-appointed custodian does not negate the criminal typicity of embezzlement. The asset partition between the business entity and its partners remains intact, and the unjustified refusal to return the deposited assets constitutes the specific intent required by the criminal offense. Thus, the fiduciary bond takes precedence over any corporate relationship, legitimizing the criminal liability of the agent.

Source: REsp 2.215.933-SC



Higher Courts

STJ: Reclassification of the Offense in Criminal Review is Permitted by Art. 626 of the Brazilian Code of Criminal Procedure, Provided it Does Not Increase the Imposed Penalty

The Superior Court of Justice analyzed the legality of the reclassification of the offense carried out in the first criminal review, which replaced the crime of money laundering with the crime of receiving stolen goods, based on the same factual description. The second criminal review, in turn, ordered the acquittal of the petitioner on the grounds of a violation of the right to adversarial proceedings and full defense, alleging a lack of opportunity to comment on the new legal classification.

However, the STJ understood that the first review decision fully observed the legal provision of Article 626 of the Brazilian Code of Criminal Procedure, which authorizes the reclassification of the offense without an increase in the penalty. The penalty was, in fact, reduced, precluding any possibility of *reformatio in pejus* (change for the worse). Furthermore, in accordance with Article 383 of the Brazilian Code of Criminal Procedure, a change in the legal qualification of the facts, without a modification of the factual narrative, does not require a new hearing for the defendant.

Thus, the Court concluded that there was no illegality in the requalification of the offense effected in the first criminal review. By considering this reclassification invalid, the second decision ultimately denied effect to Article 626 of the Brazilian Code of Criminal Procedure, contrary to the legal system and the statutory limits of criminal review.

Source: REsp 1.943.070-CE

Higher Courts

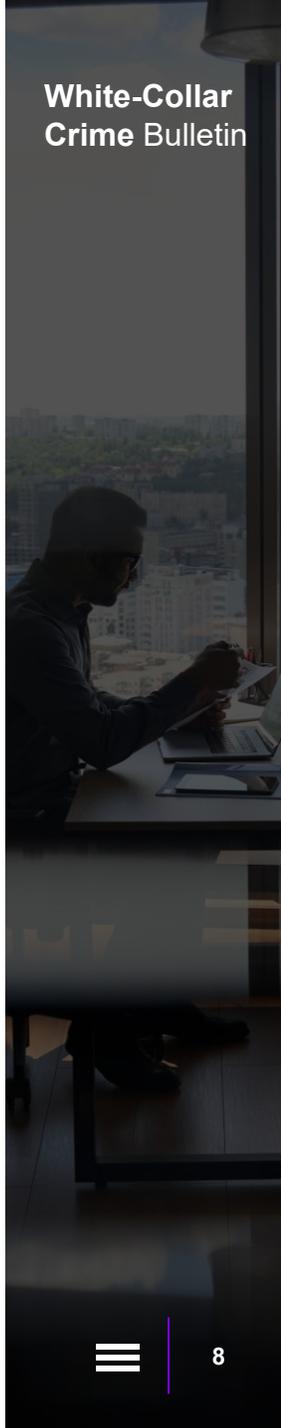
STJ: Following the Enforceability of Article 28-A of the Brazilian Code of Criminal Procedure, the Request to Enter into a Non-Prosecution Agreement Must Be Filed at the First Opportunity to Intervene in the Case Records

The Superior Court of Justice analyzed the possibility of filing a request for a non-prosecution agreement (ANPP) at a moment subsequent to the first opportunity to intervene in the case records, in light of the principles of objective good faith and procedural cooperation. According to the settled case law of the Federal Supreme Court, the ANPP may be requested in cases still in progress until the judgment becomes final and unappealable, provided the request is submitted at the first opportunity after the enforceability of Article 28-A of the Brazilian Code of Criminal Procedure.

In the specific case, it was verified that the party had already had prior opportunities to request the ANPP, including in the context of an appeal, but remained inactive. This omission characterizes conduct incompatible with the principles of loyalty and procedural good faith, resulting in the preclusion of the possibility of entering into the agreement at a later stage.

The STJ concluded that the submission of a request for an ANPP at the final stage of the proceedings, immediately before the conviction becomes final and unappealable, is inadmissible, as such conduct violates the preclusive effects arising from the prior omission and compromises the stability of the procedural dispute.

Source: AREsp 2.600.503-ES



Higher Courts

STJ: Abstract Gravity of a Crime Does Not Preclude the Offering of a Non-Prosecution Agreement

The Superior Court of Justice is analyzing, within the scope of AREsp 2.568.137, the possibility of offering a non-prosecution agreement even for crimes considered serious, provided the legal requirements of Article 28-A of the Brazilian Code of Criminal Procedure are met. The Federal Prosecution Office, in a brief filed with the court records, argues that the abstract gravity of the offense cannot, by itself, justify the refusal of an ANPP, especially when there was no violence or serious threat to a person.

The MPF's reasoning aligns with the jurisprudence of the Federal Supreme Court, which has established that an ANPP can be requested until the judgment becomes final and unappealable, provided the request is filed at the first opportunity to present arguments in the case records after the norm came into force. A refusal based exclusively on a subjective assessment of the crime's gravity violates the principles of legality, proportionality, and procedural cooperation, in addition to undermining the effectiveness of the criminal policy envisaged by the legislature.

The MPF also emphasizes that the ANPP does not require a formal confession, the accused's acknowledgment of the facts being sufficient, and that its application should be treated as a subjective right once the legal requirements are met. An unjustified denial may constitute an abuse of authority, making it essential for the Prosecution Office to properly substantiate its decision, in compliance with due process of law and legal certainty.

Source: Aresp 2.568.137

Higher Courts

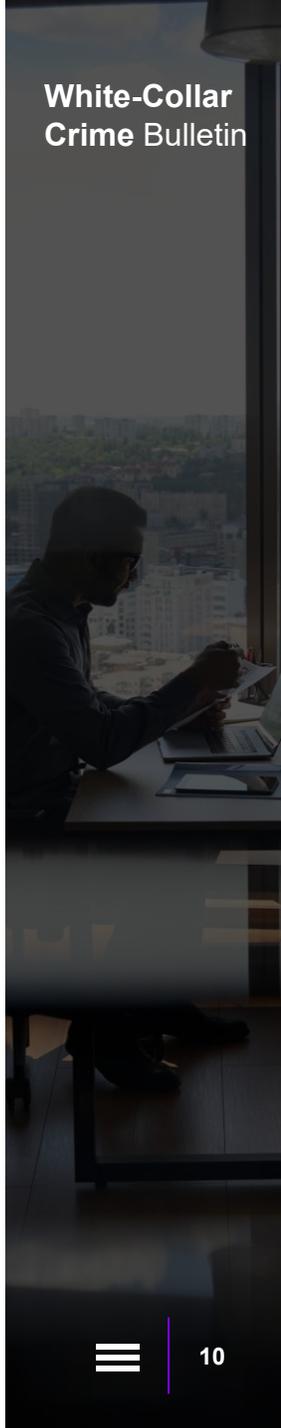
STJ: Annulment of Investigation Conducted by Special Group of the Public Prosecution Office that Replaced the Naturally Appointed Prosecutor

The Superior Court of Justice annulled an investigation conducted by a special group of the Public Prosecution Office that replaced the naturally appointed prosecutor for the case, thereby violating the principle of functional immovability. The ruling was issued by its Sixth Panel, which held that the special group's actions without legal justification compromised the legality of the criminal prosecution, infringing upon due process of law and the constitutional guarantee of the naturally appointed prosecutor, as provided for in Article 129 of the Federal Constitution.

In the specific case, the special group took over the investigation in the absence of any formal impediment or grounds for suspicion against the originally assigned prosecutor. The STJ emphasized that the improper substitution constitutes a breach of the impartiality and functional independence of the Public Prosecution Office, in addition to creating room for external interference and the steering of investigations. The Court reinforced that the role of the naturally appointed prosecutor is an institutional guarantee which protects both the individual under investigation and the very structure of the accusatory system.

Based on these grounds, the STJ declared the investigative acts performed by the special group null and void and reaffirmed that the assignment of members outside the regular structure of the Public Prosecution Office may only occur in exceptional situations and must be duly justified.

Source: HC 1.024.064



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Legal Updates

Legal Updates

Brazilian Federal Revenue Service Ordinance RFB No. 583, of September 23, 2025

Brazilian Federal Revenue Service Ordinance RFB No. 583, of September 23, 2025, establishes specific measures to combat crimes and unlawful acts related to import operations, with a special focus on fraud involving the concealment of the taxable person, the true seller, buyer, or party responsible for the operation. The regulation reinforces the Federal Revenue's role in identifying and suppressing practices such as smuggling, evasion of prohibited goods, and crimes against the tax system, determining that such offenses must be reported to the competent authorities as provided for in RFB Ordinance No. 1,750/2018.

To ensure greater effectiveness in oversight, the ordinance mandates that indications of unlawful acts be treated as a priority by customs risk management areas, with coordination between different sectors of the Revenue Service and, when necessary, with criminal prosecution agencies. Evidence may be collected by specialized teams from the General Coordination for Combating Smuggling and Evasion (Corep), with police support, aiming to ensure the safety of agents and the integrity of the evidence. The ordinance also provides for the detention of suspicious goods, following the procedures set forth in RFB Normative Instruction No. 1,986/2020.

Furthermore, the ordinance imposes new requirements for the advanced customs clearance of fuels and hydrocarbons, such as petroleum, methanol, and ethanol, making authorization conditional upon the formal approval of the General Coordination of Customs Administration (Coana). Previous authorizations will lose their validity after December 31, 2025, and may be revoked at any time. Coana may also establish additional requirements for the qualification of importers of these products, with the possibility of exemption for Authorized Economic Operators (AEO) and other entities with a high compliance rating.

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Legal Updates

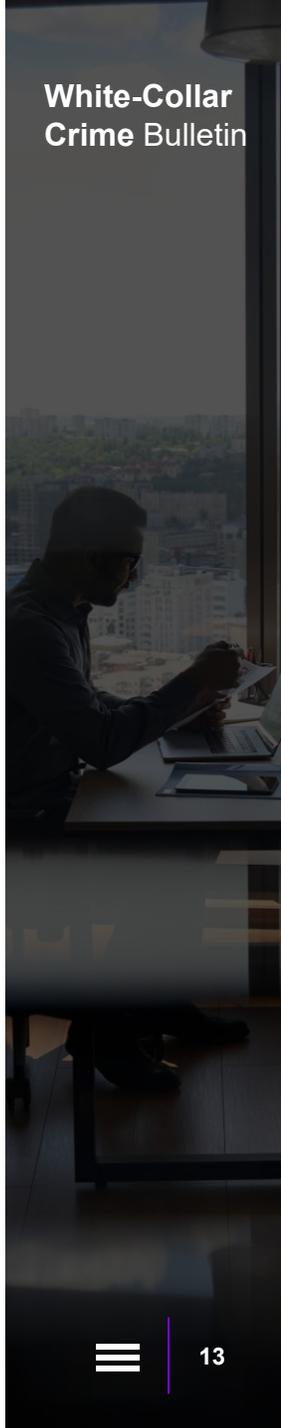
Prosecution Services of BRICS Nations Approve Declaration on the Use of Artificial Intelligence in Combating Crime

During the 7th Meeting of the Attorneys General of the BRICS member countries, representatives from nine nations, namely Brazil, China, Egypt, India, Iran, Russia, South Africa, the United Arab Emirates, and Indonesia, approved a joint declaration focused on the ethical and secure use of artificial intelligence (AI) in combating crime. The declaration recognizes the strategic role of AI in enhancing the agility and efficiency of investigations and judicial proceedings, particularly in light of the increasing use of technology by transnational criminal networks. It thereby establishes guidelines for BRICS countries to develop and utilize AI technologies in accordance with international law and human rights protection commitments.

Among the seven commitments undertaken, key points include supporting the regulation of AI through national laws and international mechanisms, promoting justice and the protection of fundamental rights, and strengthening international cooperation to reduce digital inequalities in the legal field. The text also emphasizes the importance of maintaining ethical standards, preventing discrimination and disinformation, and ensuring adequate oversight mechanisms.

Finally, the document underscores the need for training legal professionals, focusing on the education of prosecutors and legal practitioners in the responsible use of AI in their activities. The declaration also reinforces the importance of legal accountability in the use of these technologies, for both developers and users, as provided for in national legislations.

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03



International Highlights

International Highlights

United States v. Jesenik

A group of former executives of an investment management company was prosecuted following the collapse of the company, which was ultimately placed under court-supervised administration. The company had raised millions of dollars from private investors, primarily through promissory notes and other financial instruments. Following the default of a significant asset, the company faced a severe financial crisis. Despite this, the executives continued to raise funds, assuring investors that the money would be used to purchase safe receivables and that the company was financially sound. In practice, the new capital inflows were used to pay earlier investors and cover operational expenses. The defendants were charged with making false statements regarding the use of the funds, the safety of the investments, and the company's financial condition.

The trial was conducted by the United States District Court for the District of Oregon, where a jury found the three defendants guilty of conspiracy to commit wire fraud, in addition to several counts of wire fraud. One defendant was also convicted of making a false statement on a loan application. In their defense, the accused argued that they were wrongfully convicted based on a theory of omission and that they were prevented from presenting a complete defense, which was supported by information contained in the offering documents and financial statements. They also challenged the sufficiency of the evidence and the materiality of the statements made.

The case was reviewed by the United States Court of Appeals for the Ninth Circuit, which concluded that the theory presented by the government at trial was based on false statements and half-truths, not mere omissions. The court found that the instructions given to the jury accurately reflected the applicable law. Furthermore, it held that the undisclosed information was relevant to assessing the materiality of the statements and that the disclaimers contained in the offering documents did not render other statements made in the context of the criminal fraud charges immaterial. Accordingly, the convictions were affirmed.

Source: Docket: 23-2282

International Highlights

United States v. Taylor

Ephren Taylor II, the former CEO of City Capital Corporation, was charged with leading an investment fraud scheme that targeted African American and Christian communities. Taylor promoted investments and promissory notes with deceptive promises of returns, using funds from new investors to cover operational expenses, which resulted in losses exceeding \$16 million for more than 400 victims. He pleaded guilty to conspiracy to commit wire fraud and was sentenced to 235 months of imprisonment, a sentence later reduced to 223 months, in addition to being ordered to pay restitution.

Subsequently, Taylor filed a pro se petition pursuant to 28 U.S.C. § 2255, alleging ineffective assistance of counsel and various judicial errors. The United States District Court for the Northern District of Georgia, after adopting the report and recommendation of a magistrate judge, denied the petition, finding that the claims were either procedurally defaulted, waived, or unsupported by the evidence in the record. Taylor's other motions, such as those based on Rules 59(e) and 60(b) of the Federal Rules of Civil Procedure, as well as requests to amend or supplement his original petition and to modify the conditions of his supervised release, were also denied. The court held that these motions constituted unauthorized successive petitions and that it lacked jurisdiction to consider them due to a pending appeal.

On appeal, the United States Court of Appeals for the Eleventh Circuit affirmed the district court's decision, recognizing that Taylor's motions to reopen, supplement, or amend his original petition were barred by the restrictive provisions of the Antiterrorism and Effective Death Penalty Act (AEDPA). The court also ruled that Taylor's challenges to the legality or constitutionality of his supervised release conditions could not be raised under 18 U.S.C. § 3583(e)(2). However, the court vacated the decision that had denied the motion to modify those conditions and remanded the case to the lower court for analysis in accordance with the relevant legal provisions.

Source: Docket: 20-11238

International Highlights

United States v. Fishman

A licensed veterinarian developed and manufactured undetectable performance-enhancing doping substances for use in professional horse races, selling them to trainers who administered them to animals to gain a competitive advantage. With the assistance of a distributor, who operated a distribution company without prescription requirements or FDA approval, the drugs were marketed improperly. The substances were adulterated or misbranded, and the scheme involved fraudulent practices such as the falsification of customs forms. Trainers attributed the success of their horses to the use of these products, whose improper administration could cause harm to the animals' health.

The United States District Court for the Southern District of New York conducted two separate trials, which resulted in the conviction of the veterinarian and his distributor for conspiracy to manufacture and distribute adulterated or misbranded drugs with intent to defraud or mislead, in violation of the Food, Drug, and Cosmetic Act. The court denied motions to dismiss the indictment, admitted evidence derived from a prior state investigation, and imposed sentences that included imprisonment, restitution, and forfeiture. For sentencing purposes, the court considered the veterinarian's illicit gains as a proxy for loss and ordered restitution to racetracks based on prizes won by horses doped by a co-conspirator.

On appeal, the United States Court of Appeals for the Second Circuit held that the statutory element of "intent to defraud or mislead" does not require the fraud to be directed at specific victims, it being sufficient that it relates to the underlying offense. The court upheld the validity of admitting evidence from the 2011 investigation and the use of gains as a basis for the loss calculation at sentencing. However, it vacated the restitution order to the racetracks for lack of proven financial loss and also reversed the forfeiture order, finding that the applied statute did not qualify as a civil forfeiture provision subject to criminal procedures. The convictions and all other aspects of the sentence were affirmed.

Source: Docket: 22-1600

White-Collar Crime



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