

NONPRECEDENTIAL DISPOSITION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 May 26, 2023*

Decided June 21, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 22-2876

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

CHARLES A. HEWITT,
Defendant-Appellant.

Appeal from the United States District
Court for the Central District of Illinois.

No. 1:18-cr-10059

Joe Billy McDade,
Judge.

ORDER

Charles Hewitt, a federal prisoner, appeals the district court's refusal to modify his restitution order to schedule the payment of restitution during his time in prison. We affirm. The district court correctly ruled that under *United States v. Sawyer*, 521 F.3d 792, 795–96 (7th Cir. 2008), the Bureau of Prisons, rather than the district court, should set that schedule.

* 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).

Hewitt was sentenced, after pleading guilty under a plea agreement, for sex offenses. 18 U.S.C. §§ 2422(b), 2260A. He received 420 months in prison and was ordered to pay \$9,000 in restitution and a \$200 assessment. He agreed that “any and all financial obligations imposed by the Court” were “due and payable immediately upon entry of the judgment of conviction” and that he would not “dissipate assets or [] request any delay or stay in the payment of any and all financial obligations.” He also “waive[d] all rights to appeal and/or collaterally attack his conviction and sentence,” including the restitution order (except for a claim of ineffective assistance of counsel). According to the original judgment, “[a]s long as any balance remains due and owing toward the Restitution, [Hewitt] is to pay 40% of his disposable income towards Restitution.” The next day, Hewitt moved to amend the restitution order to specify that interest on that debt did not accrue during incarceration. The government did not oppose his motion, and the court amended the judgment to reflect the change.

Two years later and citing 18 U.S.C. § 3572(d) and 18 U.S.C. § 3664(k), which concern restitution, Hewitt again moved to modify the restitution order. Asserting economic hardship, he asked the court to set a monthly payment schedule and argued that the Bureau of Prisons could not set the schedule while he was in prison. (He asked that 50% of the monthly payments come from any prison employment and only between 10% and 20% of his entire income go to restitution.) The government had three responses. First, it argued, the court did not have jurisdiction to consider a motion under § 3664(k) to set a payment schedule. Second, it explained that under *Sawyer* the Bureau of Prisons may and should set the payment schedule during incarceration. Finally, it argued that Hewitt had, in his plea agreement and elsewhere, waived any challenge to the restitution order.

The district court granted the motion in part and denied it in part. The court identified in the judgment an ambiguity about when, after his release from prison, Hewitt had to start paying down any outstanding balance of his restitution debt. It therefore amended the judgment: For any unpaid balance, Hewitt must pay monthly installments of 20% of his gross income “beginning 60 days after release” from prison. (That modification, the government concedes, is “not at issue in this appeal.”) But the district court declined to set a payment schedule during Hewitt’s incarceration, deferring instead to the Bureau of Prisons. Hewitt appeals that latter decision.

We begin by briefly addressing the government’s argument that the district court lacked jurisdiction over Hewitt’s request to have the court, rather than the Bureau, set a

payment schedule during his incarceration. Hewitt invoked § 3664(k), which permits a court to “adjust the payment schedule” based on a material change in a defendant’s economic circumstances. Whether Hewitt warranted relief on the merits of his motion is separate from whether the district court had jurisdiction to consider it. *See United States v. Simon*, 952 F.3d 848, 853 n.2 (7th Cir. 2020). Because Hewitt argued that his restitution debt had become too onerous, the district court had jurisdiction to consider his motion to adjust the schedule. *See United States v. Goode*, 342 F.3d 741, 743 (7th Cir. 2003).

But on the merits, the district court properly denied Hewitt’s request to schedule restitution payments during his incarceration. First, based on his plea agreement, Hewitt waived his argument that the district court may not allow the Bureau of Prisons to schedule payments while he is incarcerated. *See United States v. Hernandez*, 44 F.4th 1053, 1057–58 (7th Cir. 2022). Regardless, *Sawyer* forecloses his argument that the district court wrongly allowed the Bureau of Prisons to set a payment schedule during incarceration. To the contrary, we wrote that “as a rule” the Bureau “should” do so. 521 F.3d at 794–96; *see United States v. Hernandez*, 952 F.3d 856, 861 (7th Cir. 2020). Hewitt directs this court to contrary holdings from other courts of appeals, but *Sawyer* addressed those cases and rejected their reasoning. 521 F.3d at 795. Hewitt does not present any compelling reason to overrule our precedent. *See Campbell v. Kallas*, 936 F.3d 536, 544 (7th Cir. 2019). He alternatively argues that he is not asking the district court to schedule payments but only to set a percentage of disposable funds for restitution during his imprisonment. Again, that determination rests properly with the Bureau of Prisons. *See Sawyer*, 521 F.3d at 794–96.

AFFIRMED