IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

UNITED STATES OF AMERICA *v.* AMANDA CHRISTIAN	Criminal Action No. 1:20-CR-296-09-JPB-CMS

Response in Opposition to Defendant's Motion to Amend Judgment and Commitment

The United States of America, by Ryan K. Buchanan, United States Attorney for the Northern District of Georgia, and Tal C. Chaiken and Nathan P. Kitchens, Assistant United States Attorneys, and by Glenn S. Leon, Chief of the Fraud Section, and Babasijibomi Moore, Trial Attorney for the United States Department of Justice, respectfully files this response in opposition to Defendant's Motion to Amend Judgment and Commitment (Doc. 731). The Court should deny Defendant's motion because she fails to establish either a material change in her economic circumstances that would justify an adjustment to her payment schedule or that she notified the Attorney General of such change.

The Mandatory Victim Restitution Act of 1996 provides that an order of restitution is a "final judgment" except in several narrow circumstances. 18 U.S.C. § 3664(o); *see also United States v. MacArthur*, 510 F. App'x 802, 803 (11th Cir. 2013) ("We have further held that the district court does not have the inherent authority to modify a sentence outside of the specific parameters provided by statute and the Federal Rules of Criminal Procedure."). The only relevant circumstance here permits the district court to adjust the payment schedule for restitution upon the defendant's showing of a "material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution." 18 U.S.C. § 3664(k). The Defendant bears the burden of establishing a "*bona fide* change in [her] financial condition." *Cani v. United States*, 331 F.3d 1210, 1215 (11th Cir. 2003); *see also* 18 U.S.C. § 3664(e) ("The burden of demonstrating the financial resources of the defendant . . . shall be on the defendant.").

The Defendant's motion requests an adjustment to her payment schedule based on her prison wages, (Doc. 731), but her submission does not establish a "*bona fide* change" in her economic circumstances "since the imposition of [her] sentence." *Cani*, 331 F.3d at 1215–16. This Court surely anticipated that the Defendant's income would be limited during her incarceration, but it nonetheless ordered that "[p]ayment of criminal monetary penalties is due during the period of imprisonment." (Doc. 569). The Defendant also does not cite any change to the net worth she reported to Probation in July 2021 or suggest that her existing assets are unavailable to meet her restitution payment obligations. PSR ¶ 157. Accordingly, the Defendant's "present financial status is no different from that contemplated by the [Court] when it imposed the restitution order," and she thus cannot satisfy her burden to establish a "*bona fide* change" in her economic circumstances under Section 3664(k). *Cani*, 331 F.3d at 1216; *see also United States v. Gladden*, No. 1:12-CR-334-WSD, 2015 WL 6506306, at *4 (N.D. Ga. Oct. 26, 2015) (denying motion to adjust payment schedule when court originally ordered restitution payments during term of imprisonment, finding that defendant's "statements that he is indigent and unable to pay while he is incarcerated simply are not enough to modify his restitution payment schedule under Section 3664(k)").

Even if the Defendant could establish a material change in her financial status, her motion still should be denied because she does not claim, much less establish, that she complied with her duty under Section 3664(k) to notify the Attorney General of her changed economic circumstances. 18 U.S.C. § 3664(k) (requiring defendants to "notify the court and the Attorney General of any material change in the defendant's economic circumstances"). Accordingly, the Defendant's motion should be denied on this independent basis. *See United States v. Dupree*, 590 F. App'x 857, 860 (11th Cir. 2014) (vacating adjusted restitution order based, in part, on fact that "the record does not reflect that [defendant] complied with his duty to notify the Attorney General of the change in his economic circumstances"); *United States v. Ford*, No. 3:15-CR-505-LSC-GMB, 2018 WL 1152406, at *1 (M.D. Ala. Mar. 5, 2018) (noting that notification "must be made both to the court and to the Attorney General of the United States" under Section 3664(k) and denying relief when defendant failed to notify Attorney General).

CONCLUSION

For the foregoing reasons, the Court should deny Defendant's motion.

Dated: October 13, 2023.

Respectfully submitted,

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I filed a copy of this document on October 13, 2023 using the Court's CM/ECF system, which will automatically generate notice of this filing to all counsel of record. A copy will also be sent by mail to the following address:

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October 13, 2023

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