

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

UNITED STATES OF AMERICA :
 :
 v. : **Criminal No. 12-462-01**
 :
ROBERT MULGREW :

ORDER AMENDING RESTITUTION PAYMENT SCHEDULE

AND NOW, this ____ day of _____, 2017, upon consideration of the government's motion pursuant to 18 U.S.C. § 3664(k) requesting the Court amend the payment schedule for restitution imposed in the above-captioned case, and the Court finds that the defendant's recent receipt of inheritance in the amount of \$36,610.56 constitutes a material change in his financial circumstances that affects his ability to pay restitution, cause exists to grant the relief requested by the motion, and, therefore, it is hereby

ORDERED that the Motion of United States of America to Amend Restitution Payment Schedule is GRANTED; and it is further

ORDERED that, pursuant to 18 U.S.C. Section 3664(k), the Court modifies the schedule for payment of restitution as follows:

(1) Within five business days after entry of this Order, the defendant shall make a lump sum payment of \$_____.00 toward restitution imposed in this case.

(2) After considering the financial resources and other assets of the defendant, including whether any of these assets are jointly controlled; the projected earnings and other income of the defendant; and any financial obligations of the defendant; including obligations to dependents, commencing on _____ 1, 201____, and on the first day of every month

thereafter, the defendant shall pay restitution in the amount of \$_____.00 per month; and it is further

ORDERED that the defendant shall forward all restitution payments, by check or money order payable to the “Clerk, U.S. District Court,” to the Clerk, United States District Court, 2609 U.S. Courthouse, 601 Market Street, Philadelphia, PA 19106-1797 (Attn: Financial Manager).

HONORABLE C. DARNELL JONES, II
United States District Judge

distribution from the Estate of Robert J. Mulgrew, the defendant's deceased father. These funds remained in Mulgrew's inmate trust account with the BOP.¹

The United States Attorney's Office for this district recently was informed that the defendant was released from Fort Dix and transferred to The Kintock Group, a residential reentry management facility (half-way house), to serve out the remainder of his custodial sentence.

Upon the defendant's release from Fort Dix, the Bureau of Prisons could no longer maintain the encumbrance on his inmate trust account. As a result, the defendant was released from Fort Dix with the entirety of the funds in his inmate trust account, including the \$36,610.56 previously encumbered by the government.

On November 17, 2017, the government sent a letter to counsel of record on this case, requesting the money be paid to the Clerk of Court immediately. To date, the government has not received a response and the money has not been paid to the Clerk of Court.

The facts here demonstrate a material change in Mulgrew's financial resources that affects his ability to pay restitution. Pursuant to 18 U.S.C. § 3664(k), the government requests that this Court enter an order amending the schedule for which Mulgrew is to pay restitution based on his receipt of the inheritance funds.

II. LEGAL ARGUMENT

A. 18 U.S.C. § 3664(k) Authorizes The Court To Require Immediate Payment Of The Inheritance Received By Mulgrew As Payment For Distribution To The Restitution Victim.

¹ On or about May 19, 2017, the Bureau of Prisons, at the request of the government, placed an encumbrance on these funds. Then, on June 1, 2017, the government filed a Motion seeking to turnover these funds from Mulgrew's inmate trust account. ECF No. 143. This motion remains pending before this Court.

18 U.S.C. § 3664 authorizes the court to require immediate payment in full based on a material change in the defendant's financial resources. The statute provides:

A restitution order shall provide that the defendant shall notify the court and the Attorney General of any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution. The court may also accept notification of a material change in the defendant's economic circumstances from the United States or from the victim. The Attorney General shall certify to the court that the victim or victims owed restitution by the defendant have been notified of the change in circumstances. Upon receipt of the notification, the court may, on its own motion, or the motion of any party, including the victim, adjust the payment schedule, or require immediate payment in full, as the interests of justice require.

18 U.S.C. 3664(k). Accordingly, Section 3664(k) vests this Court with authority to adjust the payment schedule provided in a restitution order or "require immediate payment in full, as the interests of justice require" when notified of "any material change in the defendant's economic circumstances that might affect the defendant's ability to pay restitution." *See, e.g. Cani v. United States*, 331 F.3d 1210, 1215 (11th Cir. 2003) (applying Section 3664(k)).

The government submits that relief under Section 3664(k) is warranted in this instance. Mulgrew's inheritance from his father's estate constitutes a material change in his financial resources that affects his ability to pay restitution. To date, Mulgrew has paid the \$200 special assessment, and he and his codefendant have paid a total of \$8,640.28 toward restitution. As a result, \$190,633.72 in restitution ordered by this Court remains unpaid. Despite notice of the pending motion before the Court, Mulgrew received substantial funds from his inmate trust account when he was released from FCI Fort Dix. Mulgrew has disregarded this Court's restitution order and failed to pay restitution from the inheritance funds, nor has he contacted the government or this Court of this material change in his financial resources. The interests of justice require that this Court amend the restitution payment schedule in this case to properly

reflect Mulgrew's financial resources and ability to pay restitution based on his changed financial resources.

III. CERTIFICATION PURSUANT TO 18 U.S.C. § 3664(k)

Pursuant to 18 U.S.C. § 3664(k), the United States hereby notifies the Court and the restitution victim, Pennsylvania Department of Community and Economic Development, of the change in defendant Mulgrew's economic circumstances and the government's request that the Court amend the restitution payment schedule.

IV. CONCLUSION

For the reasons explained above, the government requests that this Court grant its motion.

Respectfully submitted,

LOUIS D. LAPPEN
United States Attorney

/s/ Lauren R. Baer
LAUREN R. BAER
Assistant United States Attorney

Date: December 4, 2017

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the MOTION OF UNITED STATES OF AMERICA TO AMEND RESTITUTION PAYMENT SCHEDULE was filed electronically (and thus is available for viewing and downloading from the ECF system) and/or served by first class mail, postage prepaid, addressed as follows:

Robert Mulgrew
Reg. No. 68619-066
The Kintock Group
301 E. Erie Avenue
Philadelphia, PA 19134

Angela Halim, Esquire
Halim Drossner, PC
1528 Walnut Street, Suite 1501
Philadelphia, PA 19102

/s/ Lauren R. Baer
LAUREN R. BAER
Assistant United States Attorney

Date: December 4, 2017