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2 UNITED STATES COURT OF APPEALS  
3  
4 FOR THE SECOND CIRCUIT  
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7  
8 August Term, 2012  
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10 (Argued: September 14, 2012 Decided: October 10, 2012)

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12 Docket No. 11-3474-cr  
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15  
16 UNITED STATES OF AMERICA,  
17

18 *Appellee,*  
19

20 -v.-  
21

22 ROBERT CATOGGIO, DONALD MESSINGER, BARRY MIELE, ALAN KOOP,  
23 MARCELO QUINTERO, MICHAEL TROCCHIO, DOMINICK FRONCILLO,  
24 STEPHEN AGNESE, ARTHUR ALONZO, JOHN ASARO, RANDY ASHENFARB,  
25 ROCCO BASILE, WILLIAM JOSEPH BATTISTA, MICHAEL A. BENGEN,  
26 JOHN BESARANY, NICHOLAS BOSCO, FABIO BORGOGNONE, NEIL  
27 BRAUNER, NICHOLAS BRIGANTI, RONALD CATAGGIO, ANTHONY  
28 CAVICCHIO, JOHN CLAUDINO, DAMON GERARD COHEN, WILLIAM  
29 COSIDENTE, RONALD CROPPER, JR., JOSEPH DIBELLA, DAVID  
30 DUNHAM, JONATHAN DURINDA, RUI REIS FIGUEIREDO, ROBERT  
31 FIGUEROA, VITO GILI, VALERY GOLDBERG, GREGORY GROELLER,  
32 THOMAS GUCCIARDO, JOHN LEMBO, III, RICO LOCASCIO, BRENT  
33 CALDERONE LONGO, MARK MANCINO, PAUL MEDAGLIA, CHRISTOPHER L.  
34 MIANO, VINCENT MINERVA, CHRISTOPHER MORMANDO, JAIME SCOTT  
35 MORRILL, JOEL NAZARENO, VITO PADULO, MICHAEL PERRINE, SCOTT  
36 PICCININNI, AKA SCOTT PALMER, AKA SCOOTER, FRANK J.  
37 PIZZOLATO, AKA FRANKIE THE FISH, THOMAS PLAMENCO, JOSEPH  
38 ROSETTI, KEITH RUFFLER, KIRK RUFFLER, MICHAEL SCARAMELLINO,  
39 JOSEPH SCARFONE, JR., RICHARD SCARSELLA, PAUL TAHAN, JEFFREY  
40 VAN BLARCOM, VICTOR VERNACI,  
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42 *Defendants,*  
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1 ROY AGELOFF,  
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3 *Defendant - Appellant.*  
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8 Before:

9 POOLER, WESLEY, LOHIER, *Circuit Judges.*  
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13 Appeal from the August 19, 2011 Memorandum and Order of  
14 Restitution from the United States District Court for the  
15 Eastern District of New York (Dearie, J.) resentencing  
16 Defendant-Appellant Roy Ageloff to pay \$190 million in  
17 restitution to the victims of a massive fraud scheme  
18 perpetrated by Ageloff and his co-conspirators. Ageloff  
19 challenges this order on four grounds: (1) the district  
20 court erred by not holding an evidentiary hearing prior to  
21 resentencing; (2) the eight-year delay in resentencing  
22 violated Ageloff's constitutional and statutory rights; (3)  
23 the district court should have released some or all of the  
24 \$536,000 of Ageloff's money held by the court from the time  
25 of his initial sentencing; and (4) Ageloff was entitled to  
26 CJA funding for expert services. Should we remand, Ageloff  
27 requests that the case be reassigned and CJA counsel  
28 relieved. We affirm and hold that the district court  
29 properly exercised its authority under the All Writs Act to  
30 restrain Ageloff's funds in anticipation of resentencing.  
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33 AFFIRMED.  
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39 SCOTT L. FENSTERMAKER, Law Office of Scott L.  
40 Fenstermaker, P.C., New York, NY, *for*  
41 *Defendant-Appellant.*  
42

43 DANIEL A. SPECTOR, Assistant United States  
44 Attorney (David C. James, Assistant United  
45 States Attorney, *on the brief*), *for* Loretta E.



1 scheme. From 1991 to 1998, Ageloff and Catoggio owned and  
2 controlled four brokerage firms through which they defrauded  
3 the firms' customers in connection with the purchase and  
4 sale of different "House Stocks." Ageloff and Catoggio  
5 acquired these securities cheaply and then sold their shares  
6 at a substantial profit after creating artificial market  
7 demand by offering incentives to brokers to aggressively  
8 market the House Stocks. After this scheme unraveled,  
9 Ageloff pled guilty to one count of racketeering and  
10 stipulated to a sentence enhancement of eighteen levels for  
11 fraud that amounted to losses exceeding \$80 million.<sup>1</sup>

12 The district court sentenced Ageloff to 96 months'  
13 imprisonment, three years' supervised release and \$80  
14 million in restitution pursuant to the Mandatory Victims  
15 Restitution Act ("MVRA"), 18 U.S.C. § 3663A. At the time of  
16 his initial sentencing, Ageloff deposited approximately  
17 \$536,000 with the clerk of the court for the purpose of  
18 paying restitution. Ageloff subsequently appealed the

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<sup>1</sup>At the time Ageloff pled guilty, \$80 million was the highest possible loss bracket under the 1997 Federal Sentencing Guidelines Manual. See U.S.S.G. § 2F1.1(b)(1)(S); *United States v. Catoggio*, 326 F.3d 323, 325 (2d Cir. 2003). The highest possible loss bracket under the 2011 Federal Sentencing Guidelines Manual is \$400 million. See U.S.S.G. § 2B1.1(b)(1)(P).

1 district court's 2001 restitution order to this Court,  
2 arguing, among other things, that the district court could  
3 not order restitution without first identifying the victims  
4 and their losses. See *United States v. Catoggio*, 326 F.3d  
5 323, 324 (2d Cir. 2003). We agreed and remanded to the  
6 district court for the limited purpose of resentencing in  
7 accordance with the MVRA. *Id.* at 330; 18 U.S.C. §  
8 3664(f)(1)(A).

9 On remand, the government submitted a report prepared  
10 by the National Association of Securities Dealers ("NASD  
11 Report") that synthesized trade-sheet data to identify and  
12 tabulate the estimated \$190 million in losses suffered by  
13 more than 9,000 victims. Although armed with the NASD  
14 Report, eight years elapsed before the district court  
15 resentenced Ageloff. The delay is partly traceable to  
16 Ageloff's 2008 Florida prosecution for conspiracy to commit  
17 money laundering in connection with the conviction at issue  
18 here, as well as to a stay issued while Ageloff's petition  
19 for a writ of certiorari was pending before the Supreme  
20 Court. However, as the district court noted, the eight-year  
21 delay on remand is not solely attributable to Ageloff. Over  
22 the years, there were several changes of counsel on both  
23 sides. And, indeed, the district court recognized that

1 responsibility "ultimately lies, as it must, with the  
2 Court." See *United States v. Ageloff*, 809 F. Supp. 2d 89,  
3 107 n.17 (E.D.N.Y. 2011).

4 In 2011, after reviewing Ageloff's objections to the  
5 NASD Report, the district court incorporated the loss  
6 information into its restitution order and sentenced Ageloff  
7 to pay just over \$190 million. *Id.* at 97-98, 112. In its  
8 order, the court also affirmed its prior rejection of  
9 Ageloff's request to access some of his money held by the  
10 court. *Id.* at 106. On appeal, Ageloff argues that the  
11 district court improperly refused to release any of his  
12 funds and consequently denied him the right to secure  
13 counsel of his choice.

## 14 **Discussion<sup>2</sup>**

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16 The All Writs Act enables federal courts to "issue all  
17 writs necessary or appropriate in aid of their respective  
18 jurisdictions and agreeable to the usages and principles of  
19 law." 28 U.S.C. § 1651(a). The broad power conferred by

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<sup>2</sup> Whether 28 U.S.C. § 1651 authorizes post-conviction, pre-sentencing restraint of a defendant's property is a legal issue. We therefore engage in *de novo* review. See, e.g., *United States v. Razmilovic*, 419 F.3d 134, 136 (2d Cir. 2005).

1 the All Writs Act is aimed at achieving "the rational ends  
2 of law.'" *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 172  
3 (1977) (quoting *Harris v. Nelson*, 394 U.S. 286, 299 (1969)).  
4 Thus, courts have significant flexibility in exercising  
5 their authority under the Act. *See id.* at 173.

6 Although this Court has never addressed whether the All  
7 Writs Act enables a court to restrain a convicted  
8 defendant's property in anticipation of ordering  
9 restitution, courts in this Circuit and beyond have  
10 uniformly answered this question in the affirmative. *See*  
11 *United States v. Hatfield*, No. 06-CR-0550, 2010 WL 4235815,  
12 at \*1 (E.D.N.Y. Sept. 27, 2010); *United States v. Numisgroup*  
13 *Int'l Corp.*, 169 F. Supp. 2d 133, 138-39 (E.D.N.Y. 2001);  
14 *United States v. Ross*, No. 92-CR-1001, 1993 WL 427415, at \*1  
15 (S.D.N.Y. Oct. 15, 1993); *see also United States v.*  
16 *Sullivan*, No. 5:09-CR-302-FL-1, 2010 WL 5437243, at \*5-\*7  
17 (E.D.N.C. Nov. 17, 2010); *United States v. Simmons*, No. 07-  
18 CR-30, 2008 WL 336824, at \*1 (E.D. Wis. Feb. 5, 2008);  
19 *United States v. Runnells*, 335 F. Supp. 2d 724, 725-26 (E.D.  
20 Va. 2004); *United States v. Abdelhadi*, 327 F. Supp. 2d 587,  
21 598-601 (E.D. Va. 2004).

1           In reaching this conclusion, courts explain that a  
2 sentencing court may use the All Writs Act to prevent the  
3 defendant from frustrating collection of the restitution  
4 debt. For instance, in *Ross*, a district court for the  
5 Southern District of New York issued an order restraining  
6 the convicted defendant's assets pending sentencing pursuant  
7 to the All Writs Act. 1993 WL 427415, at \*1. The  
8 restraining order furthered the court's exercise of its  
9 jurisdiction over sentencing by ensuring that the defendant  
10 would have some assets available to satisfy the pending  
11 restitution order. See *id.* at \*1. Even though the exact  
12 amount of restitution to be ordered was unclear, the  
13 district court determined that there was "a real question as  
14 to whether or not [the defendant] currently has sufficient  
15 liquid assets to satisfy any judgment of restitution ordered  
16 by the Court," and it therefore "seem[ed] totally  
17 appropriate to restrain [the defendant] from dissipating his  
18 assets prior" to sentencing. *Id.* (emphasis added).

19           Relying on *Ross*, the Eastern District of New York used  
20 the All Writs Act to restrain the defendants' 26,600 coins  
21 (valued somewhere between \$430,000 and \$860,000) in  
22 anticipation of sentencing. *Numisgroup Int'l Corp.*, 169 F.  
23 Supp. 2d at 136-38. The court reasoned that "[t]here is no

1 logic to the position that the Court is powerless to enter a  
2 restraining order after a jury has found a defendant guilty  
3 of participating in a large-scale fraud simply because  
4 sentencing has been delayed.'" *Id.* at 138 (quoting *Ross*,  
5 1993 WL 427415, at \*1). In explaining its order, the court  
6 also expressed concern over one defendant's lack of assets  
7 available to satisfy the court's future order of  
8 restitution. *See id.* at 138.

9 Similarly, in *Sullivan*, the Eastern District of North  
10 Carolina determined that a restraining order was warranted  
11 pursuant to the All Writs Act because the defendant, who had  
12 previously pled guilty to eleven counts of manufacturing  
13 child pornography and one count of possession of child  
14 pornography, was attempting to dispose of his assets prior  
15 to sentencing and a probable order of restitution. 2010 WL  
16 5437243, at \*1, \*7. The court explained that it would be  
17 "'without any meaningful ability to impose a proper  
18 sentence'" if it could not issue an order stopping a  
19 convicted defendant awaiting sentencing from disposing of  
20 assets in an effort to avoid paying restitution or other  
21 fines and court costs. *Id.* at \*6 (quoting *United States v.*  
22 *Gates*, 777 F. Supp. 1294, 1296 n.7 (E.D. Va. 1991)).

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1           The Eighth Circuit recently issued a set of decisions  
2 that strongly suggest it takes a similar position regarding  
3 a sentencing court's ability to restrain a defendant's funds  
4 pursuant to the All Writs Act. *See United States v.*  
5 *Yielding*, 657 F.3d 688 (8th Cir. 2011) ("*Yielding I*"); *see*  
6 *also United States v. Yielding*, 657 F.3d 722 (8th Cir. 2011)  
7 ("*Yielding II*"). In *Yielding I*, the Eighth Circuit vacated  
8 and remanded the district court's approximately \$1 million  
9 restitution order after finding that the court below erred  
10 in presuming that restitution was mandatory. *See* 657 F.3d  
11 at 718-19. In *Yielding II*, decided on the same day, the  
12 court affirmed the district court's issuance of a TRO to  
13 prevent the defendant from spending or transferring any of  
14 the \$160,000 he was likely to receive as a settlement in an  
15 unrelated civil case. 657 F.3d at 727-28. The Eighth  
16 Circuit confirmed the district court's authority to issue  
17 the TRO pursuant to the All Writs Act because the  
18 restraining order was appropriate in aid of the court's  
19 exercise of jurisdiction to ensure that the defendant's  
20 assets were available for paying restitution. *See id.* at  
21 726-28. "We agree that a sentencing court has jurisdiction  
22 to enforce its restitution order and may use the All Writs  
23 Act, when necessary and appropriate, to prevent the

1 restitution debtor from frustrating collection of the  
2 restitution debt." *Id.* at 727. Because the Eighth Circuit  
3 vacated the restitution order itself on the same day it  
4 affirmed the TRO, the court effectively held that the All  
5 Writs Act gave the district court the power to issue a  
6 restraining order for the purpose of ensuring that  
7 sufficient funds would be available to satisfy any future  
8 order of restitution.

9 Aided by the relevant case law, we conclude that the  
10 district court properly exercised its authority under the  
11 All Writs Act to restrain Ageloff's assets in anticipation  
12 of resentencing.<sup>3</sup> Ageloff pled guilty to committing a crime  
13 for which restitution is mandatory under the MVRA. *See* 18  
14 U.S.C. § 3663A(c)(1)(A)(ii). Given that Ageloff agreed to a  
15 sentencing enhancement for fraud causing losses of \$80  
16 million or more, the eventual restitution order was certain  
17 to exceed \$536,000. *See Catoggio*, 326 F.3d at 329.  
18 Although we believe that this circumstance alone would be  
19 sufficient to justify the district court's exercise of its

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<sup>3</sup> That the district court did not cite to the All Writs Act in reaching its decision is of no consequence; we are free to affirm on any legal basis for which there is sufficient support in the record. *See, e.g., Alfaro Motors, Inc. v. Ward*, 814 F.2d 883, 887 (2d Cir. 1987).

1 power under the All Writs Act, other facts highlight the  
2 need to ensure compliance with the district court's  
3 anticipated order of restitution: specifically, Ageloff's  
4 2008 conviction for conspiring to launder millions of  
5 dollars in proceeds from this fraud scheme.

6 Moreover, Ageloff's argument that the district court's  
7 refusal to release any of his money denied him the right to  
8 counsel of his choice in violation of the Sixth Amendment is  
9 without merit. In *United States v. Monsanto*, the Supreme  
10 Court held that a pretrial restraining order freezing the  
11 defendant's assets did "not 'arbitrarily' interfere with a  
12 defendant's 'fair opportunity' to retain counsel." 491 U.S.  
13 600, 616 (1989) (quoting *Powell v. Alabama*, 287 U.S. 45, 69,  
14 53 (1932)). This reasoning applies with "even greater  
15 force" here because Ageloff had already pled guilty to both  
16 the underlying fraud scheme and later to attempting to  
17 launder its proceeds from his prison cell. See *Numisgroup*  
18 *Int'l Corp.*, 169 F. Supp. 2d at 139. In any event, Ageloff  
19 was ably represented by CJA counsel at the time of  
20 resentencing and for purposes of this appeal.

21 Ageloff's remaining arguments on appeal are without  
22 merit. For example, contrary to Ageloff's assertions, the  
23 district court was not required to hold an evidentiary

1 hearing prior to resentencing provided that Ageloff was  
2 afforded sufficient opportunity to be heard. *See United*  
3 *States v. Slevin*, 106 F.3d 1086, 1091 (2d Cir. 1996). He  
4 was. Finally, Ageloff cannot make out any constitutional or  
5 statutory claim based on the eight-year delay in  
6 resentencing because he did not suffer prejudice. *Cf.*  
7 *United States v. Ray*, 578 F.3d 184, 202 (2d Cir. 2009).

8

9

### Conclusion

10 For the foregoing reasons, the order of the district  
11 court is hereby **AFFIRMED**.