No. 22-2252

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DEDRE FEYIJINMI,

Plaintiff-Appellant,

v.

STATE OF MARYLAND CENTRAL COLLECTION UNIT,

Defendant-Appellee.

On Appeal from the United States District Court for the District of Maryland
(Richard D. Bennett, District Judge)

BRIEF OF APPELLEE

ANTHONY G. BROWN
Attorney General of Maryland

SUSAN C. SCANLON
Assistant Attorney General
300 West Preston Street
Room 407
Baltimore, Maryland 21201
susan.scanlon@maryland.gov
(410) 767-1234
(410) 333-5887 (facsimile)

Attorneys for Appellee

March 28, 2023

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BRIEF OF APPELLEE

JURISDICTIONAL STATEMENT

Appellee State of Maryland Central Collection Unit ("CCU") accepts the jurisdictional statement set forth in Appellant's Brief.

ISSUES PRESENTED FOR REVIEW

1. Did the district court correctly uphold the bankruptcy court's decision that Ms. Feyijinmi's conviction of welfare fraud and disposition of probation before

judgment in state court established a "conviction" under the Bankruptcy Code?

2. Did the district court correctly conclude that the bankruptcy court committed no error in determining that CCU did not waive its right to collect a nondischargeable debt for criminal restitution in filing a proof of claim that included a copy of the original judgment of restitution?

STATEMENT OF THE CASE

Procedural Background

Appellant Dedre Feyijinmi filed a petition for relief under Chapter 13 of the Bankruptcy Code on October 21, 2014, in the District of Maryland. (J.A. 1-10.) CCU filed a proof of claim with supporting itemization on April 13, 2015 (J.A. 11-14), and an amended proof of claim on May 5, 2015. (J.A. 15-18.) Its amended proof of claim included a copy of the judgment of restitution entered by the Circuit Court of Baltimore County on December 8, 2006. (J.A. 15-18.) On August 18, 2015, the bankruptcy court confirmed the Chapter 13 plan. (J.A. 19.) The order discharging the debtor was entered by the bankruptcy court on February 26, 2020. (J.A. 27-28.)

On February 23, 2021, Ms. Feyijinmi filed a motion to reopen the bankruptcy case for the purpose of pursuing an adversary proceeding. (J.A. 36-47.) The bankruptcy court granted that motion and reopened the bankruptcy case on February

24, 2021. (J.A. 48.) Ms. Feyijinmi's subsequent adversary proceeding against CCU was filed on March 26, 2021. (J.A. 49-65.)

The parties filed cross-motions for summary judgment in that action and, after extensive briefing and two hearings, the bankruptcy court granted summary judgment in favor of CCU and denied Ms. Feyijinmi's motion for summary judgment on March 30, 2022. (J.A. 216-217.) On April 12, 2022, Ms. Feyijinmi timely appealed the bankruptcy court's order to the district court. (J.A. 218-219.) On November 1, 2022, the district court entered a memorandum opinion and order affirming the bankruptcy court's conclusion that criminal restitution is non-dischargeable in Chapter 13 bankruptcy. (J.A. 276-284.)

Factual Background

Ms. Feyijinmi was found guilty of welfare fraud on July 31, 2006, in the District Court of Maryland for Baltimore County. (J.A. 208.) She was sentenced to three years of incarceration, suspended; three years of supervised probation; and ordered to pay restitution in the amount of $14,487.00 to the Baltimore County Department of Social Services ("DSS") made payable through the State's Division of Parole and Probation ("DPP").[1] (J.A. 208-209.) The Circuit Court for Baltimore

[1] Ms. Feyijinmi's criminal record was expunged (J.A. 139), making access to information regarding her underlying criminal court proceeding unavailable. Md. Rules 4-511, 4-512. It was only through one of her filings in the bankruptcy court, Adversary Proceeding No. 21-00072, Doc. No. 33-2, that CCU learned of the

County entered a judgment of restitution on December 8, 2006, ordering Ms. Feyijinmi to pay criminal restitution in the amount of $14,487.00 to DSS as both part of her criminal sentence and a condition of her probation. (J.A. 18.) DPP opened a case against Ms. Feyijinmi following entry of the probation before judgment.[2] She made only sporadic payments to DPP before her probation ended on December 8, 2009. (J.A. 139.) DPP closed her case and referred the outstanding debt to CCU, pursuant to Md. Code Ann., Crim. Proc. § 11-616 (LexisNexis 2018).

Ms. Feyijinmi filed a petition to expunge her criminal record, which the Circuit Court for Baltimore County granted on January 18, 2011. (J.A. 139.) That expungement order did not relieve Ms. Feyijinmi's obligation to repay the outstanding judgment of restitution. (J.A. 139.) The Baltimore County State's Attorney's Office then filed a motion to process garnishment of wages; the Circuit Court for Baltimore County granted the motion and indexed the restitution order in a separate civil case. (J.A. 139.) Next, CCU requested, and the court issued, a writ

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existence and disposition in her District Court of Maryland criminal case. That document, a "Defendant Trial Summary," was attached as Exhibit 5 to her motion for summary judgment in the bankruptcy court. While that document is not included the Joint Appendix here, the court and Ms. Feyijinmi's counsel relied upon it below. (J.A. 208-209.)

[2] By affidavit, Walter Nolley, DPP's Executive Deputy Director, attested to Ms. Feyijinmi's referral to DPP by the Baltimore County circuit court and events that occurred during her period of probation and subsequent referral to CCU. This affidavit appears in the record in Adversary Proceeding No. 21-00072, as Doc. No. 30-4, but is not included in the Joint Appendix.

of garnishment of wages on November 20, 2013. (J.A. 98.) Ms. Feyijinmi's Chapter 13 bankruptcy filing followed on October 21, 2014. (J.A. 1-14.)

CCU initially filed a proof of claim on April 13, 2015, later amended on May 5, 2015. (J.A. 11-18.) The amended proof of claim attached a copy of the judgment of restitution as supporting documentation and labeled the debt as "court ordered fees" on the form. (J.A. 15-18.) Ms. Feyijinmi received an order of discharge on February 26, 2020. (J.A. 27-28.) That discharge order specifically lists "debts for restitution" as an example of "debts that are not discharged." (J.A. 28.) The order further directs debtors to consult legal counsel "to determine the exact effect of the discharge in this case." (J.A. 28.)

Following the bankruptcy discharge, CCU resumed collection efforts, sending a letter on October 21, 2020, informing Ms. Feyijinmi that her name had been certified to the Maryland Comptroller as required by law. (J.A. 31); *see* Md. Code Ann., Tax-Gen. §§ 13-912 — 13-919 (LexisNexis 2022). Ms. Feyijinmi wrote to CCU on October 27, 2020, disputing the validity of that certification. (J.A. 32.) Attorneys for the parties then exchanged electronic mail correspondence, setting forth their respective positions as to dischargeability of the restitution order. (J.A. 34, J.A. 35.). Shortly thereafter, on February 21, 2021, Ms. Feyijinmi moved to reopen the bankruptcy case for the purpose of filing an adversary proceeding to determine the dischargeability of a debt for criminal restitution in Chapter 13. (J.A.

36-40.) The bankruptcy court granted the motion, entering an order on February 24, 2021. (J.A. 48.) On March 26, 2021, Ms. Feyijinmi initiated an adversary proceeding in the bankruptcy court to determine the dischargeability of the debt. (J.A. 49-65.)

CCU moved to dismiss the adversary complaint on May 5, 2021. (J.A. 66-74.) Ms. Feyijinmi responded by filing an amended complaint. (J.A. 75-95.) CCU then filed a substantially similar motion to dismiss on June 17, 2021. (J.A. 96-106.) Ms. Feyijinmi filed an opposition. (J.A. 107.) The bankruptcy court subsequently determined to treat the motion to dismiss as a motion for summary judgment and ordered additional briefing and submission of supplemental materials. (J.A. 134-136.)

Ms. Feyijinmi filed a motion for summary judgment on July 29, 2021, which CCU opposed on July 30, 2021. Adversary Proceeding No. 21-00072, Doc. Nos. 20, 21. The bankruptcy court denied the motion as premature. Adversary Proceeding No. 21-00072, Doc. No. 22. Because Ms. Feyijinmi's criminal record had been expunged, CCU filed a motion in Maryland state court seeking permission for state agencies to share pertinent details that could assist the bankruptcy court in considering the debt's dischargeability. Adversary Proceeding No. 21-00072, Doc. No. 24-1. The state court granted that motion, but by the time it did so, the expunged records had been destroyed. Adversary Proceeding No. 21-00072, Doc. No. 33-3.

Next in the bankruptcy proceeding, CCU filed a motion for summary judgment on November 10, 2021. (J.A. 137-149.) Ms. Feyijinmi filed a cross-motion for summary judgment and opposition to CCU's motion on January 9, 2022. (J.A. 150-170.)

The bankruptcy court held a virtual hearing on March 24, 2022. (J.A. 172-192.) Ruling in CCU's favor, the court held that Ms. Feyijinmi's probation-before-judgment disposition qualified as a "conviction" and was therefore excepted from discharge under 11 U.S.C. § 1328(a)(3). (J.A. 212-215.) In doing so, the court found *In re Wilson*, 252 B.R. 739 (B.A.P. 8th Cir. 2000), persuasive. (J.A. 214.) It concluded that whether the debtor pleaded guilty in the underlying criminal case to be of no consequence, reasoning that the finding of guilt by the court and the judgment of restitution render a debt non-dischargeable pursuant to 11 U.S.C. §1328(a)(3). (J.A. 214.) The district court also rejected Ms. Feyijinmi's assertion of waiver, finding that CCU did not waive any right to collect upon the debt due to the "court ordered fees" language on the proof of claim form, particularly in light of CCU's attaching a copy of the judgment of restitution to the filing. (J.A. 213.) The bankruptcy court's order memorializing its bench ruling was entered March 30, 2022. (J.A. 216-217.)

Ms. Feyijinmi noted a timely appeal to the district court on April 12, 2022. (J.A. 218-219.) Following briefing, the district court issued a memorandum opinion

and order affirming the decision of the bankruptcy court on November 11, 2022. (J.A. 276-284.) The court held that the debt is non-dischargeable pursuant to 11 U.S.C. §1328(a)(3) because probation before judgment constitutes criminal conviction for purposes of federal law, that merely labeling a debt "court ordered fees" did not constitute waiver, and that attaching the judgment of restitution "precluded any confusion about the debt CCU claimed." (J.A. 276-284.) Ms. Feyijinmi's attempt to distinguish her case because she pleaded not guilty but was convicted, according to the court, constituted "a distinction without difference." (J.A. 282.) And the district court similarly rejected the argument that the equities lie in Ms. Feyijinmi's favor, somehow excusing repayment of criminal restitution, as "unconvincing and not sounded in law." (J.A. 283.) This appeal followed. (J.A. 285.)

SUMMARY OF ARGUMENT

To prevail in an adversary proceeding seeking to have her debt declared dischargeable, Ms. Feyijinmi first was required to demonstrate that the debt was something other than a judgment of restitution in conjunction with a criminal conviction. While the parties agree that Ms. Feyijinmi received a deferred adjudication in the Maryland criminal courts—to which no federal counterpart exists, settled federal law holds that such an adjudication constitutes a conviction for purposes of interpreting federal statutes. *See, e.g., Dickerson v. New Banner Inst.,*

Inc., 460 U.S. 103, 111-13 (1983). And no basis exists in the Bankruptcy Code or case law for the contention that the equities weigh in Ms. Feyijinmi's favor and absolve her compliance with the criminal restitution obligation. The district court thus properly affirmed the bankruptcy court's grant of summary judgment in favor of CCU.

The finding of guilt made by the Maryland court when sentencing Ms. Feyijinmi to probation for judgment for welfare fraud conclusively established her sentence as a "conviction" under federal law. The bankruptcy court correctly determined that the debt fell within the ambit of 11 U.S.C. § 1328(a)(3), which excepts from discharge any debt for restitution included in the sentence of a criminal conviction.

The statutory prescription in § 1328(a)(3) is not permissive, and the bankruptcy court lacked any discretion to discharge the debt here. The bankruptcy court appropriately relied on *In re Wilson,* 252 B.R. 739, as persuasive authority and properly rejected Ms. Feyijinmi's argument that a criminal defendant's not guilty plea somehow takes precedence over a judicial finding of guilt when establishing a "conviction" under federal law. Finally, the bankruptcy court correctly determined that by attaching a copy of the judgment of restitution to its proof of claim, CCU negated any assertion that it waived the right to collect the debt due to the description on the proof of claim form.

ARGUMENT

I. THE STANDARD OF REVIEW IS DE NOVO.

A court shall grant summary judgment if the moving party demonstrates that there is no genuine dispute as to any material fact, and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a).

Declarations "must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant is competent to testify on the matters stated." Fed. R. Civ. P. 56(c)(4).

This Court reviews the district court's affirmation of the bankruptcy court's order granting summary judgment in favor of CCU under the *de novo* standard of review. "In reviewing the judgment of a district court sitting in review of a bankruptcy court, we apply the same standard of review that was applied by the district court." *Copley v. United States*, 959 F.3d 118, 121 (4th Cir. 2020) Thus, "we review the bankruptcy court's legal conclusions de novo, its factual findings for clear error, and any discretionary decisions for abuse of discretion." *Id*.

II. THE BANKRUPTCY COURT PROPERLY HELD THAT MS. FEYIJINMI'S RESTITUTION IS NONDISCHARGEABLE UNDER 11 U.S.C. § 1328(A)(3), AND THE COURT LACKED EQUITABLE POWER OR DISCRETION TO DEVIATE FROM THE STATUTE'S MANDATORY LANGUAGE.

The plain language of 11 U.S.C. § 1328(a)(3) automatically excepts from discharge any debt "for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime." Once the bankruptcy court determined that a

probation before judgment under Maryland law constitutes a "conviction" under federal law, § 1328(a)(3) compelled the court to hold the debt nondischargeable as a matter of law.

The Bankruptcy Code contains no provision that allows for judicial discretion in excepting criminal restitution from discharge under § 1328(a)(3). This is not the case for all discharge exceptions, however. The presumption of nondischargeability for educational loans and benefits under 11 U.S.C. § 523(a)(8), for example, can be overcome by a judicial determination of undue hardship. Statutory construction principles dictate that when a law expressly indicates application to a particular situation, omitted circumstances are deemed to be intentionally excluded. *Reyes-Gaona v. North Carolina Growers Ass'n*, 250 F.3d 861, 865 (4th Cir. 2001). Applying this principle here, the statutory discretion as to educational loans, but corresponding silence as to dischargeability for criminal restitution, demonstrates congressional intent that criminal restitution is not excepted from discharge. The bankruptcy court does not hold "unlimited authority to ignore the plain statutory requirements and to alter the substantive rights of the parties." *In re Landbank Equity Corp.*, 973 F.2d 265, 271 (4th Cir. 1992).

The grounds for Ms. Feyijinmi's claim that § 1328(a)(3) is subject to judicial discretion are unavailing. First, she focuses on the role judicial discretion plays in allowing an amended proof of claim. Appellant's Br. 16-17. But the circumstances

in her cited authorities differ from those here: CCU is not further attempting to amend its proof of claim nor seeking additional payment from the completed Chapter 13 plan. Second, nothing in the bankruptcy court's oral ruling or the district court's opinion supports the notion that the bankruptcy court should have exercised discretionary authority pursuant to 11 U.S.C. §105(a). And the authority on which Ms. Feyijinmi relies pertaining to filing a proof of claim concerns the separate and distinct asset distribution stage of the bankruptcy process, with no effect on dischargeability. *See, e.g.*, *In re Grynberg*, 986 F.2d 367, 370 (10th Cir. 1993) (holding that the failure of a creditor with a nondischargeable claim to file a proof of claim does not discharge the debt); *In re Kinney*, 123 B.R. 889, 891 (Bankr. D. Nev. 1991) (holding that the only statutory penalty for failing to file a proof of an otherwise nondischargeable claim is loss of the right to vote on or receive distribution under the plan).

No basis exists, as Ms. Feyijinmi urges, to remand for another "plenary hearing in which the parties can make these pertinent arguments undergirded by live witnesses and evidence." Appellant's Br. 23. Indeed, the bankruptcy court did conduct a hearing that considered witness declarations offered by CCU in support of its motion for summary judgment, as previously directed to do by the bankruptcy court. (J.A. 134-136.) Especially telling is the bankruptcy court's recognition that Ms. Feyijinmi herself failed to provide evidence in the form of an affidavit or other

definitive statement. (J.A. 199-201.) Ms. Feyijinmi had the opportunity to raise additional fact and legal arguments before the bankruptcy court but failed to do so. She now seeks that this Court remand for another bite at the proverbial apple. But the underlying and undisputed material facts here, which the bankruptcy court set forth in its oral ruling, remain unchanged. (J.A. 213-215.) "There is no dispute that the debtor was charged with a crime. There is no dispute that the circuit court entered a judgment of restitution and that judgment was the one attached to the state's proof of claim." (J.A. 213-214.) Thus, the bankruptcy court had ample basis to conclude that "under the *Wilson* rationale, a finding of guilt by the district court and an order of restitution would mean that the state's claim is not dischargeable under 11 U.S.C. §1328(a)(3). If the debtor was granted probation before judgment by either the district court or the circuit court, the same result would apply." (J.A. 214.)

Further, even assuming, for argument's sake, that the bankruptcy court possessed discretionary powers under § 1328(a)(3), Ms. Feyijinmi fails to identify any reason based in law for it to have "weighed the equities" in her favor. The Supreme Court has long emphasized its "deep conviction that federal bankruptcy courts should not invalidate the results of state criminal proceedings." *See, e.g., Kelly v. Robinson*, 479 U.S. 36, 47 (1986). This circuit likewise recognizes that the purpose of the Bankruptcy Code is to provide relief from financial overextension, not to act as "a haven for criminal offenders." *In re Thompson*, 16 F.3d 576, 579

(4th Cir. 1994). Had the bankruptcy court discharged Ms. Feyijinmi from court-ordered restitution, that action would have invalidated the carefully considered punishment that the state court crafted in sentencing her. Conversely, she offers no explanation as to how CCU's actions here prejudiced her, other than complaining about the accrual of court-ordered interest and the hardship she faced in repaying money she wrongfully gained through welfare fraud.

III. THE STATE COURT'S GUILTY DETERMINATION CONSTITUTES A "CONVICTION" UNDER THE BANKRUPTCY CODE.

The Supreme Court held in *Dickerson v. New Banner Institute, Inc.*, 460 U.S. at 111-13, that a "conviction" under federal law does not require formal entry of a judgment of guilt. Since a defendant cannot be placed on probation without being found guilty of a crime, *id.* at 113-14, courts since *Dickerson* have uniformly held that deferred adjudications constitute "convictions" under federal statutes in which the term is left undefined. *Aldaco v. RentGrow, Inc.*, 921 F.3d 685, 688 (7th Cir. 2019) (extensively reviewing the meaning of "conviction" under federal law); *see also Yanez-Popp v. U.S. Immigr. & Naturalization Serv.*, 998 F.2d 231, 236 (4th Cir. 1993); *United States v. Bagheri*, 999 F.2d 80, 84 (4th Cir. 1993); *United States v. Pritchett*, 749 F.3d 417, 425-27 (6th Cir. 2014). *Dickerson* ultimately guided the Eighth Circuit Bankruptcy appellate panel's holding in *Wilson* that a deferred adjudication establishes a "conviction" under § 1328(a)(3). 252 B.R. at 743.

Like other state deferred-adjudication statutes, Maryland law requires a

judicial finding of guilt prior to entry of a probation before judgment. Crim. Proc. § 6-220; *see also Howard County Dep't of Soc. Servs. v. Linda J.*, 161 Md. App. 402, 410 (2005); *Board of License Comm'rs for Anne Arundel County v. Corridor Wine, Inc.*, 361 Md. 403, 408 n.4 (2000); *Stutzman v. Krenik*, 350 F. Supp. 3d 366, 379 (D. Md. 2018). Thus, the bankruptcy court, citing *Wilson* as persuasive authority, properly held that Ms. Feyijinmi's criminal restitution from probation before judgment fell squarely within the purview of § 1328(a)(3).

Contrary to Ms. Feyijinmi's assertions, Appellant's Br. 22-23, no meaningful distinctions in the facts distinguish *Wilson* from the instant case. The bankruptcy court considered whether restitution was part of her sentence and the fact that Maryland law necessitates a finding of guilt by the court before a deferred adjudication and restitution can be ordered against a criminal defendant. (J.A. 138, J.A. 143-145, J.A. 203.) Thus, the bankruptcy court recognized that "once guilt has been established whether by plea or by verdict and nothing remains to be done except pass sentence, the defendant has been convicted within the inten[d]ment of Congress." *Dickerson*, 460 U.S. at 114 (quoting *United States v. Woods*, 696 F.2d 566, 570 (8th Cir. 1982)).

Utterly unsupported is Ms. Feyijinmi's claim that *Wilson* "clearly states that a conviction for purposes of a federal statute depends on whether the debtor in an underlying criminal case pleaded guilty." Appellant's Br. 3. To the contrary, *Wilson*

considered the relevance of a guilty plea in the context of finding it not to be an inferior means of establishing guilt when compared to a verdict. *Wilson*, 252 B.R. at 741-42; *see also Dickerson,* 460 U.S. at 111. The district court correctly concluded that "[Ms. Feyijinmi]'s argument raises a distinction without a difference. Therefore, [her] probation before judgment following a finding of guilt constitutes a criminal conviction under 11 U.S.C. § 1328(a)(3) and her restitution was non-dischargeable." (J.A. 282.)

IV. CCU DID NOT WAIVE ITS RIGHT TO COLLECT MS. FEYIJINMI'S NONDISCHARGEABLE DEBT BY CATEGORIZING THE DEBT AS COURT ORDERED FEES ON THE OFFICIAL PROOF OF CLAIM FORM.

CCU's labeling of the debt as "court ordered fees"[3] on its proof of claim did not demonstrate an intent to waive collection of the debt after discharge. The waiver doctrine may apply when a party voluntarily or intentionally relinquishes a known claim right. *In re Varat Enters., Inc.*, 81 F.3d 1310, 1317 (4th Cir. 1996). Multiple authorities have found that a proof of claim's supporting documentation overcomes any deficiencies of clarity on the form itself. *See In re Avery*, 272 B.R. 718, 724 (Bankr. E.D. Cal. 2002) (holding that a creditor's attachments to a proof of claim overcame any "paucity of detail" or lack of clarity when a creditor labeled the

[3] Court-ordered fees are excepted from discharge in a Chapter 7 proceeding under 11 U.S.C. § 523(a)(7). *Thompson,* 16 F.3d at 581. No rule limits a discharge to be based on a single exception. To the contrary, a debt can fall under multiple exceptions. *Kelly v. Robinson*, 479 U.S. at 42 n.3.

amount owed as "$0.00"); *In re Miller*, 124 F. App'x 490, 492 (9th Cir. 2005) (holding that a proof of claim that is not a "model of clarity and completeness" can still be a valid proof of claim). By attaching the judgment of restitution to its proof of claim, CCU removed any ambiguity as to either the nature of the debt or its intent to collect after a possible discharge.

Lacking support in the record, Ms. Feyijinmi contends that the bankruptcy court engaged in a post-discharge amendment to the proof of claim. Appellant's Br. 10, 11, 17. She points to instances where a creditor seeks to amend a claim during the pendency of an active bankruptcy case and thus the court must weigh the equities of allowing the amendment. Appellant's Br. 16-17. But this argument lacks any foundation. The bankruptcy court did not amend CCU's proof of claim post-discharge, and Ms. Feyijinmi cannot cite any evidence that it did.

Further, Ms. Feyijinmi offers no support for the contention that nondischargeability is a "right" which CCU would even have the power to waive. Appellant's Br. 24. A private statutory right cannot be waived if such a waiver would thwart the legislative policy it was designed to effect. *Brooklyn Sav. Bank v. O'Neil*, 324 U.S. 697, 704 (1945); *Tucker v. Beneficial Mortg. Co.*, 437 F. Supp. 2d 584, 587 (E.D. Va. 2006). The Bankruptcy Code enumerates exceptions to discharge not solely for the benefit of creditors, but also to effectuate public policy concerns. As noted in the Report of the Commission on the Bankruptcy Laws of the

United States:

> Claims arising from conduct of the debtor egregiously violating community standards, such as claims for fraud, larceny, embezzlement, willful and malicious wrongs, and civil penalties, should not be discharged because social policy directs, impliedly at least, that the debtor should not be able to escape his responsibility through the bankruptcy process. This view is reflected in certain debt-specific exceptions to discharge, including those that exempt from discharge debts for willful and malicious torts, for damages resulting from drunk driving, and for fraud or embezzlement. Rather than denying discharge to the substantively unworthy debtor outright, these exceptions deny discharge only with respect to those debts that result from the debtor's wrongdoing.

H.R. Rep. No. 93-137, at 79 (1973).

Congress commissioned this report to serve as the impetus for the Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, 92 Stat. 2549 (establishing a uniform bankruptcy law), and the modern Bankruptcy Code. Clearly, the public policy objectives associated with excepting criminal restitution from discharge do not render nondischargeability a "right" that CCU could waive under § 1328(a)(3).

CONCLUSION

The judgment of the United States District Court for the District of Maryland should be affirmed.

Respectfully submitted,

ANTHONY G. BROWN
Attorney General of Maryland

/s/ Susan C. Scanlon
SUSAN C. SCANLON
Assistant Attorney General
300 West Preston Street
Room 407
Baltimore, Maryland 21201
susan.scanlon@maryland.gov
(410) 767-1234
(410) 333-5887 (facsimile)

Attorneys for Appellee

REQUEST FOR ORAL ARGUMENT

Appellee respectfully requests that the Court hear oral argument in this appeal. Appellee submits that oral argument would aid the Court in its disposition of this appeal, which addresses the important issue of whether a judgment of restitution following a criminal conviction and disposition of probation before judgment is not dischargeable under Chapter 13 of the Bankruptcy Code.

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type volume limitations of Federal Rule of Appellate Procedure 32(a)(7)(B) because this brief contains 4,134 words, excluding the parts of the brief exempted by Rule 32(f).

2. This brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type style requirements of Rule 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word in Fourteen point, Times New Roman.

/s/ Susan C. Scanlon
SUSAN C. SCANLON
Assistant Attorney General

TEXT OF PERTINENT PROVISIONS

11 U.S.C. § 1328(a)

(a) Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan or disallowed under section 502 of this title, except any debt--

(1) provided for under section 1322(b)(5);

(2) of the kind specified in section 507(a)(8)(C) or in paragraph (1)(B), (1)(C), (2), (3), (4), (5), (8), or (9) of section 523(a);

(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.

Md. Code Ann., Crim. Proc. § 6-220(b)

(b)(1) When a defendant pleads guilty or nolo contendere or is found guilty of a crime, a court may stay the entering of judgment, defer further proceedings, and place the defendant on probation subject to reasonable conditions if:

(i) the court finds that the best interests of the defendant and the public welfare would be served; and

(ii) the defendant gives written consent after determination of guilt or acceptance of a nolo contendere plea.

(2) Subject to paragraphs (3) and (4) of this subsection, the conditions may include an order that the defendant:

(i) pay a fine or monetary penalty to the State or make restitution; or

(ii) participate in a rehabilitation program, the parks program, or a voluntary hospital program.

(3) Before the court orders a fine, monetary penalty, or restitution, the defendant is entitled to notice and a hearing to determine the amount of the fine, monetary penalty, or restitution, what payment will be required, and how payment will be made.

(4) Any fine or monetary penalty imposed as a condition of probation shall be within the amount set by law for a violation resulting in conviction.

(5) As a condition of probation, the court may order a person to a term of custodial confinement or imprisonment.

IN THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

DEDRE FEYIJINMI,	*	
Plaintiff-Appellant,	*	
v.	*	No. 22-2252
STATE OF MARYLAND CENTRAL COLLECTION UNIT,	*	
Defendant-Appellee.	*	

* * * * * * * * * * * * * *

CERTIFICATE OF SERVICE

I certify that, on this 28th day of March, 2023, the Brief of Respondent was filed electronically and served on counsel of record who are registered CM/ECF users, including

Marie Lott Pharaoh, Esq.
850 Lindbergh Drive, Q4
Jackson, Mississippi 39209
mariepharaoh@gmail.com

/s/ Susan C. Scanlon
SUSAN C. SCANLON