

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE No. 11-60273-CR-DIMITROULEAS

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DALE PETERS,

Defendant,

FILED by MC D.C.
JUN 07 2013
STEVEN M. LARIMORE
CLERK U.S. DIST. CT.
S. D. of FLA. - MIAMI

AMENDED APPLICATION FOR WRIT OF EXECUTION¹

Pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3203, the Plaintiff, the United States of America, by the undersigned Assistant United States Attorney for the Southern District of Florida, hereby applies for the issuance of a Writ of Execution . In support of this Application, the United States asserts the following:

1. On February 12, 2013, the court entered an Amended Judgment against the defendant, DALE PETERS, including an order of restitution in the amount of \$5,362,039.69, and an assessment of \$3,200.00, plus statutory interest pursuant to 18 U.S.C. § 3612 (DE 743).

2. To date, the defendant has not made any payments towards the forgoing criminal debt.

3. There is property in which the debtor has possession, custody, or control, and in which the debtor has a substantial nonexempt interest which may be levied upon for payment of the above judgment. The property is described as follows:

¹ This Amended Application corrects various scrivener's errors in the original (DE. 770)

4. The defendant's Social Security Number is XXX-XX-1494 and his last known address is:

221 South Fremont Street
Apt. 306
San Mateo, CA 94401

WHEREFORE, the United States respectfully requests that the Court issue a Writ of Execution in accordance with the Federal Debt Collection Procedures Act of 1990. A proposed Writ of Execution is attached.

Dated: June 7, 2013
Miami, FL

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By:



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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
CASE No. 11-60273-CR-DIMITROULEAS

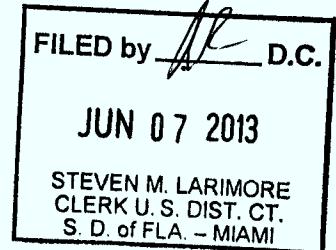
UNITED STATES OF AMERICA,

Plaintiff,

vs.

DALE PETERS,

Defendant,



AMENDED WRIT OF EXECUTION¹

TO: THE UNITED STATES MARSHAL

On February 12, 2013, an Amended Judgment was entered in the United States District Court for the Southern District of Florida, in favor of the United States of America, plaintiff, and against the defendant Dale Peters, last known address is 221 South Fremont Street, Apt. 306, San Mateo, CA 94401., including an order of restitution in the amount of \$5,362,039.69, and an assessment of \$3,200.00, plus statutory interest.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED to satisfy the judgment by levying on and selling the property in which the defendant has a substantial nonexempt interest which may be levied upon for payment of the above judgment, described as follows:

21065 Christopher Circle
Sonora, CA 95370

¹ This Amended Writ of Execution replaces and supersedes the original Writ of Execution (DE. 771)

YOU ARE FURTHER COMMANDED that the levy and sale shall not exceed property reasonably equivalent in value to the aggregate amount of the judgment and cost.

NOTICE TO DEBTOR PURSUANT TO 28 U.S.C. § 3202 (b)

You are hereby notified that the property subject to the Writ of Garnishment or Execution is being taken by the United States Government, which has a court judgment in the above captioned case, as more fully described in the Writ.

In addition, you are hereby notified that there are exemptions under the law which may protect some of this property from being taken by the United States Government if the judgment debtor can show that the exemptions apply. Below is a summary of the exemptions which may apply:

Exemptions available under the laws of the State of Florida are generally not available to a federal criminal judgment debtor in proceedings commenced under the Federal Debt Collection Procedures Act. The following property is, however, exempt from levy under federal law: (1) wearing apparel and school books; (2) fuel, provisions, furniture and personal effects; (3) books and tools of a trade, business, or profession; (4) unemployment benefits; (5) undelivered mail; (6) certain annuity and pension payments¹; (7) workmen's compensation; (8) judgments for support of minor children; (9) a minimum exemption for wages, salary and other income; (10) certain service-connected disability payments; and (11) assistance under the Job Training Partnership Act.

If you are the judgment debtor, you have a right to ask the court to return your property to you if you think the property the Government is taking qualifies under one of the above

¹ These are annuity or pension payments under the Railroad Retirement Act, benefits under the Railroad Unemployment Insurance Act, special pension payments received by a person whose name has been entered on the Army, Navy, Air Force, and Coast Guard Medal of Honor roll, and annuities based on retired or retainer pay under chapter 73 of title 10 of the United States Code.

exemptions or if you think you do not owe the money to the United States Government that it says you do.

If you want a hearing, you must notify the court within 20 days after you receive this notice. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at United States District Court, 400 N. Miami Ave., 8th Floor, Miami, FL 33128. You may send a copy of your request to the United States Attorney's Office at 99 N.E. 4th Street, Miami, Florida 33132, so the Government will know you want a hearing. The hearing will take place within 5 days after the clerk receives your request, if you ask for it to take place that quickly, or as soon after that as possible.

At the hearing you may explain to the judge why you believe the property the Government has taken is exempt or why you think you do not owe the money to the Government. If you do not request a hearing within 20 days of receiving this notice, your property may be sold and the payment used toward the money you owe the Government.

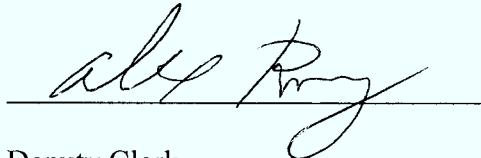
If you think you live outside the Federal judicial district in which the court is located, you may request, not later than 20 days after you receive this notice, that this proceeding to take your property be transferred by the court to the Federal judicial district in which you reside. You must make your request in writing, and either mail it or deliver it in person to the clerk of the court at United States District Court, 400 N. Miami Ave., 8th Floor, Miami, Florida 33128. You must also send a copy of your request to the United States Attorney's Office at 99 N.E. 4th Street, Miami, Florida 33132, so the Government will know you want the proceeding to be transferred.

Be sure to keep a copy of this notice for your own records. If you have any questions about your rights or about this procedure, you should contact a lawyer, an office of public legal

assistance, or the clerk of the court. The clerk is not permitted to give legal advice, but can refer you to other sources of information.

DONE AND ORDERED in Chambers at Miami, Florida, this 7th day of June, 2013.

STEVEN M. LARIMORE
CLERK OF COURT
UNITED STATES DISTRICT COURT

By: 

Deputy Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

Case No. 11-60273-CR-DIMITROULEAS

UNITED STATES OF AMERICA,
Plaintiff,

vs.

DALE PETERS,
Defendant.

/

**DEFENDANT PETERS' RESPONSE TO THE AMENDED APPLICATION
FOR WRIT OF EXECUTION (DE#773) AND THE AMENDED WRIT OF
EXECUTION (DE#774), DEMAND FOR HEARING, AND TO TRANSFER
PROCEEDINGS TO THE DISTRICT WHEREIN DEFENDANT RESIDES**

COMES NOW the Defendant, DALE PETERS, by and through undersigned appointed counsel as requested by Defendant, and hereby filed his responses to the amended application and amended writ of execution filed in this case, and as grounds therefore, says:

Undersigned counsel was appointed to represent Defendant in his criminal case (Case No. 11-60273) through sentencing (February 1, 2013). Upon filing Defendant's Notice Of Appeal of his conviction and sentence (DE#732), undersigned counsel was appointed to represent Defendant/Appellant in his direct appeal presently pending before the Eleventh Circuit Court of Appeals (Case No. 13-10602-C).

On or about June 7, 2013, the government filed its Amended Application For Writ Of Execution (DE#773) regarding certain property located in San Mateo, California, and purportedly in the possession, custody or control of Defendant, seeking a writ of execution to satisfy the order of restitution and special assessment entered in the court's Amended Judgment dated February 12, 2013. On June 7, 2013, the same date the government filed its application, a deputy clerk of this court entered the Amended Writ Of Execution (DE#774), advising that the government is seeking to take Defendant's property in satisfaction of the judgment of restitution and special assessment. Undersigned counsel forwarded a copy of the pleadings to the Defendant, who is incarcerated in a federal facility located in Atwater, California.

The Defendant has requested undersigned counsel to file this Response and objection to the taking of any property, that such is exempt from levy and sale, that Defendant is presently appealing his conviction and the sentence of imprisonment and imposition of restitution and the special assessment, and thus no final order exists for such levy and taking, and that the property subject to levy not be sold, rather, returned to Defendant, and further that a Hearing is specifically demanded by Defendant, and, because Defendant presently resides outside the district of this court, that any proceedings herein be transferred to the federal judicial district in which he resides.

By this pleading, as friend of court and on behalf of Defendant *pro se*, undersigned counsel is not making an appearance to represent Defendant in this post-

conviction collection proceeding, rather, counsel is notifying the government and the Clerk of the Court of his request for a hearing, to transfer the proceedings to the district in which he resides, and to object to any levy or taking of his property to satisfy a non-final judgment of the district court.

All further correspondence, pleadings and/or Notices should be furnished to Defendant personally at:

Dale Peters
No. 68015-097
USP Atwater
Camp Facility
P.O. Box 019001
Atwater, CA 95301

WHEREFORE, based upon the above and foregoing, the Defendant, DALE PETERS, files this response, objection, request for hearing and to transfer these proceedings to the federal district of Atwater, California.

/S/
MICHAEL G. SMITH, ESQ.
For Defendant, *pro se*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 1, 2013, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF, and that the foregoing document is being served this day on all counsel of record via transmission of Notices of Electronic Filing generated by CM/ECF, as well as to Defendant, Dale Peters, No. 68015-097, USP Atwater, Camp Facility, P.O. Box 019001, Atwater, CA, 95301.

/s/ Michael G. Smith
MICHAEL G. SMITH, ESQ.
FBN 265802
Smithlawdefend@aol.com
110 Tower, Suite 1970
110 Southeast Sixth Street
Fort Lauderdale, FL 33301
(954) 761-7201 - Office
(954) 764-2443 - Fax
For *Dale PETERS, pro se*

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 11-60273-CR-DIMITROULEAS

**UNITED STATES OF AMERICA,
Plaintiff,**

v.

**DALE PETERS,
Defendant.**

**PLAINTIFF'S RESPONSE TO DEFENDANT'S OBJECTION,
REQUEST FOR HEARING AND CHANGE OF VENUE**

Plaintiff, United States of America hereby responds to Defendant Dale Peters' Response to the Amended Writ of Execution [D.E. 792].

INTRODUCTION

On February 4, 2013, the Court convicted Defendant Dale Peters of conspiring to defraud the United States, in violation of 18 U.S.C. § 286, and presenting false and fictitious claims upon the United States, in violation of 18 U.S.C. § 287. *See* D.E. No. 718. Defendant Peters was sentenced to serve 144 months in prison and pay \$5,362,039.69 in restitution to the Internal Revenue Service.

On June 7, 2013, to secure Defendant Peters' payment of restitution, the United States sought, and the Court issued, a Writ of Execution pursuant to the Federal Debt Collection Procedures Act (28 U.S.C. § 3001, *et seq.*) for the levy of a home owned by Mr. Peters in Sonora, California. *See* D.E. 773 and 774. On July 1, 2013, attorney Michael Smith filed a response objecting to the Writ of Execution on Mr. Peters' behalf. See D.E. 792. On July 18,

2013, Mr. Peters, pro se, filed an affidavit in support of his objections to the Writ of Execution.

Defendant Peters objects to the Writ of Execution because (1) his property is exempt from levy, and (2) he is appealing his conviction and sentence and his financial obligations are not final. Defendant Peters requests a hearing on his objections and asks that these proceedings be transferred to California, where he is incarcerated. As explained below, Defendant Peters' objections lack merit and these proceedings should not be transferred.

ARGUMENT

I. Defendant Peters' Real Property is Not Exempt from Levy

Defendant vaguely objects to the Writ of Execution on the grounds that the property at issue is exempt from levy. Defendant Peters' Affidavit suggests that Mr. Peters' belief that his property is exempt from levy is based on homestead protection under the laws of the State of California. *See* D.E. 796, ¶ 14. As explained below, however, the exemptions available to a criminal defendant debtor are extremely limited and exemptions provided by state law do not apply to the government's efforts to collect federal criminal restitution.

Under the Mandatory Victim Restitution Act ("MVRA"), an order for restitution "is a lien in favor of the United States on all property and rights to property of the person fined as if the liability of the person fined were a liability for tax assessed under the Internal Revenue Code of 1986." 18 U.S.C. § 3613(c). The only property exemptions available to a criminal defendant are those provided under the MVRA. *See* 18 U.S.C. § 3613(a). The MVRA provides that the United States may enforce a judgment imposing a fine and/or restitution against all property or rights to property of the defendant except property exempt from levy for taxes pursuant to 26 U.S.C. § 6334(a)(1)(2)(3)(4)(5)(6)(7)(8)(10) and (12). Such exempt property is limited to (1) wearing apparel and school books; (2) fuel, provisions, furniture and personal effects; (3) books

and tools of a trade, business, or profession; (4) unemployment benefits; (5) undelivered mail; (6) certain annuity and pension payments; (7) workmen's compensation; (8) judgments for support of minor children; (9) a minimum exemption for wages, salary and other income; (10) certain service-connected disability payments; and (12) assistance under the Job Training Partnership Act. See 26 U.S.C. §6334(a)(1)(2)(3)(4)(5)(6)(7)(8)(10) and (12). Defendant's contrary suggestion notwithstanding, there is no exemption for a defendant's homestead.

While the State of California may provide homestead protection under state law, the Supremacy Clause of the United States Constitution provides for the preemption of state statutes that conflict with federal law. U.S. Const. art. VI, cl. 2. The United States Supreme Court has specifically held that state homestead laws are preempted by federal tax collection laws. *United States v. Rogers*, 461 U.S. 677, 701,(1983); *United States v. Mitchell*, 403 U.S. 190, 205 (1971). Such laws are also preempted by federal laws regarding the collection of federal criminal restitution. *See, e.g., United States v. Hyde*, 2007 WL 2253522 * 2 (1st Cir. Aug.6, 2007) (addressing a defendant's claim that the Massachusetts homestead exemption trumped the government's authority to garnish the sale proceeds of his home to satisfy a federal restitution order, the First Circuit held that garnishment of the proceeds was proper because the government's lien was equivalent to a tax lien and that it is "well established that the Supremacy Clause provides the underpinning for the Federal Government's right to sweep aside state-create exemptions in the face of tax liability"). *See also United States v. Lampien*, 89 F.3d 1316, 1321 (7th Cir.1996) ("[I]f the Wisconsin homestead exemption applies to ... prevent any part of the proceeds from the sale of [defendant's] home from being used to satisfy her restitution obligation, the homestead exemption is void under the Supremacy Clause."); and *United States v. Jaffe*, 314 F.Supp.2d 216, 227 (S.D.N.Y.2004) ("Florida homestead law will not protect

[defendant] with respect to his duty to provide restitution to his victim.”). Therefore, Defendant’s property is not exempt from levy to satisfy his criminal monetary penalties.

II. The Restitution Judgment Imposed is Enforceable Notwithstanding Defendant’s Appeal of his Conviction and Sentence

As discussed above, a federal criminal judgment requiring payment of restitution creates a lien in favor of the United States on all of the defendant’s property. *See* 18 U.S.C. § 3613(c). Such a lien may be enforced immediately upon entry of the judgment. *See, e.g., U.S. v. Weissenbach*, 2010 WL 2246177, *2 (W.D.N.C. June 2, 2010); *United States v. Hanhardt*, 2004 WL 3104827, *1 (N.D.Ill.). Defendant’s appeal of his conviction and sentence does not automatically stay the defendant’s sentence, including restitution. While the District Court (under Federal Rule of Criminal Procedure 38) or the Court of Appeals (under Federal Rule of Appellate Procedure 8) may stay a sentence providing for restitution, no such stay has been issued in Defendant Peters’ case. Accordingly, the restitution judgment imposed against Defendant Peters is enforceable notwithstanding his appeal.

III. Transfer of These Proceedings is Not Appropriate

Although a provision of the Federal Debt Collection Procedure Act allows a debtor to seek transfer of a debt collection action to the district in which the debtor resides (*see* 28 U.S.C. §3004(b)(2)), that right does not exist where the transfer would be inconsistent with other federal laws. As demonstrated below, a transfer of debt collection proceedings in this criminal case would be inconsistent with the Court’s continuing jurisdiction and obligation to enforce its criminally imposed judgment.

The FDCPA provides that, “[t]o the extent that another Federal law specifies procedures

for recovering on . . . a judgment for a debt arising under such law, those procedures shall apply to such . . . judgment to the extent those procedures are inconsistent with the [FDCPA]." 28 U.S.C. §3001(b). The specific procedures for recovering on a judgment for fines or restitution is set forth in 18 U.S.C. §§3611-15 . Under those sections, the sentencing court retains jurisdiction over the defendant and is empowered to ensure compliance with its judgments in a number of specified ways. *See* 18 U.S.C.A. § 3613A -- 3615. These include, *inter alia*, revocation of a defendant's probation or supervised release, resentencing, holding the defendant in contempt, and sale of the defendant's property. Transfer of the debt collection proceedings currently pending against Defendant Peters' property to California would be wholly inconsistent with the procedures set forth in 18 U.S.C. §§3611-15 and the Court's continuing jurisdiction to ensure Defendant's payment of the fines and restitution judgment imposed against him. *See U.S. v. Tedder*, 2004 WL 415270, *1 (W.D. Wis. Feb. 26, 2004).

In giving sentencing courts continuing jurisdiction over defendants they have sentenced, Congress anticipated that the courts would supervise compliance with the judgments to which defendants are subject and take action at the government's request if a defendant is in default. Allowing transfer of any part of the enforcement proceedings would be inconsistent with the government's and the court's obligation to insure that the defendant complies with his court-ordered obligations.

Tedder, at *3.

The FDCPA specifically directs courts *not* to construe the Act in a way that would "curtail or limit the right of the United States under any other Federal law . . . to collect any fine, penalty, assessment, restitution, or forfeiture arising in a criminal case. " 28 U.S.C. §3003(b). A transfer of the garnishment proceedings pending in this criminal action would do just that. Therefore, the Court should deny Defendant's request for a transfer of the garnishment proceedings to California.

WHEREFORE, Plaintiff United States of America respectfully submits that the Court should deny Defendant Peters' request for a transfer of the debt collection efforts against him and dismiss Defendant's objections to the issuance of the Writ of Execution.

Dated: July 25, 2013
Miami, Florida

Respectfully submitted,

WIFREDO A. FERRER
UNITED STATES ATTORNEY

By:

/s/ Carlos Raurell

Carlos J. Raurell
Assistant U. S. Attorney
Florida Bar No. 529893
99 N.E. 4th Street
Miami, Florida 33132
Tel: 305-961-9243
Fax: 305-530-7139

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this document was filed with the Clerk of the Court via CM/ECF on July 25, 2013 and mailed to Defendant Dale Peters, 68015-097, Atwater USP, Inmate Mail/Parcels, P.O. Box 019001, Atwater, CA 95301.

/s/ Carlos Raurell

Carlos Raurell
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

UNITED STATES OF AMERICA,

CASE NO. 11-60273-CR-DIMITROULEAS

Plaintiff,

vs.

DALE PETERS,

Defendant.

O R D E R

THIS CAUSE is before the Court on Defendant Peters' July 1, 2013 Response to the Amended Application for Writ of Execution. [DE-792]. The Court has received a response from the Government [DE-798]. The Court agrees with the Government's response. Defendant Peters' real property is not exempt from levy. U.S. v. Hosking, 567 F. 3d 329 (7th Cir. 2009).

Peter's appeal is pending, but the restitution order has not been stayed.

Transfer of the proceedings is not appropriate.

The Government's Amended Application for For Writ of Execution [DE-773] is Granted.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this

25th day of July, 2013.



WILLIAM P. DIMITROULEAS
United States District Judge

Copies furnished to:

Carlos Raurell, AUSA
Michael Smith, Esquire

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