

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 4, 2024*

Decided January 5, 2024

BeforeILANA DIAMOND ROVNER, *Circuit Judge*DIANE P. WOOD, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*

No. 23-1832

UNITED STATES OF AMERICA,
*Plaintiff-Appellee,**v.*MITCHEL A. FUCHS,
*Defendant-Appellant.*Appeal from the United States District
Court for the Northern District of
Illinois, Western Division.

No. 07 CR 50072-1

Iain D. Johnston,
*Judge.***ORDER**

Mitchel Fuchs was convicted of using the mail and wires to commit mortgage fraud, *see* 18 U.S.C. §§ 1341, 1343, and, among other parts of his sentence, the court ordered Fuchs to pay restitution. Years after Fuchs's release from custody, the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

government moved to garnish 25% of his wages to satisfy that debt. The district court granted the motion. Because the district court properly enforced Fuchs's sentence and the law when it ordered him to turn over 25% of his earnings, we affirm.

After Fuchs was convicted of mortgage fraud, the parties addressed restitution at his sentencing hearing. Fuchs denied that the victims' losses were attributable to him, but his counsel did not contest the amount of restitution. The district court ordered Fuchs to pay \$183,956.75 in restitution to five payees—four companies and one person—and imposed a prison term of 12 years, which began in 2009.

Fuchs contested his sentence several times. His first appeal successfully challenged only the district court's application of the Sentencing Guidelines. *See United States v. Fuchs*, 635 F.3d 929, 933 (7th Cir. 2011). We dismissed his second appeal under *Anders v. California*, 386 U.S. 738, 744 (1967). *See United States v. Fuchs*, No. 11-2657, 2012 WL 213345 (7th Cir. 2012). Later, Fuchs unsuccessfully petitioned for a writ of habeas corpus under 28 U.S.C. § 2255. *See Fuchs v. United States*, No. 13 C 50099, 2014 WL 1652151 (N.D. Ill. Apr. 24, 2014). He briefly asserted, among other things, that his appellate counsel failed to object to the restitution amount, but the district court denied relief because Fuchs failed to develop any argument. Fuchs also unsuccessfully moved the district court to alter restitution; the court explained that, under *United States v. Anderson*, it could not change his sentence. 583 F.3d 504, 508 (7th Cir. 2009).

This appeal stems from the government's motion to garnish 25% of Fuchs's earnings. In the motion, it explained that despite his release from prison in 2016, Fuchs had not paid restitution since 2019 and a balance of \$139,608.67 remained. Fuchs opposed the motion. He argued that the court should vacate or amend the restitution order because some of the corporate payees were dissolved and the individual payee had died. In any case, Fuchs insisted, under the language of the restitution order, the garnishment rate should be capped at 10%. In granting the government's motion and ordering that Fuchs turn over 25% of his earnings, the court repeated that *Anderson* limited its authority to amend the restitution order. It added that Fuchs should have challenged the restitution order at his first appeal. Finally, the court explained that the restitution order set a floor of 10% rather than a 10% ceiling, and the government is statutorily permitted to garnish up to 25% of his wages.

On appeal, Fuchs appears to challenge the garnishment order on three grounds. We review that order de novo. *See Kelley v. Stevanovich*, 40 F.4th 779, 784 (7th Cir. 2022).

Fuchs reasserts that the district court had authority to amend the restitution amount because some payees are now dead or dissolved; thus, the restitution order (and garnishment) should reflect those changes. But the funds collected during restitution first go to the Clerk of Court, who then distributes those funds to designated victims. And regardless, Fuchs provides no evidence of the payees' death or dissolution. Further, a district court does not acquire authority to modify a restitution order upon the death or dissolution of a payee. A district court may modify a restitution order only when a defendant's economic circumstances warrant an adjustment, or if a change is otherwise authorized by statute or rule. *See United States v. Simon*, 952 F.3d 848, 853 (7th Cir. 2020); 18 U.S.C. § 3664(o) (identifying circumstances when court may adjust a restitution order). But Fuchs points to no statute or rule permitting a court to amend the restitution amount when a payee is no longer around. And a defendant's economic circumstances have not changed merely because a payee no longer seeks restitution. *See Simon*, 952 F.3d at 853. Finally, nothing in our cases states that, when a payee does not seek restitution, a defendant may retain the funds for himself. *See United States v. Pawlinski*, 374 F.3d 536, 539–41 (7th Cir. 2004) (ruling that when victims did not claim restitution intended for them, district court lacked authority to redirect those funds to "nonvictims").

Second, Fuchs also appears to contest the government's ability to garnish 25% of his wages, but his argument fails. The government may enforce the restitution order, *see* 18 U.S.C. § 3613(a), and it may do so by using the enforcement mechanisms in the Federal Debt Collection Procedures Act, which include garnishment. 28 U.S.C. §§ 3001(a), 3205(a); *see also United States v. Kollintzas*, 501 F.3d 796, 801 (7th Cir. 2007) (authorizing civil garnishment order in underlying criminal case). Under the applicable statutes, that garnishment amount may rise to 25% of a defendant's earnings. *See* 18 U.S.C. § 3613(a)(3); 15 U.S.C. § 1673(a)(1). Thus, the government has authority to garnish Fuchs's wages at a 25% rate. To the extent Fuchs argues that the language of the judgment in his case said otherwise, he is mistaken. The judgment included a minimum Fuchs was required to pay during supervised release, but he is no longer on supervised release. And the judgment states, if "restitution [is] not paid in full during the term of incarceration," then Fuchs "shall pay to the clerk of court *at least* ten percent of the defendant's gross earnings." (emphasis added). Thus, the words "at least" set a floor of 10%, not a ceiling. *See United States v. Wykoff*, 839 F.3d 581, 582 (7th Cir. 2016).

Finally, Fuchs seemingly takes issue with the original imposition and amount of restitution. But Fuchs waived any challenge to the original restitution order when he

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failed to object to it in his initial appeal or develop an argument in a collateral attack that might excuse that omission from his appeal. *See Simon*, 952 F.3d at 853.

We have considered his other arguments, but Fuchs does not sufficiently develop them to merit discussion.

AFFIRMED