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Problems In High Court Ruling On Restitution Appeals

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Law360, New York (April 21, 2017, 4:27 PM EDT) --

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In a decision on April 19, 2017, Manrique v. United States,[1] the U.S. Supreme Court held by a 6-2 vote that when a court imposes a sentence but defers the determination of restitution until a later date, the defendant seeking to appeal his entire sentence (including the restitution amount) must file a notice of appeal not only from the initial judgment, but from the subsequent amended judgment that includes the amount of restitution.[2] This decision builds a procedural roadblock for a defendant who seeks to appeal an order of restitution with little obvious benefit to appellate practice or the criminal justice system.

The court's decision, along with a recent Second Circuit decision, seems to suggest that the federal appellate courts prefer a regime in which litigants must be constantly filing appeals concerning the amount of restitution. Although this system may be consistent with the Federal Rules of Appellate Procedure, it seems to impose unnecessary burdens on litigants and the appellate courts. Defendants in particular must remain vigilant when the court takes steps after the initial sentencing to impose or modify restitution obligations.

Background

Manrique was convicted of child pornography offenses and sentenced on June 24, 2014, to a term of imprisonment and supervised release. The court at sentencing also acknowledged that restitution was mandatory.[3] Manrique filed a timely notice of appeal. However, under the Mandatory Victims Restitution Act of 1996,[4] the court needed additional time to determine the victims' damages and decided to withhold judgment on restitution until subsequent proceedings could be conducted. On Sept. 17, 2014, the district court ordered Manrique to pay $4,500 in restitution.[5]

Manrique did not file a second notice of appeal, but challenged the restitution amount on the appeal of his initial sentence. The government argued to the Eleventh Circuit that Manrique forfeited his right to challenge restitution by not filing the second notice of appeal. The Eleventh Circuit agreed in an unpublished decision and the Supreme Court granted certiorari to resolve the issue.[6]

The Court's Opinion

The Supreme Court affirmed in an opinion authored by Justice Clarence Thomas. The court looked to Title 18, United States Code, Section 3742(a) and Federal Rule of Appellate Procedure 4, both of which use wording that suggests that the notice of appeal can be filed only after the district court has decided the issue to be appealed. Here, the notice of appeal preceded the restitution ruling and therefore could not have been filed to challenge the restitution order. Justice Thomas explained that "deferred restitution cases involve two appealable judgments, not one."[7] The court did not rule on the government's argument that filing a notice of appeal from the judgment imposing restitution is a jurisdictional prerequisite to securing appellate review of the restitution amount; but it did conclude that even if the notice-of-appeal requirement is only a mandatory claim-processing rule (i.e., a rule that promotes the "orderly progress of litigation"), the government's decision to raise the issue made the Eleventh Circuit's decision mandatory.[8]

Justice Thomas rejected Manrique's arguments in support of reversal. First, the court held that the initial judgment and amended judgment did not merge to become a single judgment from which Manrique appealed. Rather, each judgment was an immediately appealable final judgment.[9] Second, the court rejected Manrique's reliance on Fed. R. App. P. 4(b)(2), which allows an appellant to file a notice of appeal after a decision is announced but before the judgment or order is entered. The court treated this rule as applying only in a situation in which an unskilled litigant files a notice of appeal to an order that he reasonably but mistakenly believes to be a final judgment. This rule is inapplicable where the court declines to announce a sentence, which is what happened here with respect to restitution.[10] Finally, the court declined to apply the harmless error doctrine, holding that Manrique "did not file a defective notice of appeal from the amended judgment imposing restitution, but rather failed altogether to file a notice of appeal from the amended judgment."[11]

The Dissenting Opinion

Justice Ruth Bader Ginsburg authored a dissent, in which Justice Sonia Sotomayor joined. Justice Ginsburg pointed out that the district court — apparently believing that the original notice of appeal also covered the restitution order — never advised Manrique of his right or obligation to appeal the restitution order, as it was required to do under Fed. R. Crim. P. 32(j)(1)(B).[12] Indeed, the district court transmitted the amended judgment to the Eleventh Circuit, which in turn asked the district court to send the transcript and record of the restitution hearing. No one along the way ever acted in a manner that suggested that Manrique's attempt to appeal the restitution order was improper. Nor could the government have been surprised or prejudiced in any way by Manrique's appeal of the restitution term of the amended judgment. Justice Ginsburg explained that "in lieu of trapping an unwary defendant, ... I would rank the clerk's transmission of the amended judgment to the Court of Appeals as an adequate substitute for a second notice of appeal."[13]

Manrique and Yalincak Together Increase the Procedural Burden on Litigants

The Supreme Court's decision comes on the heels of a recent Second Circuit decision, United States v. Yalincak,[14] in which that court held that every order by a district court modifying a defendant's restitution obligations to reflect a credit for recoveries made by the victims of the crime is an immediately appealable final order.[15] In Yalincak, the defendant's restitution obligations were modified on more than one occasion to reflect bankruptcy recoveries made by the victims of the offense. Years after the restitution orders were issued, the government convinced the district court to increase the amount of restitution owed on the theory that the earlier credit reductions had included

administrative expenses and fees paid in connection with bankruptcy proceedings on top of amounts actually recovered by the victims. The Second Circuit held that the government — if it sought to challenge the credits to restitution as improper — should have filed a notice of appeal from each order, rather than wait until the credits eliminated the restitution obligation entirely.[16] After Yalincak, the litigants must file repeated appeals in the same matter each time the restitution amount is modified by an order of the court.

Taken together, Yalincak and Manrique result in a regime in which litigants could be required to file multiple appeals: from the initial final judgment that includes a sentence but does not specify a restitution amount, from the amended judgment that includes restitution, and then from every modification of the restitution amount. This requires considerable ongoing vigilance by both sides since a failure to timely appeal the right order will lead the challenging party to forever lose the right to challenge the restitution order in question if the prevailing party raises the argument on appeal. It is difficult to question the internal logic of Manrique or Yalincak; in Yalincak, the government did not challenge certain restitution credits for several years, which makes it hard to question the outcome. Nonetheless, the resulting appellate rule seems to place unnecessary burdens on the parties and the courts by converting the appeal of a single sentence, including restitution, into a lengthier, more complicated and risk-laden appellate process. In Manrique, Justice Ginsburg's proposed rule seems both fairer and more practical than the majority's rule.

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[1] No. 15-7250, 581 U.S. __ (Apr. 19, 2017)

[2] Manrique, No. 15-7250, slip op. at 9.

[3] Id. at 1-2.

[4] See 18 U.S.C. § 3664(d)(5).

[5] Manrique, No. 15-7250, slip op. at 2.

[6] See id. at 2-3.

[7] Id. at 6.

[8] Id. at 4-5.

[9] Id. at 5-6.

[10] Id. at 6-7.

[11] Id. at 8.

[12] Manrique, No. 15-7250, dissent at 2 (Ginsburg, J.).

[13] Id. at 2-3.

[14] No. 11-5446, 2007 U.S. App. LEXIS 6114 (2nd Cir. Apr. 10, 2017).

[15] See id. at *18.

[16] Id. at *19-21.
