

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

United States v. Tarnawa

No. 20-40295, United States Court of Appeals for the Fifth Circuit (February 25, 2022)

SUMMARY

The Fifth Circuit held that a defendant's exemption from the Inmate Financial Responsibility Program (IFRP) via a habeas judgment constituted a material change in economic circumstances under 18 U.S.C. § 3664(k), allowing the district court to modify the restitution payment schedule. The court distinguished this one-time exemption from the gradual accumulation of prison wages, which alone may not be a material change. The court also rejected the argument that the § 3664(f)(2) factors must be explicitly considered when modifying restitution under § 3664(k). The modification requiring 50% of prison wages toward restitution was affirmed.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	Edith H. Jones; Catharina Haynes; Gregg Costa
JURISDICTION	Federal
DECIDED	February 25, 2022
DOCKET	20-40295
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the Eastern District of Texas, which granted the government's motion to modify the restitution judgment under 18 U.S.C. § 3664(k).
STANDARD OF REVIEW	The court declined to decide the precise standard of review for modifications under § 3664(k), but noted that de novo review applies to legality and abuse of discretion to propriety of restitution awards.
PRECEDENTIAL VALUE	Published
PARTIES	Donald Tarnawa v. United States of America

TOPICS

- sentencing
- criminal procedure
- habeas corpus
- statutory interpretation
- remedies

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the district court erred by modifying the judgment without articulating consideration of the § 3664(f)(2) factors.
2. Whether the exemption from the IFRP constituted a material change in economic circumstances under § 3664(k).

HOLDINGS

1. The court held that the plain text of § 3664(k) does not require consideration of the § 3664(f)(2) factors, and even if it did, the Fifth Circuit does not require specific findings on each factor.
2. The court held that the exemption from the IFRP was a material change because it was a one-time event that relieved Tarnawa from a significant deduction from his inmate wages, differentiating from the gradual accumulation of prison wages.

KEY QUOTATIONS

“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.” (Page 5)

“In summary, the MVRA requires the district court to: (a) order the full amount of restitution; (b) establish an original payment schedule that takes into consideration the defendant's financial situation; and (c) respond to any change in the defendant's economic condition by adjusting the schedule. All of this has the goal of making 'full payment' in the shortest time possible.” (Page 6)

“cannot escape his responsibility to restore his victims by hiding behind his sentencing order, not when he has the means to pay and not when the law provides a remedy that the government and the district court may act upon.” (Page 8-9)

FACTUAL BACKGROUND

Tarnawa was convicted of wire fraud, bank fraud, and money laundering, and sentenced to 480 months and ordered to pay \$13,491,048 in restitution. The original judgment recommended participation in the Inmate Financial Responsibility Program (IFRP). Tarnawa was later transferred to California and filed a habeas petition, which resulted in his exemption from the IFRP. The government then moved to modify the judgment under 18 U.S.C. § 3664(k) due to this material change.

PROCEDURAL HISTORY

Tarnawa was convicted and sentenced to 480 months and ordered to pay \$13,491,048 in restitution. The original judgment recommended participation in the IFRP. Tarnawa filed a habeas petition in California district court, which exempted him from the IFRP. The government then moved to modify the judgment under § 3664(k) based on material change. The Eastern District of Texas granted the modification, requiring Tarnawa to pay 50% of his inmate trust fund deposits. Tarnawa appealed.

DISPOSITION

affirmed

CASES CITED

- United States v. Diehl, 848 F.3d 629, 633 (5th Cir. 2017)
- United States v. Pacheco-Alvarado, 782 F.3d 213, 218 (5th Cir.), cert. denied, 577 U.S. 879, 136 S. Ct. 175 (2015)
- United States v. Lemoine, 546 F.3d 1042, 1048 n.4 (9th Cir. 2008)
- Ward v. Chavez, 678 F.3d 1042 (9th Cir. 2012)
- Tarnawa v. Ives, No. 2:09-CV-02429, 2011 WL 1047701, at *1 (E.D. Cal. Mar. 18, 2011)
- Tarnawa v. Ives, No. 2:09-CV-02429, Dkt. 28 (E.D. Cal. Apr. 4, 2013)
- Tarnawa v. Ives, No. 11-17641 (9th Cir. Feb. 26, 2013)
- United States v. Hughey, 147 F.3d 423, 436 (5th Cir. 1998)
- United States v. Chaney, 964 F.2d 437, 451 (5th Cir. 1992)
- United States v. Sharma, 703 F.3d 318, 322 (5th Cir. 2012)
- United States v. Grant, 235 F.3d 95, 99 (2d Cir. 2000)
- United States v. Bratton-Bey, 564 F. App'x. 28, 29 (4th Cir. 2014) (per curiam)
- United States v. Baxter, 2019 WL 661502, at *1 (D.C. Cir. 2019) (per curiam)
- United States v. Simpson-El, 856 F.3d 1295, 1296 (10th Cir. 2017)
- United States v. Knight, 315 F. App'x. 435, 436-37 (3d Cir. 2009)
- United States v. Holley, No. 19-5492, 2020 WL 2316052, at *2 (6th Cir. Jan. 29, 2020) (per curiam)
- United States v. Dale, 613 F. App'x 912, 913 (11th Cir. 2015) (per curiam)
- United States v. Boal, 534 F.3d 965, 968 (8th Cir. 2008)
- United States v. Vanhorn, 399 F.3d 884, 886 (8th Cir. 2005) (per curiam)
- United States v. McClamma, 146 F. App'x. 446, 448 (11th Cir. 2005) (per curiam)
- United States v. Franklin, 595 F. App'x 267, 273 (5th Cir. 2014) (per curiam)
- Cani v. United States, 331 F.3d 1210, 1215 (11th Cir. 2003)
- United States v. Grigsby (Grigsby II), 579 F. App'x 680, 684 (10th Cir. 2014)
- United States v. Surber, 94 F. App'x. 355, 356 (7th Cir. 2004) (per curiam)
- United States v. Scales, 639 F. App'x. 233, 239 (5th Cir. 2016)
- United States v. Grant, 715 F.3d 552, 558 (4th Cir. 2013)

- United States v. Blocker, 104 F.3d 720, 737 (5th Cir. 1997)
- United States v. St. Gelais, 952 F.2d 90, 97 (5th Cir.), cert. denied, 506 U.S. 965, 113 S. Ct. 439 (1992)
- United States v. Impson, 129 F.3d 606, 1997 WL 680365, at *1 (5th Cir. 1997) (per curiam)
- United States v. Hughes, 914 F.3d 947, 951 (5th Cir. 2019)
- United States v. White, 745 F. App'x 646, 648 (7th Cir. 2018) (per curiam)
- United States v. Dye, 48 F. App'x 218, 220 (8th Cir. 2002) (per curiam)
- United States v. Kidd, 23 F.4th 781, 787 (8th Cir. 2022)
- United States v. Rand, 924 F.3d 140, 143-44 (5th Cir. 2019)