

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA : CRIMINAL ACTION
 :
 v. : No. 98-504-01
 :
 ROBERT LEANDER FLOYD :

MEMORANDUM

Juan R. Sánchez, J.

August 24, 2015

Defendant Robert Leander Floyd, a federal prisoner, currently pays \$55 per quarter toward the restitution imposed as part of his 1999 sentence in the above-captioned case. Recently, a large sum of money was deposited in Floyd’s prisoner trust account, and the Government filed a motion to authorize payment from Floyd’s account to satisfy the restitution remaining in this case. For the reasons that follow, the Court will grant the Government’s motion and authorize the transfer of funds to pay the restitution still owed by Floyd.

FACTUAL BACKGROUND

On April 1, 1999, a jury convicted Floyd of armed bank robbery, use of a firearm during a crime of violence, and felon in possession of a firearm. On July 22, 1999, U.S. District Judge Charles R. Weiner sentenced Floyd to a total of 350 months’ imprisonment and five years’ supervised release. The Court also ordered Floyd to pay \$21,753 in restitution and a \$300 special assessment. At the sentencing hearing, Judge Weiner directed that Floyd “shall make whatever restitution he can to the CoreStates Bank Glenside, 259 Southeaster Road, Glenside, Pennsylvania in the amount of \$21,753. He shall make restitution from any wages he may earn[] in prison in accordance with the Bureau of Prisons Financial Responsibility Program and any portion of that restitution not paid in full at the time of defendant’s release from imprisonment shall become a

condition for supervision.” Sentencing Hr’g Tr. 17, July 22, 1999.¹ The Judgment ordered that payment of the restitution was due in full immediately but provided that, if full repayment was not possible, Floyd “shall make special assessment and restitution payments from any wages he may earn in prison in accordance with the Bureau of Prisons Financial Responsibility Program. Any portion of the restitution that is not paid in full at the time of the defendant’s release from imprisonment shall become a condition of supervision.” Judgment 6, July 22, 1999, ECF 26.

Floyd is currently an inmate at the U.S. Penitentiary ADMAX Facility in Florence, Colorado. He participates in the Inmate Financial Responsibility Program (IFRP) and makes quarterly payments of \$55. As of June 2015, Floyd had paid \$185 in satisfaction of the special assessment imposed and \$1,675 in restitution, leaving \$20,078 in restitution remaining. *See* Gov’t’s Ex. 1.

Floyd’s inmate trust account is maintained by the Bureau of Prisons (BOP). The BOP notified the U.S. Attorney’s Office for the Eastern District of Pennsylvania that on November 25, 2014, it received a check payable to Floyd issued by Firsttrust Bank from an unknown source in the amount of \$25,181.40. The BOP deposited these funds in Floyd’s trust account. The Government seeks to use the funds to satisfy the restitution remaining in this case. In January 2015, the Government filed the instant motion, asking this Court to authorize payment in the amount of the outstanding restitution obligation from Floyd’s inmate trust account. The Government asserts an order authorizing the turnover of Floyd’s property is appropriate and that it is not required to rely

¹ Judge Weiner ordered Floyd to pay a \$300 special assessment, but directed that no fine would be imposed if Floyd could not pay. *See* Sentencing Hr’g Tr. 17 (“He shall pay as mandated by Congress a special assessment of \$300 and if he cannot afford any of that money, the Court will not impose a fine . . .”). It appears this special assessment amount was lowered to \$185. *See* Gov’t’s Ex. 1 (showing Floyd paid \$185 for “Fine—Crime Victims Fund” and reflecting no outstanding balance on this debt). The Government does not contend that Floyd owes anything other than the remaining restitution.

upon other more formal collection remedies such as garnishment of or execution upon property to obtain these funds.² Because the funds are in the Government's possession and the Government has a valid lien on this property, the Court finds the direct turnover of Floyd's property is the most appropriate course of action to satisfy the outstanding restitution. Floyd has filed several pro se responses to the Government's motion and was represented by an attorney at the final hearing on the motion.

DISCUSSION

The Government asserts it may collect the outstanding restitution under the collection procedures created by the Mandatory Victims Restitution Act (MVRA), and codified at 18 U.S.C. § 3664. Floyd argues Judge Weiner did not state during sentencing whether restitution was imposed pursuant to the MVRA or some other statute, and, if restitution was ordered pursuant to the MVRA, the order is invalid because Judge Weiner did not state on the record or in the Judgment the monthly payment amount or the timing of payment and he did not indicate he had considered Floyd's available resources.³ Floyd asserts the Government cannot rely on the MVRA to collect restitution imposed pursuant to an invalid order. Because the restitution order is fifteen years old, Floyd argues the Court can no longer reopen the Judgment to correct it,⁴ but instead must either invalidate the entire order or treat the order as a stipulated agreement and allow Floyd

² The Government has filed a similar motion in another criminal case in this district in which Floyd owes \$1,151.64 in restitution. *See* Gov't's Ex. 2.

³ Floyd's Presentence Investigation Report stated that Floyd had no assets or liabilities. *See* Presentence Investigation Report (PSIR) 11 ¶ 61. Judge Weiner referenced the Report several times during the sentencing hearing, but did not directly state he considered Floyd's financial resources. *See, e.g.*, Sentencing Hr'g Tr. 4, 8, 14.

⁴ The parties appear to agree the order is no longer subject to modification via any of the methods set forth in 18 U.S.C. § 3664(o).

to continue to make his \$55 dollars-per-quarter payments.⁵

Judge Weiner did not specify the statutory basis for the restitution order, and Floyd argues that the restitution order could therefore be pursuant to the MVRA, the Victim Witness Protection Act (VWPA), a stipulated agreement, or some other statute. Although Judge Weiner did not specify the relevant statute, the MVRA applies “in all sentencing proceedings for convictions of, or plea agreements relating to charges for, any offense . . . that is . . . an offense against property under [title 18] . . . in which an identifiable victim or victims has suffered a physical injury or pecuniary loss.” 18 U.S.C. § 3663A(c)(1). The MVRA was passed as part of the Antiterrorism and Effective Death Penalty Act (AEDPA) and became effective for sentencing proceedings in cases in which the defendant was convicted on or after the date of enactment of the Act, or April 24, 1996. *See* AEDPA, Pub. L. No. 104-132, § 211, 110 Stat 1214, 1241.

Floyd was convicted and sentenced after the passage of the MVRA, and he was convicted of bank robbery, an offense against property under Title 18 of the United States Code. In addition, Floyd’s Presentence Investigation Report, upon which Judge Weiner considered in fashioning the sentence,⁶ states “[t]he Antiterrorism and Effective Death Penalty Act of 1996 including the Mandatory Victims Restitution Act of 1996 applies to this case and restitution is required to be

⁵ Floyd has filed several pro-se responses and statements both before and after obtaining counsel. In several of his filings, Floyd asserts that a bank is not a victim under the MVRA. At oral argument, it appeared Floyd had waived this argument because he did not raise it even after it was mentioned by the Court and the Government. *See* Oral Arg. Tr. 8-10, 26, June 18, 2015. In any event, non-persons, including banks, qualify as victims under the MVRA. *See, e.g., United States v. Coates*, 178 F.3d 681, 684-85 (3d Cir. 1999) (remanding for restitution findings under MVRA, including loss to victim banks caused by bank robbery); *United States v. Stewart*, 283 F.3d 579, 580 (3d Cir. 2002) (acknowledging restitution order to victim banks); *United States v. Collazo*, 84 F. Supp. 2d 607, 610-11 (E.D. Pa. 2000) (clarifying restitution order amount was owed to victim banks that defendant robbed).

⁶ During the sentencing hearing Judge Weiner repeatedly referenced the PSIR. *See* Sentencing Hr’g Tr. 4, 8, 14. Further, Floyd’s counsel indicated he had reviewed the PSIR with Floyd and made one correction unrelated to the restitution order. *Id.* at 4.

paid to CoreStates Bank-Glenside in the amount of \$21,753.” PSIR 2 ¶ 10. The Court finds Judge Weiner sentenced Floyd pursuant to the MVRA.⁷ Even if Floyd was sentenced under the VWPA, that statute explicitly states “[a]n order of restitution made pursuant to this section shall be issued and enforced in accordance with section 3664,” which is part of the MVRA, *see* 18 U.S.C. § 3663(d). In addition, there is no indication anywhere in the record that the order of restitution was pursuant to a stipulation between the parties, and Floyd does not point to any other statute pursuant to which Judge Weiner could plausibly have imposed restitution.

Assuming the order was pursuant to the MVRA, the Government admits, and the Court acknowledges, that the restitution order does not comply with current Third Circuit standards for such orders because Judge Weiner did not specify a payment schedule and instead directed that Floyd make payments in accordance with the IFRP.⁸

⁷ For the proposition that the sentencing court had to indicate under which statute Floyd was being sentenced, Floyd cites to *United States v. Leftwich*, 628 F.3d 665, 668-69 (4th Cir. 2010). In that case, the defendant appealed a restitution order, asserting the district court did not make sufficient findings of fact to support restitution under the VWPA. The Government responded that the restitution was mandatory under the MVRA, which does not require the findings. *Id.* at 667. In remanding the case for resentencing, the appellate court pointed out the differences between the VWPA and the MVRA, including that the VWPA requires a court to review a defendant’s resources before awarding restitution and the award of restitution is not mandatory. The MVRA, on the other hand, mandates that the court order restitution in the full amount of the victim’s loss when the defendant has been convicted of certain specified offenses regardless of the defendant’s resources. The appellate court found that it could not properly review the district court’s sentence because it was unclear whether the sentence was pursuant to the MVRA or the VWPA, and in any event, the district court did not make any of the findings required by the separate statutes regardless of which statute applied. *Id.* at 669. *Leftwich*, however, is not dispositive in this case. Not only is it not controlling in this Circuit, but the plea agreement for the defendant in *Leftwich* stated that restitution was pursuant to both the VWPA and the MVRA and the defendant, in his sentencing memorandum, argued that the VWPA did not apply to him. Here, the PSIR, upon which Judge Weiner relied during sentencing, states that the MVRA applies to the restitution in this case, *see* PSIR 2 ¶ 10, and Floyd did not dispute that provision even when given the opportunity during sentencing, *see* Sentencing Hr’g Tr. 4. In addition, Floyd’s challenge is to the collection of the restitution and not the actual order of restitution itself, as explained above.

⁸ In 1996, Congress enacted the MVRA as part of the Antiterrorism and Effective Death Penalty Act of 1996. *See* 18 U.S.C. §§ 3663A, 3664. The MVRA makes restitution mandatory for certain

crimes, including a crime of violence or an offense against property. *See* 18 U.S.C. § 3663A(c)(1)(A). The statute requires a district court to order the payment of restitution in the full amount of the victim’s losses “without consideration of the economic circumstances of the defendant.” *See id.* § 3664(f)(1)(A); *see also Coates*, 178 F.3d at 683-84. Upon determination of the amount of restitution owed, the sentencing court “shall specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid.” *See* 18 U.S.C. § 3664(f)(2). In so doing, the court is required to consider the financial resources, projected earnings, and financial obligations of the defendant, *see id.* § 3664(f)(2)(A)–(C), and may order the defendant to make a single, lump-sum payment, periodic payments, or, given the defendant’s economic circumstances, nominal periodic payments, *see id.* § 3664(f)(3)(A), (B).

In *United States v. Coates*, decided two months before Judge Weiner sentenced Floyd, the Third Circuit held a sentencing court committed plain error in ordering the defendant to pay restitution without considering the factors set forth in 18 U.S.C. § 3664(f)(2) and without specifying a payment schedule. *See* 178 F.3d at 685. Although the district court complied with the MVRA by ordering the defendant to pay the full amount of his share of the victim’s losses, it failed to specify in the restitution order the “manner in which, and schedule according to which,” the restitution was to be made and to state on the record that it had considered the defendant’s financial situation in determining his ability to make a single lump-sum payment. *Id.* at 684. Noting that 18 U.S.C. § 3572(d)(1) provides that a person sentenced to pay restitution shall make payment immediately unless the court provides otherwise, the Government argued that, in view of the sentencing court’s silence, full payment was due immediately. *Id.* The Third Circuit found, however, that § 3572(d)(1) does not eliminate the court’s obligation under the MVRA to consider the defendant’s financial situation and schedule restitution payments accordingly, and held the district court could not satisfy its duties under § 3664 through its silence. *Id.* The Court also held that a court cannot delegate the fixing of restitution payments to the probation office. *Id.* at 685.

Eight years after Floyd’s sentencing, the Third Circuit expanded on *Coates* and held that “ordering restitution is a judicial function that cannot be delegated, in whole or in part.” *United States v. Corley*, 500 F.3d 210, 225 (3d Cir. 2007), *vacated and remanded on other grounds*, 556 U.S. 303 (2009). The restitution order in *Corley* provided that restitution was due immediately but also that the “defendant shall make restitution and fine payments from any wages he may earn in prison in accordance with the Bureau of Prisons Inmate Financial Responsibility Program.” *Id.* at 213. The Court found that the district court impermissibly delegated to the BOP the task of determining how the defendant would pay his obligations while he was in prison. *Id.* at 225. The Government argued that the restitution order was proper because the district court could order immediate payment with the understanding that the defendant would make payments to the extent he could in good faith and the BOP could ensure through the IFRP that the defendant made progress toward his obligation while imprisoned. *Id.* The Court pointed out that because the district court reduced the defendant’s fine and directed him to make restitution and fine payments from any wages he may earn while in prison, the district court knew the defendant was indigent and could not make immediate payment in full. *Id.* at 227. The Court found that an order directing “immediate” payment from an indigent defendant was indistinguishable from an outright delegation of authority to the BOP, and therefore, the district court was required under § 3664(f)(2) to set a schedule of payments. *Id.* (citing *United States v. Prouty*, 303 F.3d 1249, 1255 (11th Cir. 2002)).

The restitution order at issue in this case does not include a monthly payment amount or

However, whether or not the order itself complies with the MVRA is irrelevant because the issue in the case is not the payment schedule for restitution, but the collection of restitution.⁹ Regardless of whether the payment schedule was in compliance with 18 U.S.C. § 3664(f)(2)—requiring the Court set the payment schedule and consider the defendant’s financial resources—the MVRA as a whole still applies to Floyd’s case. The Government requests collection pursuant to provisions of the MVRA that function as procedural devices by which a defendant or the Government can petition a court to adjust a restitution payment schedule based on changed economic circumstances. Section 3664 does not provide a vehicle by which a defendant can challenge the validity of the restitution order itself. *See United States v. Jackson-El*, 179 F. App’x 147, 149 (3d Cir. 2006) (explaining a defendant “may not raise in his § 3664(k) motion a contention that the sentencing court impermissibly delegated to the BOP the duty to set a schedule for his payments”).

Specifically, under § 3664(n), “[i]f a person obligated to provide restitution, or pay a fine, receives substantial resources from any source, including inheritance, settlement, or other judgment, during a period of incarceration, such person shall be required to apply the value of such resources to any restitution or fine still owed.” Similarly, 18 U.S.C. § 3664(k) permits a court, on

payment schedule (other than due in full immediately) and delegated the determination of the actual payment amount to the BOP in the event Floyd could not pay restitution in full immediately. While the direction that the restitution order be due immediately arguably complies with the *Coates* standard—if it could be found Judge Weiner considered Floyd’s financial resources—the order does not align with the requirements under *Corley*. At the oral argument in this case, the Government admitted the order does not meet the *Corley* requirements, and stated that post-*Corley*, the Government asks for a minimum of \$25 per quarter for cases in which the defendant is indigent. *See Oral Arg. Tr.* 31. It should be noted, however, that *Corley* was decided eight years after Floyd was sentenced.

⁹ Floyd does not contest the amount of restitution or his current payments. *See Oral Arg. Tr.* 23 (“It’s still a valid order as to Mr. Floyd paying his monthly payment, and, yes, owing that much money to Core State Bank.”).

its own or pursuant to a party's motion, to "adjust the payment schedule, or require immediate payment in full, as the interests of justice require" when there is a "material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution."

Floyd is also incorrect insofar as he claims the Government cannot collect restitution outside of his IFRP payment schedule. Under 18 U.S.C. § 3664(m)(1)(A), the Government may collect on a restitution order in the manner provided by 18 U.S.C. § 3613(a), which allows the Government to enforce a judgment imposing a fine in accordance with the procedures for the enforcement of a civil judgment, including a writ of garnishment. In *United States v. Shusterman*, the Third Circuit found the district court had jurisdiction to issue a final order of garnishment against a defendant's assets to enforce a restitution judgment, even though the district court had entered a payment schedule for restitution at the defendant's sentencing. 331 F. App'x 994, 996 (3d Cir. 2009).¹⁰ Thus, the Government may collect restitution from Floyd's additional assets, in addition to his payments under the IFRP schedule.

Because the Government is entitled to collect Floyd's assets to pay the outstanding restitution in this case, its motion to authorize payment will be granted. An appropriate order follows.

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

¹⁰ The *Shusterman* Court was careful to differentiate a district court case that prevented the Government from seeking payment of restitution outside of the payment plan. See *United States v. Roush*, 452 F. Supp. 2d 676, 681 (N.D. Tex. 2006) (holding the government cannot execute garnishment at will to disrupt a court-ordered payment schedule). The Court explained that in *Roush*, the judgment provided that the restitution would be paid pursuant to a payment schedule, but in the case at issue, the judgment provided that restitution was due immediately. In Floyd's case, Judge Weiner specifically stated that restitution was due in full immediately.

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ORDER

AND NOW, this 24th day of August, 2015, upon consideration of the Government's Motion to Authorize Payment from Inmate Trust Account and Defendant Robert Floyd's responses thereto, and following an oral argument on June 18, 2015, it is ORDERED the motion (Document 30) is GRANTED.

The Government is DIRECTED to inform the Bureau of Prisons of the outstanding balance of Floyd's restitution obligations in this case no later than August 31, 2015.¹ The Bureau of Prisons is DIRECTED to transfer to the Clerk of Court funds in the amount of the outstanding balance from the trust account for Robert Leander Floyd, Register Number: 04526-067.

It is further ORDERED the Clerk of Court shall apply these funds as payment for the restitution owed by Floyd in this case.

It is further ORDERED Floyd's Motion for Disclosure (Document 57) is DISMISSED as moot.²

¹ As of January 9, 2015, Floyd owed \$20,188.00 in restitution. During the litigation on the above-referenced motion, however, Floyd continued to pay restitution through the Inmate Financial Responsibility Program (IFRP) at a rate of \$55 per quarter. At the June 18, 2015, oral argument, the Government demonstrated Floyd owed \$20,078 in restitution, *see* Oral Arg. Tr. 5, June 18, 2015 & Ex. 1, indicating Floyd had made two IFRP payments since January. The Court does not know whether Floyd has made any payments since June; therefore, the Government shall inform the Bureau how much restitution Floyd presently owes.

² It is this Court's practice not to accept pro se submissions from a defendant who is represented

BY THE COURT:

/s/ Juan R. Sánchez
Juan R. Sánchez, J.

by counsel.