UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

UNITED STATES OF AMERICA

v. Case No. 2:21-cr-74-TPB-KCD

AMBER REWIS BRUEY

UNITED STATES' OPPOSITION TO DEFENDANT'S MOTION TO LIMIT RESTITUTION PAYMENTS

The United States opposes Bruey's motion (Doc. 181) seeking to have the Court direct the Bureau of Prisons to limit her restitution payments to $25 per month, and in support, submits the following memorandum of law.

MEMORANDUM OF LAW

I. Background

1. On March 16, 2022, the Court accepted Bruey's plea of guilty to conspiracy to commit wire fraud in violation of 18 U.S.C. § 1349 (Count One), wire fraud in violation of 18 U.S.C. §§ 1343, 1349, and 2 (Counts Two through Eleven), conspiracy to commit money laundering in violation of 18 U.S.C. § 1956(h) (Count 14), and illegal monetary transactions (Counts 14, 15, 16, 17, and 18). Doc. 72. Bruey was sentenced to 48 months in prison and ordered to pay a $1,600 special assessment and restitution in the amount of $881,659.35 to the victims. Doc. 109.

2. The Court ordered that her restitution was due during her incarceration. Doc. 109 at p. 6. The Court also ordered that while in the custody of the Bureau of Prisons (BOP), the defendant shall either (1) pay at least $25.00 quarterly if she has a non-UNICOR job or (2) pay at least 50% of her monthly earnings if she has a UNICOR job. *Id.*

3. As of December 3, 2024, according to the Clerk of Court, Bruey has paid her special assessment and $413 towards restitution. Bruey still owes restitution of $881,246.35.

4. Most recently, Bruey has made the following payments: October 2024: $65, September 2024: $65, August 2024: $58.

5. Bruey now requests that the Court order the Bureau of Prisons to set her payments at $25 per month while she is incarcerated.

II. Legal Argument

Bruey's motion (Doc. 181) appears to oppose the BOP's Inmate Financial Responsibility Program (IFRP) rather than the Court's Schedule of Payments. Specifically, Bruey claims in her motion that she is only earning between $45 and $50 per month. However, the Clerk's Office records show that she has been making payments of between $58 to $65 for the past three months. The undersigned contacted her assigned Case Manager in the BOP and confirmed that she is in fact participating in the IFRP and that the payment amounts she is trying to avoid in her motion are those that were set by the BOP as part of the BOP's IFRP. These payments take into consideration her income and funds available from outside sources.

The IFRP is a voluntary program. If Bruey is challenging an aspect of her confinement, courts have found such a challenge should be brought under 18 U.S.C. § 2241 in the district of confinement. Nonetheless, her account records and conversations with her BOP Case Manager show that Bruey was receiving funds in addition to her payroll. Pursuant to the IFRP, all of her available funds were taken into account by the BOP in arriving at her monthly payment amount. The records show that she received sufficient funds to make reasonable payments toward her restitution if prioritized. For example, she had the following funds available to her:

- July 2024: $115 in deposits + $73.50 payroll
- August 2024: $165 in deposits + $50.03 payroll
- September 2024: $295 in deposits + $70.85 payroll
- October 2024: $75 in deposits + $50.68 payroll
- November 2024: $250 deposits + $50.03 payroll

A. Voluntary Participation in the IFRP

The IFRP, established by BOP regulations, is a work program designed to help inmates develop a financial plan to meet certain financial obligations, including the payment of restitution. *See* 28 C.F.R. § 545.11. Participation in the IFRP is voluntary. *See United States v. Boyd*, 608 F.3d 331, 334 (7th Cir. 2010). Participation and compliance, however, affords inmates with specific benefits, such as assignment to outside work details and preferential housing placement. *See* 28 C.F.R. § 545.11. Therefore, many inmates choose to participate in the program, make meaningful payments to their obligations, and take advantage of all benefits for those in compliance with their FRP.

The BOP evaluates the inmate's total resources in setting the inmate's FRP payment plan. Thus, if an inmate is receiving deposits from outside sources into their account, in order to participate in the IFRP, the inmate may be required to use a portion of those funds toward their financial obligations, in this case, to the victims of Bruey's offense.

The undersigned requested and reviewed Bruey's prison account records in order to respond to this Court's Order (Doc. 182) and spoke with Bruey's BOP Case Manager who provided her deposit records and the formula used in the IFRP for calculating her IFRP payments. *See* Bruey's BOP Account Records attached as Composite Exhibit A. These records confirm that in addition to her employment income through the BOP, Bruey receives deposits from outside sources. The IFRP expects that a portion of deposited funds be used for their financial obligations rather than simply spending on commissary for themselves or transferring to other inmates.

B. Challenges to the IFRP

The payment amount established by the IFRP has been found to be an aspect of confinement. A challenge to the implementation of this program is a challenge to the execution of her sentence. Thus, Bruey's complaints, to the extent they are about the IFRP, must be pursued under 28 U.S.C. § 2241 in the district of her confinement. *See Williams v. Pearso*n, 197 F. App'x 872, 876-77 (11th Cir. 2006); *United States v. Warmus*, 151 F. App'x 783, 786-87 (11th Cir. 2005); *see also United States v. Gala*, 698 F. App'x 602, 604 (11th Cir. 2017) (holding that inmate's claim that he was coerced into participating in the IFRP must be presented in a § 2241 petition filed in the district of confinement). Even if this Court had jurisdiction over the matter, a § 2241 habeas petitioner must exhaust her administrative remedies prior to filing suit. *Santiago-Lugo v. Warden*, 785 F.3d 467, 475 (11th Cir. 2015).

Here, there is no evidence that Bruey has attempted to gain review of her IFRP payments through the BOP's administrative process.

C. No Material Change in Circumstances

If the Defendant's motion can be construed as a request for this Court to stay her obligation to pay restitution while incarcerated under 18 U.S.C. § 3664(k), this argument is not supported by the facts and review of her BOP account records. At the time of her sentencing, Bruey identified no significant assets that could be used to pay toward the losses caused by her offenses. *See*

Doc. 97 at pp. 28-29. The Court was also aware of her impending incarceration status as the court sentencing her to incarceration, and still required that Bruey make efforts to pay restitution while incarcerated. Doc. 109. Now, Bruey's BOP records show that she receives deposits from outside sources, which actually increases her ability to pay restitution while incarcerated.[1] Therefore, if anything, Bruey's records support that she does and should continue to make reasonable efforts to repay her restitution obligation. There is no material change in her financial circumstances that would support staying her restitution obligation during incarceration to the detriment of the victims.

D. Victim Has a Right to Restitution in Shortest Time Reasonably Possible

In enacting the Crime Victims' Rights Act (CVRA), Congress imposed an affirmative duty on Department of Justice employees to use their "best efforts to see that crime victims" are accorded their rights, including their right to "full and timely" restitution. 18 U.S.C. § 3771(a)(6), (c). And, the CVRA

[1] Notwithstanding the FRP, if a person obligated to pay restitution receives substantial resources from any source, such person shall be required to apply the value of such resources to any restitution or fine still owed. 18 U.S.C. § 3664(n). The source of the funds is not determinative in the analysis. The criminal restitution order operates as a lien on all of Bruey's property and her rights to property. 18 U.S.C. § 3613(c). This is true regardless of Bruey's desire to retain the funds for her own use and enjoyment.

further provides that the court "shall ensure" that crime victims are afforded their rights. 18 U.S.C. § 3771(b). Further, when payment cannot be made in full immediately, the length of payments must be the shortest time in which payment is reasonably possible. *See* 18 U.S.C. § 3572(d)(2) ("[T]he length of time over which scheduled payments will be made shall be set by the court, but shall be the shortest time in which full payment can reasonably be made.") The statutes are designed to protect victims and afford them the right to be made whole in the shortest time reasonably possible.

III. Conclusion

Challenges to the FRP amount shall be brought as a § 2241 petition in the district of her confinement after exhausting all administrative remedies, which does not seem to have occurred in this case. Nonetheless, the IFRP is established by regulation and participation in the program is voluntary. If Bruey wishes to avail herself of the benefits of the IFRP program, she cannot also object to the goal of the IFRP, which is to compensate the victims of her offenses.

Further, to the extent this motion can be construed as a request to stay her restitution obligation under 18 U.S.C. § 3664(k), Bruey's account records do not support a finding of a material change in her financial circumstances that would justify staying her obligation to pay restitution while incarcerated.

stead, her records show that she has a greater ability to pay restitution because in addition to her prison payroll, she receives and spends significantly from outside sources.

Based on the foregoing, Bruey's motion (Doc. 181) should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on December 13, 2024, I electronically filed the foregoing with the Clerk of Court by using the CM/ECF system, which will send a notice of electronic filing to all parties of record, and I mailed the foregoing document and the notice of electronic filing by first-class mail to the following non-CM/ECF participant:

Amber Rewis Bruey, Register Number 63267-509
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s/Julie A. Simonsen
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