



## USA v. Christensen

2022 | Cited 0 times | D. Arizona | August 24, 2022

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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff/Respondent, v. Gary Stevens Christensen,

Defendant/Petitioner.

No. CR-14-08164-PCT-DGC No. CV-18-08235-PCT-DGC (DMF) No. CV-20-08152-PCT-DGC (DMF)  
(Related Civil Cases) ORDER

Defendant Gary Christensen was convicted of multiple tax-related offenses. See Case No. CR-14-08164. He was sentenced to 42 months in prison and ordered to pay \$579,706 in restitution, plus \$202,816.19 in prejudgment interest, to the Internal Revenue . CR Docs. 140, 274, 277; CV Doc. 30; see also 18 U.S.C. §§ 3613(a), 3663A. 1

The government has filed motions for garnishment disposition orders (CR Docs. 287, 288) which are fully briefed (CR Docs. 290, 291, 293). The Court will grant the 289) will be denied. I. Background.

In September 2014, a grand jury indicted Defendant on multiple counts of tax evasion, filing false tax returns, and failure to file returns for the 2004-2010 tax years.

1 Documents filed in the criminal case, No. CR-14- coram nobis, No. CV-20-

CR Doc. 1; see 26 U.S.C. §§ 7201, 7203, 7206. Defendant declined the gove offers and went to trial in May 2016. The jury acquitted Defendant on the false tax return

charges (counts eight through twelve), but found him guilty on each count of tax evasion (counts one through seven) and failure to file a return (counts thirteen and fourteen). CR Docs. 95, 101.

The Court entered judgment in October 2016, sentencing Defendant to 42 months in prison followed



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by 3 years of supervised release, and ordering him to pay restitution to the IRS in the amount of \$1,603,533, which included back taxes for years not covered by his convictions (1997-2003 and 2011-2015). CR Doc. 140. The Ninth Circuit affirmed the convictions and sentence. CR Doc. 166; *United States v. Christensen* 599 (9th Cir. 2017). 2

Defendant completed his prison sentence and was placed on supervised release in December 2019. See Federal Bureau of Prisons, Find an Inmate, [https://www.bop.gov/mobile/find\\_inmate/byname.jsp#inmate\\_results](https://www.bop.gov/mobile/find_inmate/byname.jsp#inmate_results) (last visited Aug. 22, 2022). Defendant made some minimal restitution payments while incarcerated, but still owed a substantial amount to the IRS upon his release. See CR Doc. 292-1.

Pursuant to the Federal Debt Collection Procedures Act, 28 U.S.C. § 3205, the government obtained multiple writs of garnishment against Defendant property in February and May 2020. CR Docs. 181-92, 237. 3

Each garnishee filed an answer identifying property belonging to Defendant in custody, control, or possession. CR Docs. 215-27, 241. 2

Christensen moved to vacate his convictions under 28 U.S.C. § 2255 in September 2018, asserting claims of ineffective assistance of counsel. Case No. CV-18-08235, Doc. Id., Docs. 18, 24. Christensen attempted to appeal the ruling, but the Ninth Circuit denied his request for a certificate of appealability. Id., Docs. 29, 32; see *United States v. Christensen*, No. 20-16072, 2020 WL 7048609 (9th Cir. Nov. 20, 2020).

3 The Mandatory Victims Restitution Act, *United States v. Swenson*, 971 F.3d 977, 979 n.1 (9th Cir. 2020) (citing *In re Partida*, 862 F.3d 909, 913 (9th Cir. 2017)). Section 32 Id.

disposition orders on certain garnishments. CR Doc. 265; see CR Docs. 245-52, 254. The *United States v. Christensen*, 845 F. cert. denied, 142 S. Ct. 348 (2021).

Defendant filed a coram nobis petition in June 2020, arguing that the restitution judgment should be vacated as unlawful. CR Doc. 244; CV Docs. 1, 17. 4

The Court granted the petition in part and reduced the restitution amount because the Court may order restitution only for the tax years involved in the convictions (2004-2010). CR Doc. 274 at 14 (citing *United States v. Batson*, 608 F.3d 630, 637 (9th Cir. 2010)). The Court reduced the restitution amount from \$1,603,533 to \$579,706 for the 2010-2014 tax years, and added \$202,816.19 in prejudgment interest. Id. at 15-16. The Court denied the petition with respect to Defendant Id. at 10-13; see also CV Doc. 30. 5

The Clerk entered judgment terminating the civil case (CV Doc. 31) and entered an amended



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criminal judgment requiring Defendant to pay restitution to the IRS in the total amount of \$782,522.19 (CR Doc. 277).

The government has collected \$431,903.42 through payments and garnishments. See CR Docs. 292 at 2, 292-1. As of July 22, 2022, Defendant owed a balance of \$350,618.77. *Id.* II. re Garnishee Armour Self Storage Flagstaff, Inc.

The government served a writ of garnishment on Armour Self Storage Flagstaff in February 2020. CR Doc. 182. Armour answered the writ on March 2, 2020, stating that the contents of the storage unit Defendant was renting was with custody, control, or possession. CR Doc. 217. Defendant filed objections answer on August 28, 2020. CV Doc. 22.

4 See *Nowlin v. United States*, 81 F. Supp. 3d 514, 519 (N.D. Miss. 2015). At common law, a *coram nobis* writ was used by a court to vacate its own judgments for errors of fact in those cases where the errors are of the most fundamental character[. *Flores v. Washington*, No. 2:18-CV-00177-SAB, 2018 WL 10509378, at \*1 (E.D. Wash. Sept. 18, 2018) (quoting *United States v. Mayer*, 235 U.S. 55, 69 (1914)).

5 See CR Docs. 276, 279.

The Armour garnishment was one of fourteen issued in the same timeframe. See CR Docs. 181-92, 237. In September 2020, the government moved for garnishment disposition orders on nine of the fourteen garnishments (CR Docs. 245-252, 254) and proceeded with discovery on the Armour garnishment and several others (see CR Doc. 287 at 3). as untimely

With respect to the Armour garnishment, Defendant claimed that his items in empt personal property including furniture, clothing, toys and household items CV Doc. 22 at 5. Defendant also claimed that the storage unit had not been inventoried. *Id.*

Through a subpoena, the government inspected the storage unit and inventoried the property, in Defendant presence. CR Doc. 287 at 3. During that process, precious metals were found three bags of silver half dollars and one bag of silver quarters worth more than \$30,000. *Id.* The coins have been securely held by a third party, T & T Estates Services LLC. *Id.*

Pursuant to § 3205(c)(7) of the FDCPA, the government moves for a disposition order directing Armour, by and through T & T Estate Services or another liquidator identified by the government, to liquidate the non-exempt property belonging to Defendant the precious metals found in the Armour storage unit and pay over the liquidated amount of the property, less reasonable costs of liquidation, to the government. CR Doc. 287 at 3; see also CR Doc. 287-1.

Defendant does not specifically object to a disposition order with respect to Armour. See CR Docs. 290, 291. Instead, he challenges the legality of the restitution order and repeats arguments made in



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his coram nobis petition and earlier garnishment proceedings. to the IRS and that the Court relied on false statements and fraudulent spreadsheets in

calculating the restitution amount. CR Docs. 290 at 1-2, 291 at 1-2. Defendant acknowledges that these issues were fully briefed in his coram nobis petition. CR Doc.

290 at 1-2. The Court previously rejected these arguments and will not reconsider them here. See CR Docs. 265, 276, 279; see also CR Doc. 292 at 3-4 (noting that a defendant cannot use garnishment proceedings to collaterally attack the legality of a restitution order) (citations omitted).

Defendant complains that there has been no accounting of restitution payments made to CR Doc. 290 at 1. This issue is now moot given that the government has provided an accounting in its reply. See Docs. 292-1, 292-2.

D See CR Doc. 290 at 1-2. It appears that Defendant may owe taxes as part of a separate civil matter, and the IRS levies are not part of the enforcement of the criminal restitution order in this case. See CR Doc. 292 at 4. 6

with respect to Armour. CR Doc. 287; see § 3205(c)(7); United States v. Gorshe, No. 1:20- MC-00042- files an answer, and if no hearing is requested within the required time period, the Court

must promptly enter an order directing the garnishee as to the disposition of the judgment ; United States v. Diaz Landa, No. 1:18-mc- 00020-DAD- U.S.C. § 3205(c)(7), as no hearing was requested during the applicable time period, the

Court must enter an order directing the Garnishee as to the disposition of the bank ; see also CR Doc. 265 (order granting other motions for garnishment disposition orders). III. The government served a writ of garnishment on National Securities Corporation

that

6 The government notes that to the extent any civil collection overlaps with the any overlapping payment is credited toward criminal restitution. Id.

dian, National Id. 7 motion for a garnishment disposition order directing NSC to nonexempt property to the United States. CR Docs. 250, 265. NSC, in its attempt to comply with the rder, requested NFS to turn over the funds to the United States. See CR Doc. 288 at 2. NFS has informed the government that it requires an order directing it, rather than NSC, to liquidate and turn over the funds it holds as the custodian for NSC. See id. The government requests an amended disposition order in this regard. Id. Defendant does not address the request in his responses. See CR Docs. 290, 291.



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an amended garnishment disposition order with respect to NSC and its custodian, NSF. CR Doc. 288; see § 3205(c)(7); Gorshe, 2020 WL 5905358, at \*2. IV. Defendant moves for a hearing to establish an accounting of all monies collected and disbursed by the Clerk of Court, the Department of Justice, and the IRS. CR Doc. 289. The motion will be denied.

As noted, the government has provided Defendant an accounting, as of July 22, 2022, of all payments made toward the restitution he owes. See CR Docs. 292 at 6, 292-1, 292-2. A hearing to determine criminal restitution payments is therefore unnecessary, and any civil levies or payments collected by the IRS are not part of these garnishment proceedings. See CR Doc. 291 at 6. 8

What is more, any hearing on garnishments must be limited to determining the validity of claimed exemptions

7 The account is identified by its last four digits, 7569. See *id.*; CR Doc. 288 at 2. 8 Defendant asserts in his reply that the government has failed to provide an annual accounting on each garnishment as required by § 3205(c)(9). CR Doc. 293 at 3. The government is directed to comply fully with § 3205(c)(9) and provide Defendant with any necessary accountings.

and the validity of any default judgment. See 28 U.S.C. § 3202(d); *United States v. Pedro*, No. CR-06-0513-PHX-ROS, 2011 WL 2262226, at \*2 (D. Ariz. May 16, 2011) If a garnishment hearing were held in this case, the issues to be considered at such a hearing are quite limited [under] Section 3202(d). . . . [S]ince Pedro's debt (restitution) has been reduced to judgment, the scope of any hearing is limited to the validity of any claim of exemption and the Government's compliance with the statutory requirements for the garnishment process. (citing § 3202(d)(1)-(2)). Defendant claims no statutory exemption and does not contend that the government has failed to satisfy statutory requirements. Furthermore, the time for requesting a hearing on the garnishments has passed. See § 3205(c)(5) (providing that any objection or request for a hearing 20 days after receipt of the answer CR Doc. 238 at 1 (giving Defendant

until July 6, 2020 to respond to the garnishments); CR Doc. 265 at 6 (finding that Defendant had failed to show good cause or excusable neglect for his failure to file objections (or a hearing request) by the July 6 deadline).

IT IS ORDERED: 1. (CR Doc. 287) is granted. Garnishee Armour Self Storage Flagstaff, Inc., by and through T & T Estate Services LLC or other liquidator identified by the government, is directed to liquidate the non-exempt property (the precious metals found in the storage unit) belonging to Defendant and pay over the liquidated amount of the property, less reasonable costs of liquidation, to the United States.

2. CR Doc. 288) is granted. National Financial Services, as custodian for Garnishee National Securities Corporation, is directed to liquidate and pay over the entire balance of Corporation



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Premiere Select IRA brokerage account number ending in 7569, to the United States within 14 days of the date of this Order.

3. Funds paid check made payable to the Clerk of Court, and mailed to the Clerk's Office, U.S. District

Court, Attention Finance Division, 401 W. Washington Street, SPC 1, Suite 130, Phoenix, Arizona 85003-2118. Christensen, CR 14-08164-PCT-

4. g (CR Doc. 289) is denied. Dated this 24th day of August, 2022.

