

Legal Sidebar

Sentence for Killing a Bald Eagle Found Too Severe and Unauthorized

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Lamar Bertucci pleaded guilty to killing a bald eagle and a rough-legged hawk. The trial court ordered him imprisoned for eight months, to pay \$6,500 in restitution, and to undergo anger-management counseling as a condition of his supervised release. The United States Court of Appeals for the [Eleventh Circuit](#) in *United States v. Bertucci* threw out all three orders. It concluded that the term of imprisonment was the product of the Sentencing Guideline miscalculation; that the lower court had no authority to order restitution; and that the record did not support the counseling requirement.

Bertucci was convicted under two federal statutes. [One](#) outlaws killing bald eagles and the [other](#) killing certain migratory birds. Absent aggravating factors, the first is punishable by imprisonment for not more than one year, and the [second](#) by imprisonment for not more than six months. Both statutes permit a court to impose a term of [supervised release](#) of not more than one year. Both provide for fines; neither provides for restitution.

The federal sentencing process [begins](#) with the trial court's calculation of the range of imprisonment recommended by the U.S. Sentencing Guidelines. Miscalculation can result in a sentence vacated on appeal. In *Bertucci*, the [applicable](#) Guidelines called for sentencing enhancements based on the value of the birds destroyed. Rather than rely on the usual methods of value assessment, the trial court trusted in an assessment which the [appellate court](#) found unreliable and which considerably enhanced the recommended Guideline sentencing range.

The trial court also cryptically imposed a "financial obligation in lieu of a fine." The [Eleventh Circuit](#) reasoned that if this financial obligation was not a fine, then it must be an obligation to pay restitution. Yet, a court may order restitution only when it is statutorily authorized to do so, and the Eleventh Circuit held there is no restitution authority based on either crime of conviction. The trial court might have ordered restitution as a condition of supervised release, but it did not. Moreover, there were other problems with the trial court's supervised release order.

The trial court cited the fact that Bertucci had been arrested on various charges in the past – all later dismissed – and had taken various self-improvement courses while in the county jail. As a general rule, conditions of supervised release must be reasonably related to the crime of conviction or the defendant's criminal record. The [appellate court](#) did not believe the anger management counseling, which the trial court imposed as a condition of supervised release, met the reasonably related standard.

The [Eleventh Circuit](#) ended its opinion with something of an unusual note: "[W]e vacate the district court's sentence and remand for resentencing consistent with this opinion. As for remand, the government had notice of Bertucci's factual objection to the PSR [presentence report] and had fair opportunity to present evidence. Thus, following 'the traditional path' of limiting the government to one bite at the apple, the district court on remand may re-sentence only based on the existing record."