

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-20684  
Conference Calendar

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UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

EDWARD LAVELLE DUNCAN,

Defendant-Appellant.

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 94-CR-75-1  
- - - - -

June 29, 1995

Before JONES, WIENER, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Edward Lavelle Duncan contends that the district court abused its discretion by ordering restitution when the record reveals that Duncan does not have the ability to pay restitution. Duncan also contends that the district court's findings on the issue of ability to pay are insufficient. In imposing a restitution order, the district court "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." 18

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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 Pursuant to that Rule, the court has determined that this opinion should not be published.

U.S.C. § 3664(a). The defendant bears the burden of showing that he lacks the financial ability to pay restitution. Id.

An order of restitution will be reversed on appeal only when the defendant shows that it is probable that the court failed to consider a mandatory factor and the failure to consider the mandatory factor influenced the court. The Court's failure to follow the statutory requirements is reviewed for abuse of discretion.

United States v. Reese, 998 F.2d 1275, 1280-81 (5th Cir. 1993) (internal citation omitted).

In this Circuit, sentencing courts are required to consider a defendant's ability to pay but are not required to make explicit findings on that issue. United States v. Barndt, 913 F.2d 201, 204 (5th Cir. 1990). A defendant's "indigency at the time restitution is ordered is not a bar to the requirement of restitution." United States v. Ryan, 874 F.2d 1052, 1054 (5th Cir. 1989); see United States v. Stafford, 896 F.2d 83, 84 (5th Cir. 1990). In Ryan, the Court adopted the reasoning of other circuits in cases involving significant restitution orders and indigent defendants:

[T]he Victim and Witness Protection Act does not prohibit restitution in such instances; and a defendant's financial situation may well change in the future, making him able to pay some if not all the restitution ordered. Even some payment in the future, no matter how minuscule it might be in relation to the victim's loss, would be in keeping with the philosophy of the Act.

874 F.2d at 1054. The district court did expressly consider Duncan's financial circumstances. Although Duncan demonstrated that he is indigent, Duncan did not identify any significant future financial responsibilities which would prevent him from making restitution payments. AFFIRMED.