

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

United States of America,
Plaintiff,

vs.

Case No. 12-10174-01-JTM

Philip Andra Grigsby,
Defendant.

MEMORANDUM AND ORDER

This matter is before the court on defendant Philip Grigsby's Motion to Modify Restitution Order (Dkt. 100), which seeks alteration of the court's Amended Judgment of July 30, 2013 (Dkt. 98) which imposed that restitution. Grigsby's criminal conviction is otherwise on appeal. In his motion, Grigsby seeks alteration of the \$140,000 restitution order by the creation of a trust fund to administer restitution payments — one which he volunteers to create. (Dkt. 100, at 2). Despite the court's clear direction prohibiting contact with his victim and her sibling, Grigsby also seeks to modify this restriction. (*Id.*)

A district court retains limited jurisdiction pursuant to 18 U.S.C. § 3664(k) to modify a restitution order based upon a claim of "material change in the defendant's economic circumstances." *See United States v. Banks*, 422 Fed.Appx. 137, 139 (3d Cir. 2011). Grigsby's

motion, however, is not grounded on any change in his economic circumstances, but rests on allegations regarding a subsequent Kansas state domestic action involving the victim and her sibling, coupled with a complaint about the state psychology license of one of the witnesses involved in the sentencing.

That is, Grigsby challenges the content of the restitution order itself, and thus raises a sentencing issue that must be raised on appeal. *United States v. Hatten*, 167 F.3d 884, 887 (5th Cir. 1999). “With respect specifically to restitution orders, the jurisprudence of the ... circuits ... is consistent with the rule that a district court's power to act, while the order is on appeal, is limited to actions that do not change the appealed order in any meaningful way.” *United States v. Patel*, 2009 WL 3232792, *2 (W.D. La. 2009).

The court lacks jurisdiction to consider Grigsby’s motion, which is hereby DENIED this 14th day of February, 2014.

s/ J. Thomas Marten

J. THOMAS MARTEN, JUDGE