

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

CASE NO. 14-20210-CR-COOKE

UNITED STATES OF AMERICA,

Plaintiff,

v.

MIKEL MIMS,

Defendant.

ORDER

THIS CAUSE came before the Court on the Government’s Motion for an Order Directing the Defendant to Comply with the Payment Schedule Imposed by this Court [ECF No. 110], filed on November 5, 2021. Defendant, Mikel Mims, filed her Response [ECF No. 111], to which the Government filed a Reply [ECF No. 112]. After carefully considering the parties’ arguments, the Motion is granted.

Background. On May 14, 2014, Defendant pleaded guilty to one count of wire fraud under 18 U.S.C. section 371. (*See* Min. Entry [ECF No. 40]). The Court sentenced Defendant to three years of probation and imposed restitution in the amount of \$255,620.00. (*See* Am. J. [ECF No. 65] 2, 4). In assessing restitution, the Court imposed a payment schedule wherein Defendant had to “pay restitution at the rate of 10% of monthly gross earnings, until such time as the court may alter that payment schedule in the interests of justice.” (*Id.* 4).

Defendant paid \$58,232.93 toward her criminal restitution until her probation ended in 2017. (*See* Mot. 1–2). She has not indicated why she stopped paying restitution other than a now-stricken letter indicating that she unilaterally forgave her own debts. (*See* June 20, 2018 Letter [ECF No. 97]; *see also* July 5, 2018 Order [ECF No. 99]).

After two hearings (*see* [ECF Nos. 104, 109]) regarding Defendant's failure to pay restitution, the Government filed the present motion seeking an order from the Court compelling Defendant to continue making restitution payments. (*See generally* Mot.).

Legal Standard. "A federal district court has 'no inherent authority to order restitution, and may do so only as explicitly empowered by statute.'" *United States v. Dickerson*, 370 F.3d 1330, 1335 (11th Cir. 2004) (quoting *United States v. Hensley*, 91 F.3d 274, 276 (1st Cir. 1996)). The Mandatory Victims Restitution Act of 1996 ("MVRA"), Pub. L. No. 104-132, 110 Stat. 1227, codified at 18 U.S.C. [section] 3663A, empowers courts with the authority to order restitution in certain cases, including wire fraud. *See* 18 U.S.C. § 3663A(c)(1). After assessing an amount of restitution, "the court shall, pursuant to section 3572, specify in the restitution order the manner in which, and the schedule according to which, the restitution is to be paid[.]" 18 U.S.C. § 3664(f)(2) (alteration added).

Analysis. The parties dispute whether the Court has subject matter jurisdiction to enforce its restitution order. The Government argues that jurisdiction exists because the "criminal restitution judgment has not expired." (Mot. 3). Defendant, in contrast, insists that the Court lacks jurisdiction because her criminal case, including her "term of probation[,] has ended." (Resp. 1 (alteration added)). The Government has the better argument.

In evaluating the Court's jurisdiction, the first place to look is the text of the statute. *See In re Trusted Net Media Holdings, LLC*, 550 F.3d 1035, 1042 (11th Cir. 2008). Under section 3613(b), "[t]he liability to pay restitution shall terminate on the date that is the later of 20 years from the entry of judgment or 20 years after the release from imprisonment of the person ordered to pay restitution." 18 U.S.C. § 3613(b) (alteration added). The Government relies on section

3613(b) to argue that Defendant's liability remains intact because the 20-year liability period has not elapsed. (*See* Mot. 3, 5).

Defendant responds that section 3613 provides civil remedies that can only be enforced in a separate civil action. (*See* Resp. 2 (citing 18 U.S.C. § 3613)). But Defendant cites no authority for her position, and virtually every decision addressing this argument has squarely rejected it. *See, e.g., United States v. Kollintzas*, 501 F.3d 796, 800 (7th Cir. 2007) (“[D]istrict courts may entertain civil garnishment and other collection proceedings as postjudgment remedies within an underlying criminal case; nothing precludes the government from initiating a collection proceeding under an existing criminal docket number in order to collect a fine or restitution ordered as part of the criminal sentence.” (collecting cases; alteration added); *United States v. Mays*, 430 F.3d 963, 966 (9th Cir. 2005) (same); *United States v. Robles*, No. 06-20286, 2013 WL 3778629, at *2 (S.D. Fla. July 18, 2013) (same).

Defendant's argument also fails to consider the statutory regime for pursuing restitution. The Federal Debt Collection Procedures Act of 1990 (“FDCPA”) provides “exclusive civil procedures for the United States . . . to recover a judgment on . . . an amount that is owing to the United States on account of . . . restitution.” 28 U.S.C. §§ 3001(a)(1), 3002(3)(B). Despite being a criminal statute, the MVRA preserves the Government's ability to enforce restitution through other means, such as through the FDCPA. *See* 18 U.S.C. § 3613(a) (“The United States may enforce a judgment imposing a fine in accordance with the practices and procedures for the enforcement of a civil judgment under *Federal law* or State law. Notwithstanding any other Federal law . . . , a judgment imposing a fine may be enforced against all property or rights to property of the person fined[.]” (alterations and emphasis added)); *see also Mays*, 430 F.3d at 965–66. And the FDCPA simultaneously recognizes the Government's right “to collect any fine,

penalty, assessment, restitution, or forfeiture arising *in a criminal case*[.]” 28 U.S.C. § 3003(b)(2) (alteration and emphasis added); *see also United States v. Scarboro*, 352 F. Supp. 2d 714, 717–18 (E.D. Va. 2005). Rather than divest the Court of jurisdiction to enforce restitution in the underlying criminal case, the MVRA and FDCPA appear to sanction it and leave the mode of enforcement to the Government. *See Robles*, 2013 WL 3778629, at *2 (“To enforce a restitution order, the Government may file a motion in the defendant's criminal case.” (citations omitted)).

Undeterred, Defendant attempts to outmaneuver the weight of authority and the statutory regime by arguing that no court “has ordered a defendant to comply with a payment schedule imposed as a term of probation, following completion of the defendant’s term of probation.” (Resp. 3–4).¹ Nor could it, according to Defendant, because forcing her to comply with a payment schedule is “akin to asking the Court to order [her] to comply with any other condition of probation[.]” (Resp. 2 (alterations added)). To support this argument, Defendant points to language in the Amended Judgment that states, “[i]f this judgment imposes a fine or restitution, it is a condition of supervised release, that the defendant pay in accordance with the Schedule of Payments sheet of this judgment.” (*Id.* (alteration added; emphasis omitted; quoting Am. J. 2)).

Defendant conflates the impetuses for restitution and probation, respectively, and ignores the independent nature of the Court’s restitution penalty. The Amended Judgment conditions probation on complying with the payment schedule, but that does not mean that the payment schedule becomes obsolete once supervision ends. *See Carter*, 742 F.3d at 445. After all, “[t]he primary function of supervised release is to provide post-imprisonment supervision over the

¹ This argument is demonstrably wrong. *See, e.g., Mays*, 430 F.3d at 967 (“The existence or non-existence of supervised release has no bearing on the district court’s jurisdiction to enter a postjudgment garnishment order.”); *United States v. Carter*, 742 F.3d 440, 445 (9th Cir. 2014) (“The district court retained the power to enforce the order of restitution, even if it did not condition supervised release on complying with a particular payment schedule.” (citations omitted)).

defendant's rehabilitation." *United States v. English*, 589 F.3d 1373, 1377 (11th Cir. 2009) (citation omitted). "Restitution, in contrast, is intended to ensure that victims are made whole for their losses and is not designed to punish the defendant." *United States v. Bane*, 948 F.3d 1290, 1301 (11th Cir. 2020) (Martin, J., concurring) (alterations adopted; citations and quotation marks omitted).

The distinction becomes more acute upon evaluating the remedies. "When a defendant violates a condition of supervised release, the court may revoke the supervised release term and impose a prison term." *United States v. Everhart*, 562 F. App'x 937, 940 (11th Cir. 2014) (citing 18 U.S.C. § 3583(e)(3)).² Whereas, as discussed, if a defendant fails to comply with a payment schedule after supervision has elapsed, the Government may enforce the order through a separate civil action or the underlying criminal action. *See Mays*, 430 F.3d at 966.

Here, the Government does not suggest that Defendant violated her probation, such that she should be sanctioned. (*See generally* Mot.). Rather, the Government merely seeks to enforce "the restitution judgment for the benefit of the victims[.]" (Reply 4 (alteration added)). Not only is the Government well within its right to enforce restitution, but the Court has jurisdiction to adjudicate such enforcement. *See, e.g., Carter*, 742 F.3d at 445 ("The district court retained the power to enforce the order of restitution, even if it did not condition supervised release on complying with a particular payment schedule." (citations omitted)).

At a more basic level, Defendant misreads the Amended Judgment. (*See* Resp. 1–2). While the Amended Judgment may condition supervision on complying with the restitution payment schedule, restitution does not derive from the probationary component of Defendant's sentence. Indeed, the heading above the restitution amount states "Criminal Monetary

² The same goes for probation. *See United States v. Thomas*, 571 F. App'x 820, 822 (11th Cir. 2014) ("When a defendant violates a condition of probation, the court may revoke the sentence of probation and resentence the defendant." (citing 18 U.S.C. § 3565(a)(2))).

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Penalties[,]” and instructs Defendant to “pay the total criminal monetary penalties under the schedule of payments on Sheet 6.” (Am. J. 4 (alteration added; emphasis omitted). Nowhere in that section does the Court limit the effect of the payment schedule to the probationary period.


Nor does such a limitation exist in the Probation section. (*See* Am. J. 2). The Probation section of the Amended Judgment simply conditions supervision on Defendant complying with the payment schedule (*see id.*); a condition that enables the Court to revoke Defendant’s supervision if she failed to comply with the payment schedule.

In sum, Defendant’s remarkable, yet unfounded, attempt to wriggle her way out of the payment schedule lacks support in law and fact. She must renew the restitution payments to her victims and make up for the past five years of noncompliance with the Amended Judgment.

Being fully advised, it is

ORDERED AND ADJUDGED that United States’ Motion for an Order Directing the Defendant to Comply with the Payment Schedule Imposed by this Court [ECF No. 110] is **GRANTED**. Defendant must comply with the payment schedule listed in the Amended Judgment [ECF No. 65]. Because Defendant’s last payment occurred in 2017, she must also fill out and submit the Financial Statement of Debtor form by **September 16, 2022**.

DONE AND ORDERED in Miami, Florida, this 18th day of August, 2022.


CECILIA M. ALTONAGA
CHIEF UNITED STATES DISTRICT JUDGE
On behalf of **Marcia G. Cooke, United States District Judge**

cc: counsel of record