

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

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MOTION TO AMEND JUDGMENT TO REFLECT MODIFIED RESTITUTION

The above defendant pleaded guilty to one count of bank fraud and was sentenced on December 1, 2000. The defendant was ordered to pay restitution to three victim banks. In the judgment filed on December 8, 2000, total restitution in the amount of \$51,153.68 was ordered in the following amounts to the three victim banks:

1. [REDACTED];
2. [REDACTED]; and
3. [REDACTED].

Although the judgment ordered that the defendant be allowed to serve [REDACTED] five-month active sentence in a community correction center, the defendant was required to serve that sentence in a Bureau of Prisons facility in Danbury, Connecticut, because she was not an American citizen. Although the defendant has legally been in this country since childhood, and is a legal permanent resident, she has never obtained United States citizenship.

The defendant also has learned that, because of her bank fraud conviction, she will be deported by the Immigration and Naturalization Service. The defendant was released from service of her active sentence on June 8, 2001, and was taken into the custody

of the Immigration and Naturalization Service immediately. The defendant has a hearing on June 13, 2001, and again on June 20, 2001.

The defendant's husband has hired an immigration attorney in Danbury, Connecticut, where the defendant is in custody, to represent the defendant at [REDACTED] immigration/deportation hearing. That attorney has informed the undersigned counsel and defendant's [REDACTED] that the defendant's chances of not being deported will be enhanced if the total amount of restitution owed is less than \$10,000.00. Accordingly, the defendant's [REDACTED] has discussed that matter with [REDACTED], [REDACTED], and [REDACTED] has decided to reduce the amount of restitution owed to [REDACTED]. See attached letter from [REDACTED] [REDACTED] to the undersigned counsel.

Therefore, the defendant respectfully requests that the court enter an Order amending the amount of restitution owed to a total of [REDACTED], apportioned to the three victim banks as follows:

1. [REDACTED];
2. [REDACTED]; and
3. [REDACTED].

As set out in the defendant's Presentence Report and discussed at the sentencing hearing, the defendant is a [REDACTED] year old native of [REDACTED] who came to the United States with her family legally in [REDACTED] at the age of [REDACTED]. The defendant is married to an

American citizen, and they have [REDACTED] minor children, approximately of the ages of [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]. The defendant's bank fraud offense, or check kiting, was the result of a gambling addiction, for which the defendant was seeking treatment at the time of [REDACTED] sentencing.

The obvious point of requesting an amendment to the amount of restitution is to increase the chances that the defendant will be allowed to remain in the United States with [REDACTED] and [REDACTED] [REDACTED]. If the defendant is deported, [REDACTED] will not be eligible to even apply for legal re-entry into the United States for five years, and that application may not be granted even at that time.

The requested amendment also is based on the fact that [REDACTED] [REDACTED] has, in fact, reduced its amount of restitution owed by the defendant to \$5,000.00. Therefore, amending the judgment accordingly will simply make the judgment accurate as to the amount of restitution owed. Because the defendant has been ordered to pay \$100.00 per month toward restitution during her term of supervised release, correcting the total amount of restitution is important. It should be noted that, if the defendant is deported, [REDACTED] will never be on supervised release in this country, and the three banks to which restitution is owed will probably never receive a penny.

As authority for amending the amount of restitution in the judgment, the defendant cites 18 U. S. C. § 3664(k). Although this

subsection does not deal directly with the fact situation presented in this case, it does allow for amending the amount of restitution owed based on changes in the defendant's economic circumstances that might affect the defendant's ability to pay restitution, and provides for modifying the amount of restitution upon motion by the court, or of any party. Obviously, reducing restitution owed to [REDACTED] from \$ [REDACTED] to \$ [REDACTED], to which [REDACTED] expressly agreed, affects the economic circumstances of the defendant. The defendant has not found any authority which prohibits the court from amending the judgment as requested

Therefore, the defendant respectfully requests that the court enter an order amending the amount of restitution owed to the three victim banks as set forth above.


Respectfully submitted this the 12th day of June, 2001.

[REDACTED]
Federal Public Defender

[REDACTED]
First Assistant Federal Public Defender
North Carolina State Bar No. [REDACTED]
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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing on the below-mentioned attorney by hand-delivering or by mailing a copy of the same to the following address:


Assistant United States Attorney
P. O. Box 1858
Greensboro, NC 27402

This the 12th day of June, 2001.


First Assistant Federal Public Defender

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[REDACTED]

[REDACTED]

ORDER AMENDING RESTITUTION

The defendant has filed a Motion requesting that the amount of restitution as set forth in the judgment filed on December 8, 2000, be modified and amended based on the fact that one of the victim banks, [REDACTED] [REDACTED] [REDACTED] [REDACTED], has agreed to reduce the restitution owed to [REDACTED] from \$ [REDACTED] to [REDACTED]. For good cause shown, that Motion is hereby granted, and the amount of restitution owed to the three victim banks are in the amounts as follows:

1. [REDACTED]
2. [REDACTED] and
3. [REDACTED].

As set forth in the judgment filed December 8, 2000, in the event the amount of restitution has not been paid prior to the commencement of the defendant's term of supervised release, the defendant shall make monthly payments toward restitution in the amount of [REDACTED] per month to begin sixty days after the commencement of the term of supervised release and to continue during the entire term of supervised release.

This the _____ day of June, 2001.

United States District Judge

