

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 92-1640  
(Summary Calendar)

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JARRETT E. WOODS, JR.,

Defendant-Appellant.

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Appeal from the United States District Court  
For the Northern District of Texas

(CR3-90-276-T)

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(April 23, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:\*

Defendant-Appellant Jarrett E. Woods, Jr. appeals his jury conviction on numerous counts, including conspiracy, misapplication of funds, aiding and abetting, unlawful participation, false entries, and unlawful receipt. He also appeals the restitution

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\*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

facet of his sentence. Finding no reversible error in the guilt-innocence aspect of the trial, we affirm the conviction of Woods. Finding an impermissible discrepancy, however, between the amount of restitution orally ordered by the sentencing judge and the amount set forth in the written restitution order, we vacate both the oral and written orders of restitution and remand for clarification and imposition of a new restitution order in the correct amount.

## I

### FACTS AND PROCEEDINGS

Woods was convicted for illegal activities related to the failure of Western Savings Association, a Texas savings and loan institution (Western). Woods was chairman of the board of directors and chief executive officer of Western. He illegally used Western's funds to conceal the financial problems of James Reagin, a substantial customer, and to cloak the true net worth of Western.

Woods was convicted of all 35 counts of a superseding indictment, was sentenced to 25 years' imprisonment, and was ordered to pay \$37,771,334.43 in restitution and \$1,750 as a special assessment.

## II

### ANALYSIS

Woods challenges his conviction, arguing that the district court violated his Sixth Amendment right to compulsory process by not granting use immunity to two defense witnesses. He also

challenges his sentence, contending that the sentencing judge erred by ordering him to pay \$37,771,334.43 in restitution.

#### Compulsory Process

On December 9, 1991, Woods filed a motion to dismiss counts one through seven of the indictment on the ground that he would be denied the Sixth amendment right to compulsory process if forced to go to trial on those counts. He argued that he was entitled to the testimony of the attorneys who advised him during the transaction giving rise to the subject counts in the superseding indictment, because he intended to raise the defense of "reliance upon the advice of counsel." Alleging that the two attorneys he intended to call as witnesses would exercise their Fifth Amendment privilege against self-incrimination, Woods requested that the district court: (1) sever counts one through seven until the government granted use immunity to the witnesses or the Court of Appeals ruled that the statute of limitations for charges against the witnesses had run, and (2) permit the liberal use of hearsay testimony so that he (Woods) could show that he relied on the advice of counsel during the transaction underlying counts one through seven. He insisted that the government had strategically manipulated the unavailability of defense witnesses.

On February 6, 1992, Woods filed a second motion to dismiss on the ground of denial of the right to compulsory process. He argued that the district court should "exercise its narrow discretion to grant [use] . . . immunity." Id. at 1279. The district court denied this second motion on the day it was filed.

The government argues that the district court's refusal to grant use immunity should not be reviewed because Woods failed to preserve the issue for appeal. The government is correct on the law but incorrect on the facts. Woods renewed the motion to dismiss the indictment for interference with the right to compulsory process before the district court, and that court overruled the objection. The issue was properly preserved for appeal. Nevertheless, we find that Woods is not entitled to relief.

"District Courts have no inherent power to grant immunity. A district court may not grant immunity simply because a witness has essential exculpatory evidence unavailable from other sources." United States v. Follin, 979 F.2d 369, 374 (5th Cir. 1992) (citing United States v. Thevis, 665 F.2d 616, 638-41 (5th Cir.), cert. denied, 456 U.S. 1008 (1982)). "However, judicially ordered immunity may be sanctioned to stem governmental abuse." Follin, 979 F.2d at 374, citing Thevis, 665 F.2d at 640-41. Although this court has not completely foreclosed the opportunity for a district court to grant use immunity, Thevis, 665 F.2d at 641 (n. 28), we have never held that a defendant was entitled to a judicial levy of immunity for a witness.

Woods argues that the government abused its power and that his conviction should be "vacated[]" and the matter remanded to the district court for a hearing on whether immunity should have been granted to the defense witnesses." The factual predicate for the alleged abuse by the government is the fact that the government

sent letters to Woods' attorneys advising that they may be "targets" in the investigation of Western. The sending of "target letters" not intended to intimidate witnesses does not amount to government misconduct that rises to the level of reversible error. See United States v. Fricke, 684 F.2d 1126, 1130 (5th Cir. 1982), cert. denied, 460 U.S. 1011 (1983). Therefore, Woods has failed to allege facts constituting "governmental abuse" that would entitle him to a grant of immunity for his witnesses. Follin, 979 F.2d at 374. Although we have not specifically identified the circumstances that would warrant a judicial grant of use immunity, the established law of this circuit instructs that the instant facts do not constitute such a circumstance. Fricke, 684 F.2d at 1130. The district court committed no reversible error.

#### Restitution

Woods insists that the sentencing judge erred by ordering him to pay \$37,771,334.43 in restitution because: (1) the district court did not consider the factors listed at 18 U.S.C. § 3664(a); (2) Woods is indigent; (3) the district court failed to resolve disputes concerning the amount of restitution; and (4) the restitution order did not accurately reflect the losses caused by Woods.

First, sentencing judges are accorded broad discretion in ordering restitution. United States v. Ryan, 874 F.2d 1052, 1054 (5th Cir. 1989). To determine the amount of a restitution order, the sentencing judge "shall consider the amount of the loss sustained by any victim as a result of the offense, the financial

resources of the defendant, the financial needs and earning ability of the defendant and the defendant's dependents, and such other factors as the court deems appropriate." United States v. Plewniak, 947 F.2d 1284, 1289 (5th Cir. 1991) (quoting 18 U.S.C. § 3664(a)), cert. denied, 112 S.Ct. 1239 (1992). A sentencing judge is not required to make specific findings on these factors; an appellate court need satisfy itself only that the record adequately supports the district court's order. Id.

Here, the sentencing judge did not express his consideration of the factors listed in 18 U.S.C. § 3664(a); he did, however, consider whether Woods was able to pay a fine. The record need not expressly reflect that the sentencing judge addressed a defendant's ability to pay restitution. Ryan, 874 F.2d at 1053. The decision whether to assign reasons is committed to the sound discretion of the sentencing judge, guided by whether "the record contain[s] sufficient data for the appellate court to perform its mandated review." Id. The record need show only by implication that the sentencing judge considered Woods' ability to pay the restitution. As the court considered Woods' financial ability to pay the fine, it impliedly did so when it ordered him to pay restitution as well. See United States v. Hagmann, 950 F.2d 175, 185-86 (5th Cir. 1991), cert. denied, 113 S.Ct. 108 (1992).

Second, Woods' present indigency is not a bar to an order of restitution. Ryan, 874 F.2d at 1054. The sentencing judge did not err by ordering restitution despite his finding that Woods had no present ability to pay a fine.

Third, Woods objected to the loss calculations in the Victim Impact Statement of the PSR, alleging that he was not directly responsible for any loss to Western other than the \$33,000 he used to pay a personal gambling debt. The PSR calculated total losses of \$37,948,160<sup>1</sup> incurred as a result of Woods' illegal activity, stating that the FDIC "will provide a detailed synopsis of its determination of loss." The FDIC letter requested restitution in the amount of \$37,771,334.43. The sentencing judge adopted the findings on the PSR and ordered Woods to pay \$37,948,160 in restitution "for the benefit of the Federal Deposit Insurance Corporation." Nevertheless, in the written judgment, he ordered Woods to "pay restitution to the U. S. Department of Justice in the amount of \$37,771,334.43, plus 4.11% post-judgment interest."

By adopting the findings in the PSR and ordering Woods to pay \$37,948,160 in restitution, the sentencing judge implicitly rejected Woods' contention that he was responsible for only \$33,000 of Western's losses and determined that the PSR accurately reflected the loss to Western. It is clear from the record that the sentencing judge resolved the dispute concerning the amount of restitution in favor of the government and thus against Woods.

Finally, however, Woods correctly contends that there is an inaccuracy in the restitution order, i.e., a discrepancy in the amounts contained in the oral and written orders. Although the dispute between Woods and the government concerning the amount of restitution was resolved in favor of the government, the exact figure that should apply is unclear. The judge orally ordered

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<sup>1</sup> This amount was described as a "tentative figure" by the probation officer.

Woods to pay \$37,948,160 (the "tentative figure" from the PSR); but the written judgment specified that Woods was to pay \$37,771,334.43 (the amount requested by the FDIC). Apparently the sentencing judge changed the amount to accord with the FDIC's request. The FDIC's letter provides a detailed breakdown of the losses resulting from Woods' activities. In contrast, the Victim Impact Statement in the PSR outlined the losses in more general terms.

When there is a discrepancy between an oral and a written pronouncement of sentence, the oral sentence controls. United States v. Shaw, 920 F.2d 1225, 1231 (5th Cir.) (citation omitted), cert. denied, 111 S.Ct. 2038 (1991). The written pronouncement may be used only "to clarify an ambiguous oral sentence . . . [but the written judgment may not be used] to impeach the oral sentence." United States v. Chagra, 669 F.2d 241, 261 (n. 29) (5th Cir.) (citation omitted), cert. denied, 459 U.S. 846 (1982). As the FDIC's figure was the more definite and is lower than the pronounced oral figure, we have no choice but to vacate the earlier oral restitution order and remand this case to the district court with instructions to impose the \$37,771,334.43 restitution order. See Shaw, 920 F.2d at 1231.

Woods' conviction is AFFIRMED, but the restitution order is VACATED and the case REMANDED to the district court for clarification of the amount of restitution Woods is to make and issuance of an order of restitution reflecting such amount.