

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	CRIMINAL NO. 3:07CR274
v.)	
)	
MICHAEL VICK,)	
a/k/a "Ookie,")	
)	
Defendant.)	

GOVERNMENT’S MOTION FOR RESTRAINING ORDER

COMES NOW, the United States of America, by and through Chuck Rosenberg, United States Attorney for the Eastern District of Virginia, Brian L. Whisler and G. Wingate Grant, Assistant United States Attorneys, and hereby moves this Honorable Court to enter an order restraining the Defendant from dissipating assets of the value of the minimum amount of restitution the Defendant will be required to pay as part of the sentence to be imposed in this case. In support thereof, the United States shows unto this Court the following.

A. Factual Background

Since 2001, Defendant MICHAEL VICK, along with co-defendants PURNELL PEACE, QUANIS PHILLIPS, and TONY TAYLOR, operated an illegal dog fighting operation at 1915 Moonlight Road in Surry County, Virginia. In June 2001, VICK purchased the 1915 Moonlight Road property to serve as the base of operations for the dog fighting operation. In 2002, VICK and his co-defendants agreed to name their illegal dog fighting operation "Bad Newz Kennels." Over the years, "Bad Newz Kennels" hosted a number of dog fights at 1915 Moonlight Road and traveled across state lines to other dog fights in North Carolina, South Carolina, Alabama,

Maryland, Pennsylvania, New Jersey, and other places. In connection with this dog fighting activities, “Bad Newz Kennels” amassed a significant number of pit bulls on the Surry County property. In early 2007, the number of fighting dogs on the property exceeded 50.

On April 25, 2007, state investigators executed two search warrants at 1915 Moonlight Road, Smithfield, Virginia, which was owned by Defendant Michael Vick, also known as “Ookie.” During those searches, the officers recovered and observed numerous items associated with an illegal animal fighting venture, including approximately 54 pit bull dogs. Those pit bulls, along with a few other dogs, were seized by state officials and placed in various shelters around the Commonwealth of Virginia. The dogs, along with the other evidence seized on April 25, 2007, were secured as evidence for criminal proceedings. In connection with the federal investigation, the United States filed a civil suit to forfeit the pit bulls under 7 U.S.C. § 2156(f). On August 31, 2007, this Court entered the final order of forfeiture. *See United States v. Approximately 53 Pit Bulldogs*, Docket No. 3:07CV397.

B. Status of Criminal Proceedings and Dog Evaluations

On July 17, 2007, PEACE, PHILLIPS, TAYLOR, and VICK were all named in a one-count federal criminal indictment charging them with Conspiracy to Travel in Interstate Commerce in Aid of Unlawful Activities and to Sponsor a Dog in an Animal Fighting Venture, in violation of 18 U.S.C. § 371. Beginning with TAYLOR on July 30, 2007, and concluding with VICK on August 27, 2007, all four defendants entered pleas of guilty to the conspiracy charge. VICK’s written plea agreement, which filed with this Court on August 27, 2007, includes the following provision with respect to his restitution obligations in this case:

Pursuant to 18 U.S.C. §3663A(a)(3) and §3663(a)(3), defendant agrees to make restitution for the full amount of the costs associated with the disposition of all

dogs which are currently the subject of the civil action known as United States v. Approximately 53 Pit Bull Dogs, Case No. 3:07CV397. Such costs may include, but are not limited to, all costs associated with the care of the dogs involved in that case, including if necessary, the long-term care and/or the humane euthanasia of some or all of those animals as may be directed by the court in that case.

Vick Plea Agreement, ¶ 8. This provision, which was entered in direct accordance with applicable law, is aimed at ensuring that VICK shoulders the financial burden accompanying the seizure, maintenance, and long-term care of the pit bulls seized from “Bad Newz Kennels” on April 25, 2007. In addition to the contractual agreement between VICK and the United States, restitution is mandatory, *see* 18 U.S.C. § 3663A(a)(1), and the statute governing forfeiture of the dogs in the related civil case specifically provides: “Costs incurred by the United States for care of animals seized and forfeited under this section shall be recoverable from the owner of the animals if he appears in such forfeiture proceeding or in a separate civil action brought in the jurisdiction in which the owner is found, resides, or transacts business.” 7 U.S.C. § 2156(f).

On August 31, 2007, this Court entered the final order of forfeiture transferring legal title to the pit bull dogs to the United States. Since that time, the dogs have been evaluated by behavioral experts from the American Society for the Prevention of Cruelty to Animals and other organizations. To assist in the evaluation and disposition process, this Court appointed Rebecca J. Huss, Professor of Law at Valparaiso University School of Law, as the guardian/special master on October 15, 2007. The evaluation and placement process remains ongoing and should be completed in the upcoming weeks.

The ongoing evaluation process has revealed that a significant number of these pit bulls may be eligible for adoption and placement in sanctuaries around the United States. The costs associated with seizing, maintaining, and ultimately placing the pit bulls seized from 1915

Moonlight Road is significant, with a current estimate placing the total costs at approximately \$928,073.04. The government remains in the process of working out the particulars of how the restitution funds will be disbursed to the entities responsible for the placement and long-term care of these animals, but believes this estimate is a reasonably accurate restitution figure.

Information on how this figure was computed has been provided to counsel for the defendant and the probation officer.

C. VICK's Financial Condition

In the past few weeks, the Atlanta Falcons and numerous financial institutions have initiated legal proceedings against VICK to recover money related to his signing bonus and a number of loans. The government has been informed of the following pending matters relevant to this issue:

- The Atlanta Falcons football team initiated an arbitration proceeding to recoup bonus money from a 10-year, \$130 million contract executed by VICK in 2004. On October 9, 2007, the arbitrator ruled that the Falcons can recover \$19.97 million in bonuses from VICK. The ruling is presently on appeal.
- Wachovia Bank has filed a federal lawsuit alleging a default on a \$1.3 million loan for a wine store. VICK, among others, owes \$937,907.61 in principal, along with interest and fees totaling \$1,876.60, and \$34,680.85 in funds overdrawn from their checking accounts;
- The Royal Bank of Canada, conducting business in the United States as RBC Centura, has filed suit against VICK in U.S. District Court in Newport News, Virginia seeking payment for default on a \$2.5 million line of credit. At the time

the suit was filed, the bank was seeking the balance on the line of credit, which was \$2.313 million, interest of \$499 per day (commencing on January 19, 2008), and legal fees.

- 1st Source Bank of South Bend, Indiana filed a federal lawsuit against VICK requesting at least \$2 million for loans involving a car rental business.

While the government is not familiar with the merits of these pending matters, the fact that these lawsuits and the arbitration proceeding have been filed suggests that demands for payment by VICK have gone unheeded. In addition, published reports also indicate that VICK is in the process of selling assets, specifically a suburban Atlanta home listed at \$4.5 million. In light of VICK's agreed-upon, statutorily-mandated restitution obligation in this case, the United States is filing this motion for a Restitution Restraining Order as set forth below.

D. Legal Authority in Support of the Instant Motion

VICK's plea agreement included his express agreement to pay "restitution for the full amount of the costs associated with the disposition of all dogs which are currently the subject of the civil action known as *United States v. Approximately 53 Pit Bull Dogs*, Case No. 3:07CV397" and his recognition that "[s]uch costs may include, but are not limited to, all costs associated with the care of the dogs involved in that case, including if necessary, the long-term care and/or the humane euthanasia of some or all of those animals as may be directed by the court in that case." *Vick Plea Agreement*, ¶ 8; *see also* 18 U.S.C. § 3663A(a)(3) ("The court shall also order, if agreed to by the parties in a plea agreement, restitution to persons other than the victim of the offense.").

This provision is explicitly clear: VICK agreed to pay the full amount of costs associated with the care, euthanasia, and long-term care of the dogs seized from his property on April 25, 2007. At sentencing, the government will request that this Court honor the parties' written plea agreement and enter an order for the total amount of caring for these dogs, which is currently estimated at approximately \$928,073.04. The actual figure may be more or less depending on the ultimate disposition of the dogs, which will be determined in the upcoming weeks.

In *United States v. Alalade*, 204 F.3d 536, 540 (4th Cir. 2000), the Fourth Circuit explained the compulsory nature of restitution under the Mandatory Victims Restitution Act (MVRA), and how the defendant's financial condition is irrelevant to setting the restitution amount:

We fully agree with the government that the plain language of the MVRA did not grant the district court discretion to reduce the amount of restitution required to be ordered by an amount equal to the value of the property seized from Alalade and retained by the government in administrative forfeiture. Critically, with passage of the MVRA, Congress completely deleted the language of the VWPA affording the district court discretion in cases such as this to consider any factor it deemed appropriate in determining the amount of restitution to be ordered, *see* 18 U.S.C.A. § 3664(a) (West 1985) (amended 1996), and replaced it with language requiring the district court to order restitution in the full amount of loss to each victim as determined by the district court, *see* 18 U.S.C.A. § 3664(f)(1)(A) (West Supp.1999). Furthermore, in contrast to the VWPA, the MVRA does not contain any language requiring the district court, in determining the total amount of restitution to be ordered, to consider the financial resources of the defendant or the financial needs and earning ability of the defendant and the defendant's dependants. *Compare* 18 U.S.C.A. § 3664(f) (West Supp.1999) *with* 18 U.S.C.A. § 3664(a) (West 1985) (amended 1996). Moreover, the MVRA's prohibition on district courts from considering the fact that a victim has received or is entitled to receive compensation for its loss from an insurance company or any other source in determining the total amount of restitution to be ordered, *see* 18 U.S.C.A. § 3664(f)(1)(B) (West 1999), further evinces congressional intent that defendants such as Alalade initially be ordered to pay restitution in the full amount of each victim's loss.

Because VICK will likely owe approximately \$928,073.04 as restitution, the government moves this Honorable Court to restrain that amount to assure payment of his obligations in this case. Various decisions support the notion that district courts enjoy the inherent authority to restrain assets for restitution after guilt has been established. *United States v. Gates*, 777 F.Supp. 1294, 1296, n.4 (E.D.Va. 1991) (“If a trial court does not have authority to order a defendant, post-conviction but prior to sentencing, not to dispose of his assets, then the court is without any meaningful ability to impose a proper sentence under the guidelines and to fulfill the intent and mandate of Congress that a financially able defendant pay fines and costs of prosecution, incarceration, and supervised release or probation. In effect, the court's inability to prevent a convicted defendant from disposing of his assets prior to sentencing would create a situation in which it would only make sense for, and legal counsel would so advise, any defendant with assets to ‘dispose of’ or transfer them for ‘safekeeping.’”). While *Gates* did not expressly rely upon the All Writs Act, another judge in this district found that *Gates* supported its finding that the All Writs Act provided support for a post-sentencing restraint on dissipation of assets. *United States v. Abdelhadi*, 327 F. Supp. 2d 587, 601 (E.D.Va. 2004) (“While these various remedies available to the government and the victim may, in the fullness of time, play a role in assuring that restitution is paid, none can be instantly implemented and none ensures that, in the interim, defendant's assets will not be secreted, wasted or placed beyond the reach of the victim or the government. In short, none reasonably ensures the effectiveness of the Court’s restitution order by ensuring that defendant’s assets are not wasted or secreted. Only the restraining order can serve this function and hence, this is the reason it issued.”). Other courts have recognized the need to prevent a defendant, who has been convicted and is awaiting sentencing, from

dissipating assets that will be needed to pay restitution. *United States. v. Numisgroup Intl. Corp.*, 169 F.Supp.2d 133, 138 (E.D.N.Y. 2001) (restraint of assets where “sentencing and a substantial Order of Restitution is imminent” and defendant has virtually no other assets); *United States. v. Ross*, 1993 WL 427415 at *1 (S.D.N.Y. 1993) (unpublished) (“There is no logic to the position that the Court is powerless to enter a restraining order after a jury has found a defendant guilty of participating in a large-scale fraud simply because sentencing has been delayed so that a pre-sentencing report may be prepared”).

This Court clearly has the authority to restrain the Defendant from dissipating assets that will be needed to satisfy the mandatory restitution order the Court will impose at sentencing. The current events outlined above regarding VICK’s deteriorating financial condition demonstrate the validity of the government’s concern about the Defendant’s ability to fulfill his legal obligation by the time he is sentenced on December 10, 2007. Accordingly, the government moves this Court to enter a restitution restraining order preserving the minimum sum the Defendant will be required to pay upon sentencing.

Conclusion

Wherefore, based upon the foregoing points and authorities, the United States respectfully moves this Honorable Court to enter an order restraining the Defendant from dissipating any assets up to the sum of the restitution amount to be imposed.

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of November, 2007, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send a notification of such filing (NEF) to the following:

William Robert Martin
Sutherland, Asbill & Brennan, LLP
1275 Pennsylvania Avenue, NW
Washington, DC 20004

Lawrence Woodward, Jr.
Shuttleworth, Ruloff, Swain, Haddad & Morecock, P.C.
4525 South Boulevard, Suite 300
Virginia Beach, Virginia 23452-1137

Claire G. Cardwell
Stone & Cardwell
101 Shockhoe Slip
Suite K
Richmond, Virginia 23219

Stephen Hudgins
11836 Canon Boulevard
Suite 100
Newport News, Virginia 23606

Franklin Swartz
Jeffrey Swartz
Rabinowitz, Swartz, Taliaferro, Swartz & Goodove
150 Boush Street, Suite 800
Norfolk, Virginia 23510

Joseph Winston
4860 Cox Road, Suite 200
P.O. Box 27642
Richmond, Virginia 23261-7642

Paul Curley
Canfield, Baer, Heller & Johnston, LLP
2001 Libbie Avenue, Suite 200
Richmond, Virginia 23230

Flora Edwards

115 Broadway, Suite 1505
New York, New York 10006

In addition, a copy of the foregoing was served on United States Probation Officer Blakely Brown, 600 East Main Street, Suite 2110, Richmond, Virginia 23219.

/s/

Brian L. Whisler
G. Wingate Grant
Assistant United States Attorney
United States Attorney's Office
600 East Main Street, Suite 1800
Richmond, Virginia 23219
Phone: 804/819-5400
Fax: 804/771-2316
Email: brian.whisler@usdoj.gov

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA

Richmond Division

UNITED STATES OF AMERICA,)	
)	CRIMINAL NO. 3:07CR274
v.)	
)	
MICHAEL VICK,)	
a/k/a "Ookie,")	
)	
Defendant.)	

ORDER

THIS MATTER appears before the Court upon the motion of the United States, filed on November 20, 2007, in which the United States moves for the entry of a restraining order to restrain the Defendant from dissipating assets necessary to satisfy an order of restitution which the Court must impose at sentencing.

The Defendant has agreed in his written plea agreement to pay restitution, and restitution is mandatory. 18 U.S.C. § 3663A(a)(1). In this case, the government is seeking restitution of approximately \$928,073.04.

Concluding that the Court has the authority to restrain assets for the purpose of making those assets available for restitution, *see United States v. Gates*, 777 F.Supp. 1294, 1296 n.4 (E.D. Va. 1991); *United States v. Abdelhadi*, 327 F. Supp. 2d 587, 601 (E.D. Va. 2004), it is hereby ORDERED:

That the defendant, his agents, representatives, servants, employees, attorneys, family members and those persons in active concert or participation with him, are hereby ENJOINED AND RESTRAINED from transferring, selling, assigning, pledging, distributing, giving away, encumbering or otherwise participating in the disposal of or removal from the jurisdiction of the

Court of the defendant's interest, direct or indirect, in any property, real or personal, with a value of \$928,073.04 or less, without prior approval of the Court. The United States may provide a copy of this order to any individual or entity believed to be holding property of the defendant and may record a copy of this order as appropriate to prevent the transfer of any property in which the defendant has an interest. Any financial institution served with a copy of this order shall provide to the United States all information regarding the defendant's accounts and balances.

Let the Clerk send four certified copies of this order to counsel for the United States and a copy to all other counsel of record.

Date

UNITED STATES DISTRICT JUDGE

I ask for this:

/s/

Brian L. Whisler (VSB 30435)
G. Wingate Grant (VSB 18643)
Assistant United States Attorneys
United States Attorney's Office
600 East Main Street, Suite 1800
Richmond, Virginia 23219
Phone: 804/819-5400
Fax: 804/771-2316
Email: brian.whisler@usdoj.gov