

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 95-10864
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JAMES OLUMIDE ADEOYE,

Defendant-Appellant.

Appeal from United States District Court
for the Northern District of Texas
USDC No. 94-CR-209-X

September 20, 1996

Before EMILIO M. GARZA, STEWART and PARKER, Circuit Judges.

PER CURIAM:*

James Olumide Adeoye pled guilty to a two count information charging fraudulent use of a social security number and mail fraud. After his original sentence was vacated by this court, the district court on remand resentenced Adeoye to 18 months' imprisonment with three years' supervised release, fined him \$4,000, and ordered him to pay \$162,045 in restitution. At the resentencing hearing, the district court stated, "The fine and the restitution will be made in monthly

*Pursuant to Local Rule 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in Local Rule 47.5.4.

installments of no less than \$750 per month.” The district court also stated that should Adeoye be able to pay more, he would be required to pay more. Adeoye made no objection. The district court’s subsequent written judgment states:

The fine shall be payable through the Bureau of Prisons Inmate Financial Responsibility Program during the period in which he is in custody, and the balance shall be payable through monthly installments of at least \$124 per month, beginning 60 days after release from custody.

The judgment also states:

Restitution is to be paid in 36 monthly installments at the rate of \$4,501.27 per month and is to be paid during the defendant’s supervision term; however, the amount shall at no time be less than \$750.00 per month. If the defendant has the ability to pay more than the amount ordered, he is ordered to do so.

Adeoye filed a timely notice of appeal arguing that where, as here, there is a discrepancy between the oral and written orders, the oral pronouncement controls.

It is well settled law in this circuit that when the oral pronouncement of sentence varies from the written, the oral prevails. United States v. Shaw, 920 F.2d 1225, 1231 (5th Cir.), cert. denied, 500 U.S. 926 (1991); United States v. Chagra, 669 F.2d 241, 261 n.29 (5th Cir.), cert. denied, 459 U.S. 846 (1982). The discrepancy is clear: By the oral pronouncement, the payment on both the fine and the restitution are to total at least \$750 per month. The court’s written order specifies that defendant is to pay at least \$750 per month in restitution only. We therefore remand the case to the district court with instructions to impose a sentence requiring monthly installment payments of no less than \$750 for both the fine and the restitution.