

United States v. Witham 00-CR-017-SM 07/20/10  
UNITED STATES DISTRICT COURT

DISTRICT OF NEW HAMPSHIRE

United States of America,  
Government

v.

Criminal No. 00-cr-17-2-SM  
Opinion No. 2010 DNH 119

Wayne S. Witham,  
Defendant

O R D E R

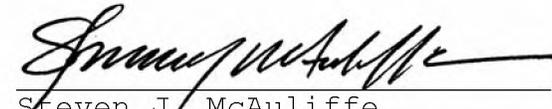
Acting pro se, Wayne S. Witham moves to vacate (or modify) an order of restitution imposed as part of his criminal sentence (document no. 59). He offers several grounds in support of the motion, including that he has experienced a drastic change in his economic circumstances, is no longer employed, receives no unemployment benefits, lacks adequate reserve funds to sustain himself, and is indigent.

The government objects in part (document no. 64), correctly noting that the restitution order itself cannot be vacated, but acknowledging that changed circumstances could support a modification of the periodic payment requirement. Witham alleges facts sufficient to support a motion to modify the periodic payment order (currently set at \$200.00 per month), and claims that he "has no means to produce \$200.00 per month as ordered for 1 July 2010 and each month thereafter." While the restitution

order cannot be vacated, the periodic payment schedule is subject to adjustment. See 18 U.S.C. § 3664(c). If, as he asserts, Witham is no longer employed and is without income or other assets, an adjustment may well be appropriate.

The clerk shall schedule a hearing at which Witham will be obligated to bear the burden of establishing, by a preponderance of the evidence, his inability to comply with the periodic payment order currently in effect, as well as his current financial circumstances and ability to make periodic payments. See 18 U.S.C. § 3664(e).

**SO ORDERED.**

  
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Steven J. McAuliffe  
Chief Judge

July 20, 2010

cc: Michael T. McCormack, AUSA  
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