

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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UNITED STATES OF AMERICA,

Plaintiff,

v.

REED J. ROGALA,

Defendant.

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ORDER

08-cr-84-bbc

Defendant Reed Rogala has filed a motion to correct clerical errors under Fed. R. Crim. P. 36, which permits the court to correct a clerical error at any time. The motion will be denied because defendant is not asking the court to correct a clerical error. Rather, he is objecting to the court's decision to impose a \$100,000 fine on him and to impose conditions relating to alcohol consumption as a condition of supervised release.

Defendant asserts that the \$100,000 fine imposed on him at sentencing is too high and that the government has not taken steps to reduce the fine by applying the proceeds from the garnishment of his IRA account and from the forfeiture and sale of the artwork and personal items seized from his house. He asks the court to waive any balance remaining on his fine obligation once the proceeds have been applied to it, asserting that the fine will be too large for him to pay now or at any time in the future.

A review of the court's financial records indicates that approximately \$21,283.67 has been applied to defendant's fine. This amount includes the proceeds from the sale of defendant's IRA account as well as payments made by the defendant through the Inmate Financial Responsibility Program.

In checking with the United States Attorney, I have been informed that the forfeiture process involving the art and personal items seized from defendant's residence is not yet complete, but that once the proceeds are received from the sale of those items, they will be applied toward the defendant's fine. As to defendant's request that the balance of his fine be waived, the court does not have the authority to initiate any action or waive any portion of defendant's fine. Under 18 U.S.C. § 3572(c), a fine may be changed only under 18 U.S.C. § 3573, which provides three means of modifying a fine: (1) by petition of the government for modification or remission; (2) by motion of the government under Fed. R. Crim. P. 35 for substantial assistance; or (3) by a decision of the court of appeals acting on a direct appeal by the defendant. If defendant believed that the fine was improperly calculated, he should have filed an appeal promptly after his sentencing. It is too late to do that, but if turns out that defendant lacks any means of paying his fine, his supervising probation officer may decide to ask the government to petition for a reduction.

Defendant asks also for removal of what he believes is a special condition of his supervised release that requires him to abstain from the use of alcohol. He argues that such a condition is unfair because his crime did not involve alcohol, the consumption of alcohol

or the abuse of alcohol. A review of the conditions of supervised release shows that defendant is required to “refrain from the *excessive* use of alcohol and shall not purchase, possess, use, distribute or administer any narcotic or other controlled substance, or any paraphernalia related to such substances excepts as prescribed by a physician.” The conditions do not require him to abstain from alcohol use altogether.

ORDER

IT IS ORDERED that defendant’s motion to correct clerical errors is DENIED.

Entered this 26th day of July, 2011.

BY THE COURT:

/s/  
BARBARA B. CRABB  
District Judge