

No. _____

IN THE SUPREME COURT OF THE UNITED STATES

CHUCK DUCKWORTH,

Petitioner,

-vs-

PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

On Petition for Writ of Certiorari
to the Appellate Court of Illinois, Fourth District

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Section 524 of the United States Bankruptcy Code provides that a bankruptcy discharge “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset” a discharged debt. 11 U.S.C. § 524(a)(2) (2018); *Taggart v. Lorenzen*, 139 S. Ct. 1795, 1799 (2019) (explaining that the discharge order “bars creditors from attempting to collect any debt covered by the order”).

The question presented is whether a state prosecutor can nonetheless recover previously discharged debts on behalf of bankruptcy creditors following a criminal prosecution and by way of a restitution award sought with the express intent of making the creditors whole.

PARTIES TO THE PROCEEDING

The caption of the case contains the names of all the parties to the proceeding in the court whose judgment is sought to be reviewed.

RELATED PROCEEDINGS

- *People v. Duckworth*, Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois. McLean County, Illinois. Judgment of conviction following a bench trial entered October 20, 2017. Judgment of sentence entered October 10, 2018.
- *People v. Duckworth*, No. 4-18-0740-U, Appellate Court of Illinois, Fourth District. Order affirming judgment below, in part, entered August 27, 2021.
- *People v. Duckworth*, No. 127723, Supreme Court of Illinois. Order denying petition for leave to appeal entered November 24, 2021.

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PETITION FOR WRIT OF CERTIORARI

Chuck Duckworth respectfully petitions for a writ of certiorari to review the judgment of the Appellate Court of Illinois, Fourth District, affirming, in part, his convictions and sentences, including a more than \$92,000.00 restitution award.

OPINIONS BELOW

The unpublished opinion and order of the Appellate Court of Illinois, Fourth District (Pet. App. 1a-43a), is reported at 2021 IL App (4th) 180740-U. The judgment of the Circuit Court of the Eleventh Judicial Circuit, Champaign County, Illinois (Pet. App. 120a-140a), is not reported. The summary order of the Supreme Court of Illinois (Pet. App. 44a) is reported at 2021 WL 6500501 (Table).

JURISDICTION

The Appellate Court of Illinois, Fourth District, reduced one of the Petitioner's convictions from a felony to a misdemeanor and vacated one of the restitution awards imposed by the circuit court, but affirmed the judgment below in all other respects, on August 27, 2021. The Petitioner filed a timely petition for leave to appeal with the Illinois Supreme Court on October 1, 2021. That petition was denied on November 24, 2021. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1257(a) (2022).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amend. VI

- In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

11 U.S.C.A. § 524(a)(b) (2018).

- (a) A discharge in a case under this title –
 - (1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1192, 1228, or 1328 of this title, whether or not discharge of such debt is waived;
 - (2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived; and
 - (3) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect or recover from, or offset against, property of the debtor of the kind specified in section 541(a)(2) of this title that is acquired after the commencement of the case, on account of any allowable community claim, except a community claim that is excepted from discharge under section 523, 1192, 1228(a)(1), or 1328(a)(1), or that would be so excepted, determined in accordance with the provisions of sections 523(c) and 523(d) of this title, in a case concerning the debtor's spouse commenced on the date of the filing of the petition in the case concerning the debtor, whether or not discharge of the debt based on such community claim is waived.

730 ILCS 5/5-5-6(b) (2018).

- In fixing the amount of restitution to be paid in cash, the court shall allow credit for property returned in kind, for property damages ordered to be repaired by the defendant, and for property ordered to be restored by the defendant; and after granting the credit, the court shall assess the actual out-of-pocket expenses, losses, damages, and injuries suffered by the victim named in the charge and any other victims who may also have suffered out-of-pocket expenses, losses, damages, and injuries proximately caused by the same criminal conduct of the defendant ***.

INTRODUCTION

A petitioner who files for bankruptcy is immediately sheltered from any attempts at collection of his debts by the United States Bankruptcy Code's automatic stay provision. 11 U.S.C.A. § 362(a)(1) (2018) (prohibiting the commencement or continuation "of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title ***."). This provision is designed to protect the debtor's assets, provide temporary relief from creditors, and further equity of distribution among the creditors by preventing a race to the courthouse. *GATX Aircraft Corp. v. M/V Courtney Leigh*, 768 F.2d 711, 716 (5th Cir.1985).

Once a petitioner's bankruptcy is discharged, the temporary stay is replaced with a permanent bankruptcy injunction that enjoins all creditor actions to collect discharged debts. 11 U.S.C.A. § 727 (2018); 11 U.S.C.A. § 524(a)(2) (2018); *In re Cherry*, 247 B.R. 176, 182 (Bankr. E.D. Va. 2000). This permanent injunction assures that the debtor is given a fresh financial start, unburdened by the threat that the discharged creditors will seek payment, and is one of the primary functions and purposes of the Bankruptcy Code. *In re Latanowich*, 207 B.R. 326, 334 (Bankr.D.Mass.1997).

Yet, while giving the debtor a fresh financial start is unmistakably one of the clearest goals of the Code, courts disagree about the finality of a bankruptcy discharge, and whether a post-discharge bankruptcy petitioner should be required to pay a former creditor restitution following a state court proceeding. Numerous courts have held that imposing restitution is an integral part of a probationary sentence regardless of whether the restitution has previously been discharged in bankruptcy and

irrespective of whether the purpose of the restitution award is rehabilitative or compensatory. See e.g., *United States v. Alexander*, 743 F.2d at 480; *United States v. Carson*, 669 F.2d 216, 217 (5th Cir. 1982); *People v. Duckworth*, 2021 IL App (4th) 180740-U, ¶ 122. Other courts engage in a different analysis and examine whether a criminal prosecution was instituted in order to collect a debt. See e.g., *Barnett v. K-Mart, et al. (In re Barnett)*, 15 B.R. 504 (Bkrtcy.D.Kan.1981), *Whitaker v. Locker (In re Whitaker)*, 16 B.R. 917 (Bkrtcy.M.D.Tenn.1982); *Kaping v. State (In re Kaping)*, 13 B.R. 621 (Bkrtcy.D.Or.1981); *In re James*, 10 B.R. 2, 4 (Bkrtcy.W.D.N.C.1980). These courts forbid the assessment of restitution if its purpose is to reimburse creditors whose debts have been previously discharged in bankruptcy. This case illustrates the disagreement which permeates throughout state and federal jurisdictions.

In the instant case, and with defense counsel’s erroneous agreement (R. 594), the circuit court permitted the State of Illinois, while acting as a proxy for Mr. Duckworth’s former creditors, to seek an end-round bankruptcy provisions and protections for the sole purpose of making those creditors “whole.” (Pet. App. 47a-48a, 199a; R. 54) (indicating that it was seeking criminal convictions so the creditors could be made whole and so the defendant has a criminal record). The result, requiring Mr. Duckworth to pay over \$90,000 of his previously discharged debts with the express intent of reimbursing the discharged creditors (Pet. App. 47a-48a, 199a), clearly frustrates Congress’ intent demonstrated by affording a bankruptcy petitioner permanent protection against creditors named in the bankruptcy petition, and undermines a bankruptcy petitioner’s confidence in the guarantee of a fresh start promised by the Code.

The essential purpose of the United States Bankruptcy Code cannot be achieved if a state or federal unit of government is allowed to stand in the place of a post-discharge creditor and successfully argue that the debtor, now bankrupt, is still responsible for paying a number of creditors who were named in his bankruptcy petition their full pre-bankruptcy claim amount.

STATEMENT OF THE CASE

In 1901, a multi-story brick building was built at 114 North Kentucky Avenue in Rantoul, Illinois. The building housed a hardware store for nearly 100 years before it was converted into a cabinetry and woodworking shop. (Pet. App. 2a) At some point, the building, which featured wood floors and exposed brick walls, was vacated and fell into disrepair. Prior to December of 2013, the structure, known as the Kentucky Building, was unusable. (Pet. App. 2a; R. 62)

Chuck Duckworth purchased the Kentucky Building at the end of 2013, and contacted the City of Rantoul about a loan program administered through the Bank of Rantoul. (Pet. App. 2a-3a) Mr. Duckworth was awarded a \$50,000 loan under the Rantoul program. (Pet. App. 13a-14a)

In June of 2015, Mr. Duckworth filed a voluntary petition in the United States Bankruptcy Court for the Central District of Illinois. (Pet. App. 59a-118a) That petition included a list of creditors holding both secured and unsecured claims, including construction contractors and merchants who were involved in the renovation of the Kentucky Building. (Pet. App. 80a-86a, 99a-101a, 109a-17a) The list of unsecured creditors included Contractor Services of Illinois, Classic Granite and Marble, New Age Home Improvement, Lanz Heating & Cooling, Inc., Phoenix Insulation, Good Vibes Sound, Victor Treat & Sons Inc., and ServePro of Clinton.

Some of the unsecured creditors hired attorneys and participated in the bankruptcy proceedings, but most did not. (R. 101, 120, 135, 146, 162, 186, 203, 216, 240-41, 259-60, 352-53, 368) One creditor explained that it did not participate in the bankruptcy because it would have been “futile.” (R. 203) Another explained that there was no point in making a bankruptcy claim. (R. 216)

On August 27, 2015, a hearing was held in the bankruptcy court, and attorneys were given an opportunity to question Mr. Duckworth about the state of his finances and his renovation of the Kentucky Building. (Pet. App. 20a) During that proceeding, Mr. Duckworth explained that he initially planned to use funds from several sources, including an inheritance from his father’s estate, to complete the remodeling work. (Pet. App. 20a-21a)

A few months later, the bankruptcy court discharged Mr. Duckworth's debts, including the debts owed to the contractors involved in the rehabilitation of the Kentucky Building. (Pet. App. 3a, 119a)

Six months later, the Champaign County, Illinois, State's Attorney filed fourteen criminal charges against Mr. Duckworth alleging theft of services and theft of property from the construction contractors and merchants who worked on the Kentucky Building project. (Pet. App. 3a) It explicitly noted that it was pursuing criminal convictions, in part, "to make these victims whole." (R. 54a) Mr. Duckworth's bench trial began in February of 2017. (R. 48a-173a)

During that trial, various construction contractors and merchants testified about their interactions with Mr. Duckworth and the items and services they provided during the rehabilitation of the Kentucky Building. (Pet. App. 4a-12a) At the end of the trial, the court convicted Mr. Duckworth of theft of property or services from most of the named construction contractors. (Pet. App. 21a-22a) Mr. Duckworth filed a post-trial motion and the State filed a response. In its response, the State explained:

"The State seeks restitution for Defendant's victims. The Illinois Constitution recognizes victims' right to restitution. See Ill. Const. 1970, Art. I, Sec. 8.1. A simple desire by the State to obtain restitution for victims of crime is not itself evidence of bad faith. See *Fussell*, 928 F.2d at 717-18. Nonetheless, the State stands ready to forego a restitution judgment if – and only if – necessary to proceed to sentencing in this matter." (Pet. App. 56a)

The State argued that, if a restitution order violated the bankruptcy discharge, Mr. Duckworth could request an injunction from a federal court. (R. 500) Mr. Duckworth's post-trial motion was denied on October 10, 2018, and his case proceeded to a sentencing hearing. (Pet. App. 158a-211a) During that hearing, several of the contractors and merchants testified about their losses. (Pet. App. 160-84) While arguing about the sentencing factors, the State noted that the "unsecured credit loan [was] stripped off through bankruptcy ***." (Pet. App. 189a)

The court sentenced Mr. Duckworth to a series of probationary sentences for each count, the longest of which was 48 months. The court added:

"I will find that he's to order [sic] restitution in the total amount of \$95,331.10 for the benefit of those named contractors that are listed on the proposed restitution order submitted by the State." (Pet. App. 203a)

The court entered a sentencing order listing various restitution amounts that were payable, not to the State, but to the named creditors – the same creditors whose debts were previously discharged through bankruptcy proceedings. (Pet. App. 47a-48a, 59a-118a)

Mr. Duckworth appealed and, among other things, asserted that the attorney who represented him during sentencing proceedings was ineffective for failing to argue that the bankruptcy discharge precluded the restitution award, the entirety of which only benefitted construction contractors and merchants who were involved in the Kentucky Building renovation. (Pet. App. 1a); *Duckworth*, 2021 IL App (4th) 180740, ¶ 1. The appellate court rejected that argument. It found, based on an analysis of *United States v. Alexander*, 743 F.2d 472 (7th Cir. 1984), and *United States v. Carson*, 669 F.2d 216 (5th Cir. 1982), that restitution “is by nature rehabilitative,” and, as a result, can be imposed even where the only expressed purpose for a restitution award is to make “victim’s whole.” (Pet. App. 37a-38a); *Duckworth*, 2021 IL App (4th) 180740, ¶ 126. The court reduced one of Mr. Duckworth’s convictions from a felony to a misdemeanor, and vacated one of the restitution awards imposed on an acquitted count, but affirmed his convictions and sentences, including the remaining \$92,009.10 restitution award, in all other respects. (Pet. App. 23a, 40a); *Duckworth*, 2021 IL App (4th) 180740, ¶¶ 83, 137.

Mr. Duckworth filed a timely petition for leave to appeal to the Supreme Court of Illinois which was summarily denied. (Pet. App. 44a) Mr. Duckworth now respectfully petitions this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

Courts are divided, in a clear and fundamental way, over whether a bankruptcy petitioner can be required to make restitution to aggrieved parties following a criminal prosecution where the debts owed to those parties have previously been discharged through bankruptcy proceedings. This conflict, and the cases which improperly hold that a bankruptcy petitioner, relieved of his debt by a bankruptcy discharge is responsible for reimbursing discharged creditors, undermines Congress’ intent expressed throughout the United States Bankruptcy Code. The uncertainty caused by this conflict also erodes

a bankruptcy petitioner’s confidence that, when he files for bankruptcy and sacrifices assets which are made part of the bankruptcy estate, he will have a fresh start unencumbered by his prior, dischargeable, debts. Given the importance of bankruptcy to America’s financial system and the sheer frequency with which bankruptcy protections are sought, this case presents the perfect opportunity for this Court to resolve the disagreement on this issue of national importance.

Congress’ Intent That Bankruptcy Petitioners Be Afforded A Fresh Start Post-Discharge Is Being Ignored By State And Federal Courts, With The Results Being An Inconsistent National Patchwork Of Important Bankruptcy Rules Where State and Federal Entities Are Allowed To Act As Proxies For Creditors Who, Themselves, Are Prevented From Seeking Reimbursement Following A Bankruptcy Discharge.

The institution of bankruptcy predates America’s founding. The Federalist No. 43, at 271 (Clinton Rossiter ed., 1961). When the Framers gathered to draft the Constitution, English statutes had long empowered nonjudicial bankruptcy “commissioners” to collect a debtor’s property, resolve claims by creditors, order the distribution of assets in the estate, and ultimately the debts. 2 William Blackstone, *Commentaries on the Laws of England*, 471-88 (Clarendon Press, 1765-1769). Over time, however, a number of uniform bankruptcy provisions were codified.¹

Congress enacted the current United States Bankruptcy Code pursuant to the authority granted to it under Article I, § 8 of the United States Constitution to “establish *** uniform Laws on the subject of Bankruptcies throughout the United States.” U.S. Const., art. I, § 8, cl. 4. As that constitutional provision indicates, those bankruptcy laws must be, with limited exceptions, “uniform throughout the United States.” *Ry. Labor Executives’ Ass’n v. Gibbons*, 455 U.S. 457, 469 (1982).

Chapter 7 of the United States Bankruptcy Code allows citizen debtors, struggling with crushing debt, to claim bankruptcy and allow a trustee to liquidate assets to satisfy creditors. More than 733,000 bankruptcy petitioners sought the Code’s protections in 2020. The 475,279 petitions filed under chapter 7 in 2020 far exceeded all combined filings in the U.S. district

¹ The Bankruptcy Code became effective on October 1, 1979. See Bankruptcy Reform Act of 1978, Pub. L. No. 95-598, § 402, 92 Stat. 2549, 2682. It has been routinely amended.

courts for civil cases and criminal defendants. Federal Judicial Caseload Statistics 2020, <https://www.uscourts.gov/statistics-reports/federal-judicial-caseload-statistics-2020>. But, while the staggering number of chapter 7 bankruptcy petitions filed each year illustrates the importance of bankruptcy protections, those statistics are insufficient to fully reveal the significance of bankruptcy as a viable option for American citizens. Some economists estimate that, for every family that files for bankruptcy, there are about 15 more who are in the same amount of financial trouble and would profit from bankruptcy but have not yet filed. Transcript: Elizabeth Warren on Debt and the Middle Class (February 9, 2007), <http://www.shoppbs.pbs.org/now/news/306-transcript.html> (last visited February 15, 2022).

Congress has provided immediate protections for someone who files for bankruptcy. A bankruptcy petition, for example, “creates an estate” that, with some exceptions, comprises “all legal or equitable interests of the debtor in property as of the commencement of the case.” 11 U.S.C.A. § 541(a)(1) (2018). A second automatic consequence following the filing of a bankruptcy petition is that, with certain exceptions, the petition “operates as a stay, applicable to all entities,” of efforts to collect from the debtor outside of the bankruptcy forum. 11 U.S.C.A. § 362(a) (2018).

Critically, though, the purpose of the Code “has been again and again emphasized by the courts as being of public as well as private interest, in that it gives to the honest but unfortunate debtor who surrenders for distribution the property which he owns at the time of bankruptcy, a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.” *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934). This crucial goal of the Bankruptcy Code is accomplished by allowing a bankruptcy court to exercise exclusive jurisdiction over all of the debtor’s property so it may equitably distribute that property among the debtor’s creditors, and discharge the debt so that the debtor has a “fresh start” without further liability for old debts. *Cent. Virginia Cnty. Coll. v. Katz*, 546 U.S. 356, 363-64, (2006). Bankruptcies, with few exceptions, must offer finality and the fresh start Congress sought to guarantee.

Nearly four decades ago, this Court sought to determine the extent of protections offered to bankruptcy petitioners when it examined whether a bankruptcy court could discharge a debtor's already existing restitution award through bankruptcy proceedings. In *Kelly v. Robinson*, 479 U.S. 36, 53 (1986), a majority of this Court found that a restitution order which existed at the time that a bankruptcy petition was filed was not subject to discharge where the discharge would have the effect of invalidating "results of*** state criminal proceedings," and because, usually, restitution *is not* assessed "for ... compensation of the victim." *Robinson*, 479 U.S. at 50-53 (Emphasis added).

Robinson, however, did not decide other important issues that are causing national confusion, several of which are involved in the instant case. This Court has not explained whether a debt, discharged by a bankruptcy court, can be rekindled following a criminal prosecution or whether a State's attorney can act as a proxy for creditors whose debts were earlier discharged and ask a state court to make the creditors "whole." Additionally, unlike the restitution statute discussed in *Robinson* – a statute which set restitution in an amount the defendant can afford to pay and that the court felt was appropriate (*Robinson*, 479 U.S. at 52, quoting Conn.Gen.Stat. § 53a-30(a)(9)(1985)) – Illinois' restitution statute requires that a criminal defendant make restitution in an amount of actual loss suffered by the creditor. 730 ILCS 5/5-5-6(b) (2018). Illinois' restitution statute, and its use in this case, demonstrates that restitution was improperly imposed for a singular purpose – to make creditors whose debts were discharged in bankruptcy "whole."

Courts have demonstrated a great deal of confusion about whether a post-discharge restitution award, explicitly imposed to reimburse a victim, can be levied against a debtor or whether it is a violation of a bankruptcy discharge injunction for a state to stand in the place of a bankruptcy creditor and ask that the creditor be fully reimbursed. This Court's guidance is needed to clarify whether a state can seek a post-discharge restitution award when the debts, on which the restitution order is based, have been previously discharged through bankruptcy.

A. There Exists A Deep And Mature Conflict Over Whether A Permanent Bankruptcy Injunction Prohibits The Imposition Of A Post-Discharge Restitution Award Following A Criminal Prosecution, Especially Where The Restitution Award Is Requested By A State As A Proxy For A Creditor.

A bankruptcy discharge does not, in most cases, prevent a criminal prosecution. See 11 U.S.C.A. § 362(b)(1) (2018) (explaining that a bankruptcy stay does not prohibit “the commencement or continuation of a criminal action or proceeding against the debtor”); *Parker v. United States*, 153 F.2d 66, 71 (1st Cir. 1946). However, existing precedent demonstrates a significant disagreement about whether a State can pursue restitution on behalf of a creditor named in a bankruptcy petition where the creditor is prohibited from doing so.

In *United States v. Alexander*, 743 F.2d 472, 480 (7th Cir. 1984), the trial court, while sentencing the defendant to probation, explained that imposing a restitution order following a post-bankruptcy conviction, was a “critical element of the rehabilitation process that I think has to occur in this case.” *Alexander*, 743 F.2d at 480. While reviewing the propriety of that restitution award, the Seventh Circuit found only one case on the subject, *United States v. Carson*, 669 F.2d 216, 217 (5th Cir. 1982). *Id.*

The defendant in *Carson* fraudulently received a bank loan, filed for bankruptcy, and was granted a bankruptcy discharge without objection from any of his creditors. *Carson*, 669 F.2d 216, 217. Approximately a year later, Carson was convicted of making a false statement to FNB, a bank insured by the Federal Deposit Insurance Corporation, for the purpose of influencing the bank’s action on a loan. *Id.* at 217. The district court sentenced Carson to a two-year term of incarceration, with six months to be served in prison and the remainder suspended. The court also placed Carson on probation for five years, with the condition that he make restitution to FNB in the amount of its loss as a result of the offense. *Id.* Carson appealed, and argued that, because his debt had been discharged in bankruptcy, the district court abused its discretion by making restitution a condition of probation. *Id.*

The Fifth Circuit explained that the purpose of a probation order is to allow an “unhardened offender an opportunity to rehabilitate himself without institutional confinement ***.” *Id.* at 218, quoting *Roberts v. United States*, 320 U.S. 264, 272 (1943). The court concluded that restitution was “strengthening an individual’s sense of responsibility,” regardless of whether the relevant debt was entirely discharged following an earlier bankruptcy. *Carson*, 669 F.2d at 218, quoting *Huggett v. State*, 83 Wis.2d 790, 798 (1978). As a result, the Fifth Circuit ruled that it was not error for the court to impose the restitution award following the defendant’s bankruptcy discharge. *Carson*, 669 F.2d at 218.

While citing to *Carson*, *Alexander* observed that a “bankruptcy proceeding is largely unconcerned with criminality, and discharge may occur regardless of how the debtor has incurred his debts ***.” *Alexander*, 743 F.2d at 480. The *Alexander* Court noted that “[t]he ‘fresh start’ envisioned by the imposition of probation conditions is entirely different from the one resulting from discharge in bankruptcy.” *Id.* According to the *Alexander* Court, rehabilitation of the probationer at no cost to the public safety was fundamental to a probationary sentence. *Id.* As a result, the court permitted the post-discharge restitution award to stand. See also *People v. Washburn*, 97 Cal. App. 3d 621, 626 (Ct. App. 1979) (“A discharge in bankruptcy has no effect whatsoever upon a condition of restitution of a criminal sentence. *** A condition of restitution in a sentence of probation is a part of the judgment of conviction. It does not create a debt nor a debtor/creditor relationship between the persons making and receiving restitution. As with any other condition of a probationary sentence it is intended as a means to insure the defendant will lead a law-abiding life thereafter ***.”).

Mr. Duckworth cited to the language in *Carson* and *Alexander* and argued that, in order to survive bankruptcy, restitution orders must do more than seek to make the victim whole. See *People v. Duckworth*, 2021 IL App (4th) 180740-U, ¶ 122, appeal denied, 127723, 2021 WL 6500501 (Ill. Nov. 24, 2021). Despite the State explicitly noting that it sought a restitution award to make Mr. Duckworth’s creditors whole, the appellate court reasoned that restitution is *always* rehabilitative. *Duckworth*, 2021 IL App (4th) 180740-U, ¶ 126. Under this logic, restitution awards, regardless of

their intent or purpose can always be imposed at the State’s request following a bankruptcy discharge in Illinois. Courts like *Carson, Alexander*, and the appellate court in the instant case allow a State, acting as a proxy for a creditor, to request a restitution award following a criminal proceeding – something that the creditor itself is prohibited from doing.

However, these holdings conflict with the holdings of numerous other cases which explain that allowing a state to pursue restitution in place of a creditor following a bankruptcy discharge results in improper “debt servicing,” which is prohibited by a bankruptcy injunction.

In re Magnifico, 21 B.R. 800 (Bankr. D. Ariz. 1982), for example, involved a situation where the State sought a finding that an existing restitution order was not dischargeable through bankruptcy proceedings. The bankruptcy court agreed, but did so after finding that restitution had been imposed to further the defendant’s rehabilitation. *In re Magnifico*, 21 B.R. at 803. The court, however, noted widespread confusion about when a State could pursue a restitution award on a creditor’s behalf.

Magnifico explained that not all courts impose restitution as a means of rehabilitation and that “different views” had been taken by courts where restitution appeared to be imposed to compensate creditors. *Id.*, citing *Barnett v. K-Mart, et al. (In re Barnett)*, 15 B.R. 504 (Bkrtcy.D.Kan.1981), *Whitaker v. Locker (In re Whitaker)*, 16 B.R. 917 (Bkrtcy.M.D.Tenn.1982); and *Kaping v. State (In re Kaping)*, 13 B.R. 621 (Bkrtcy.D.Or.1981).

Rather than conclude that restitution was simply rehabilitative, *In re Barnett*, *In re Whitaker*, and *In re Kaping* each “looked to the motivation involved in the criminal charges when litigated to collect the debt” and concluded that, in those cases, the prosecuting authority improperly sought to “make the victim whole after discharge of an underlying, pre-existing debt ***.” *In re Magnifico*, 21 B.R. at 803; See also *In re James*, 10 B.R. 2, 4 (Bkrtcy.W.D.N.C.1980) (“The creditor, Clint Triplett, should not be allowed to proceed with prosecution of the criminal action for worthless checks against the Debtor unless and until the debt owed him by the Debtors is finally determined to be non-dischargeable, as allowing him to proceed would wholly frustrate the jurisdiction and judgments

of the Bankruptcy Court.”); *In re Reid*, 9 B.R. 830, 832 (Bkrcty.M.D.Ala.1981) (enjoining a state court criminal action where it appeared that “the prosecuting witnesses are attempting to use the state criminal courts to collect moneys that the debtor is offering to pay them through his Chapter 13 case.”); *In re Lake*, 11 B.R. 202, 204 (Bankr. S.D. Ohio 1981) (“It is quite apparent in this case that the criminal proceedings against the Lakes were not instituted to vindicate the rights of the people of the State of Ohio. They were instituted in order to collect a bad check debt.”).

These courts would not only prohibit a restitution order imposed to restore a debt discharged in bankruptcy, but could also enjoin a criminal prosecution brought for the purpose of relitigating a bankruptcy case in state court. See *In re Penny*, 414 F. Supp. 1113, 1115 (W.D.N.C. 1976) (“The only way to insure effectuation of the judgments of the bankruptcy court is to enjoin permanently criminal proceedings founded on this debt against Penny.”).

Thus, courts clearly disagree about whether a state court, with or without the State’s request, can impose a post-discharge restitution award, following a criminal conviction, in order to make creditors whole. Some courts require an analysis into whether a restitution award is rehabilitative or imposed to make creditors whole, the later purpose being a violation of a bankruptcy discharge. Yet other courts have erroneously found that restitution is *always* permitted as an essential component of a defendant’s rehabilitation and, by so finding, appear to afford little deference to a bankruptcy discharge that has forgiven the imposed restitution.

Indeed allowing a state to act as a proxy for a creditor whose debt was discharged through a bankruptcy proceeding, itself, conflicts with well-established bankruptcy rules. In *In re Barrup*, 51 B.R. 318 (Bankr. D. Vt. 1985), for example, a debtor filed for relief under chapter 7 of the Bankruptcy Code. *Id.* at 318. A creditor brought a complaint to determine the dischargability of a debt and that complaint was denied. *Id.* at 319. A discharge was entered on February 2, 1984. *Id.* at 319. Several months later, the creditor filed a claim in state court similar to the claim litigated in the dischargability

complaint. *Id.* at 319. As a result, *Barrup* filed a motion for contempt and injunctive relief against the creditor.² *Id.* The *Barrup* Court explained that Section 524(a) insures that a discharge granted to a debtor under section 727 will be “completely effective.” *Id.* The promise of finality following bankruptcy proceedings is so important that Section 524(a) “protects a debtor from a subsequent suit in a state court by a creditor whose claim (debt) had been discharged in the title 11 case.” *Id.*, quoting *Collier on Bankruptcy* (15th ed.) ¶ 524.01[1] at page 524 (1985).

Put another way, *Barrup* clearly explained that a creditor who pursues a suit in state court following discharge violates an injunction and faces a citation for contempt in the bankruptcy court upon the application of the debtor. *Id.* at 319. Other courts have announced similar rules and these rules and practices are squarely in conflict with the holding in the instant case, allowing a State’s Attorney to act as a proxy for a creditor in order to recover discharged debts. See *In re Dickinson*, 24 B.R. 547, 550 (Bankr.S.D.Cal.1982) (discharge operates as a permanent injunction against any attempt to collect or recover on a debt as a personal liability of the debtor); *Matter of Ford*, 35 B.R. 277, 279-80 (Bankr.N.D.Ga.1983) (§ 524(a) prohibits a creditor from engaging in collection efforts or seeking judgment against a debtor with respect to discharged debt in any later action).

Notably, under this Court’s precedent, there is even an argument that a State is always foreclosed from recovering a restitution award for a debt that was discharged during bankruptcy proceedings. In *Pennsylvania Dept. of Pub. Welfare v. Davenport*, 495 U.S. 552, 558 (1990), this Court explained that Section 101(11) of the Bankruptcy Code defines “debt” as a “liability on a claim,” and the term

² While *Barrup* discusses the application of section 524(a) to a chapter 11 discharge, it is equally applicable to a chapter 7 bankruptcy, like the one in the instant case. See *In re Barbour*, 77 B.R. 530, 531 (Bankr. E.D.N.C. 1987) (explaining that, when a discharge is granted in a chapter 7 case, the automatic stay terminates (11 U.S.C. § 362(c)(2)(C)), but the stay is replaced by a permanent discharge injunction which, among other things, “operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived.”).

“claim” as a “right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” 11 U.S.C. § 101(4)(A) (2018). This Court’s analysis, in *Davenport*, and the definitions it adopts from the Bankruptcy Code should control this issue. Debts discharged in bankruptcy no longer exist and, by virtue of the definitions in the Bankruptcy Code are no longer “claims” with an existing “right to payment” for the purposes of restitution. *Davenport*, 495 U.S. at 558, citing 11 U.S.C. § 101(4)(A); See *Johnson v. Home State Bank*, 501 U.S. 78, 83 n.4 (1991) (noting that Congress subsequently passed a statute which operated to overrule the holding in *Davenport*, but finding that the *Davenport* Court’s discussion of “claims” was not impacted by Congress’ action).

However, following *Davenport*, courts remain divided on the question of whether restitution awards are dischargeable during the course of a bankruptcy. Compare *In re Towers*, 162 F.3d 952, 956 (7th Cir. 1998), cert. denied *Illinois ex rel. Ryan v. Towers*, 527 U.S. 1004 (1999) (civil restitution payable to, but not for the benefit of, the state could be discharged during a chapter 7), with *In re Barnett*, 416 B.R. 917, 920 (Bankr. M.D. Ga. 2009) (“This Court is bound by the Eleventh Circuit’s decision in *In re Verola* [, 446 F.3d 1206, 1208 (11th Cir. 2006)], which held that all state-imposed criminal restitution obligations are not dischargeable in bankruptcy.”).

It is clearly inappropriate for a creditor to pursue a post-discharge suit to recover debts that are subject to the permanent bankruptcy injunction. This prohibition should extend to any agent for the creditor, implied or otherwise, including the State of Illinois – especially, here, where the State of Illinois admitted that it was acting as a proxy for the bankruptcy creditors. See (R. 54) (noting the State’s request for restitution to compensate the construction contractors whose claims were discharged in the earlier bankruptcy proceedings).

The fact that the State’s Attorney was pursuing restitution for the sole purpose of making the discharged creditors whole would be of no consequence in the Fifth Circuit, Seventh Circuit, or in the State of Illinois. See *Alexander*, 743 F.2d 472, 480; *Carson*, 669 F.2d at 217. However, it would

prohibit the entry of a restitution order in Ohio, North Carolina, or Maryland. *In re James*, 10 B.R. 2; *In re Reid*, 9 B.R. 830; *In re Penny*, 414 F. Supp. at 1115. The conflicting decisions on this subject call for this Court’s intervention and a determination of whether states should be allowed to service debt on behalf of creditors who are enjoined from doing so themselves.

The State of Illinois should not be allowed to act as a proxy for the bankruptcy creditors and argue that the creditors should be made whole. Indeed, doing so violates the permanent bankruptcy injunction.

B. The State’s Actions In This Case Undermine The Promises Made To Every Debtor Who Files For Bankruptcy.

Post-discharge restitution orders, awarded at the behest of a state in order to make a creditor whole following a bankruptcy discharge erode the key purpose of the Bankruptcy Code. *Local Loan Co. v. Hunt*, 292 U.S. 234, 244 (1934) (explaining that a central purpose of the code is to provide a procedure by which certain insolvent debtors can reorder their affairs, make peace with their creditors, and enjoy “a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt.”).

Once a petitioner files for bankruptcy, nonexempt assets make up the corpus of the bankruptcy estate and are distributed to creditors. The petitioner eventually emerges from bankruptcy financially vulnerable, with ownership of only the exempt and after-acquired assets which were not included in the bankruptcy estate – just enough to “provid[e] the necessities of life.” *In re Bartlett*, 168 B.R. 488, 493 (Bankr. D.N.H. 1994). In most cases, the assets available to a post-discharge bankruptcy petitioner are extraordinarily limited. For example, pursuant to the Code, a bankruptcy petitioner who emerges with a “fresh start” is only allowed \$4,000 for his motor vehicle (11 USC § 522(d)(2) (2018)); \$13,400 in loan value, accrued dividends, or interest in a life insurance policy (11 USC § 522(d)(8) (2018)); \$1,700 for jewelry (11 USC § 522(d)(4) (2018)); and a total aggregate value of \$13,400 for household goods, furnishings, appliances, clothes, books, animals, crops, musical instruments. (11 USC § 522(d)(3) (2018)). Debtors who emerge from bankruptcy, including Chuck Duckworth, are financially fragile.

Approximately \$229,600 of Chuck Duckworth's unsecured debts were discharged once the bankruptcy court filed its order discharging those debts. (Pet. App. 86a, 119a) At the time of the discharge, Mr. Duckworth reported an annual income of \$14,400. (Pet. App. 89a) He listed his most valuable asset as a \$34,264.00 building and a \$3,399.00 Honda Accord. (Pet. App. 74a, 77a) He should have been allowed to emerge from bankruptcy with his creditors having received a proportionate share of the bankruptcy estate, regardless of whether they participated in the bankruptcy proceedings or not.

Instead, the possessions in Mr. Duckworth's bankruptcy estate were presumably liquidated and each of the creditors received a proportionate share of the bankruptcy estate. *In re Upshur*, 317 B.R. 446, 452 (Bankr. N.D. Ga. 2004); *Matter of Smith*, 966 F.2d 1527, 1535 (7th Cir. 1992). Then the State of Illinois was permitted to request, on behalf of several creditors, that Mr. Duckworth be required to make the creditors whole. Such an outcome denied Mr. Duckworth the protections afforded to him by the Bankruptcy Code, permitted Illinois state law to take precedence over federal bankruptcy protections, and resulted in his creditors being treated differently depending on whether the State of Illinois took up their cause.

When bankruptcy works as Congress intended, the fact that a petitioner emerges from bankruptcy in a vulnerable financial position is of little consequence. After all, bankruptcy was designed as an equitable means to satisfy a petitioner's creditors and grant the petitioner a fresh start unencumbered by past, discharged, debt. See *In re Schmiedel*, 236 B.R. 393, 398 (Bankr. E.D. Wis. 1999) ("The injunction under § 524(a)(1) and (2) prevents creditors from attempting to establish or to collect on account of personal liability of a debtor for prepetition dischargeable debts.").

Allowing a state to step into the place of a post-discharge creditor and assert that, following a criminal conviction, a restitution order should be imposed to make the creditors whole is a misuse of the criminal justice system and a circumvention of bankruptcy laws. Such a scenario also elevates

the quality of the debt owed to the contractors and allows a state court, sensitive to the financial plight of the businesses in its jurisdiction, to avoid the permanent bankruptcy injunction in favor of local businesses. This Court’s intervention is needed to ensure that creditors, unhappy with the bankruptcy process, do not pursue a similar course, thereby rendering the most laudable goal of bankruptcy proceedings a vestige of the past. See *In re Jensen*, 127 B.R. 27, 31 (B.A.P. 9th Cir. 1991), aff’d, 995 F.2d 925 (9th Cir. 1993), quoting *Grogan v. Garner*, 498 U.S. 279, 286-87 (1991) (“the overriding goal of the Bankruptcy Code to provide a ‘fresh start’ for the debtor.”).

C. The Error Made By The Circuit Court When It Imposed A Restitution Order Was Compounded By Defense Counsel, Who Did Not Object To The Imposition Of Restitution. Though Clear Precedent Existed For An Objection To A Restitution Award, The Disparate Manner With Which Restitution Awards Are Imposed Following A Bankruptcy Causes Confusion For Debtors, Counsel, And Courts Alike And Should Be Addressed By This Court.

The attorney who represented Mr. Duckworth at sentencing told the court that “Mr. Duckworth should be held liable in terms of, you know, paying these contractors back.” (Pet. App. 193a) Counsel did not file a post-sentencing motion challenging the restitution award. Defense counsel was ineffective for failing to argue that the restitution award, ordered solely to compensate the contractors for their loss, was improper where the underlying debts had been discharged through bankruptcy months before the criminal charges were filed.

A defendant has a constitutional right to the effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668, 686 (1984); U.S. Const., amends. VI, XIV. A defendant claiming ineffective assistance of counsel must prove that trial counsel’s actions or omissions were so deficient that they were unreasonable. *United States v. Simone*, 931 F.2d 1186, 1194 (7th Cir. 1991). The defendant must also demonstrate that, but for counsel’s unprofessional errors, there is a reasonable probability that the result of the proceedings would have been different. *Strickland*, 466 U.S. at 698. Whether counsel rendered ineffective assistance is a mixed question of law and fact, subject to *de novo* review. *Id.* at 698.

The primary duties of a defense attorney are to advocate for the defendant's cause and to use his skill and knowledge to render the trial a reliable adversarial testing process. *Id.* at 688. An attorney who acts unreasonably while representing a defendant is ineffective if his unreasonable conduct caused the defendant prejudice. Prejudice is shown if "there is a reasonable probability that, but for counsel's unprofessional errors, the results of the proceeding would have been different." *Id.* at 694. A reasonable probability is one that is "sufficient to undermine confidence in the outcome" of the trial." *Id.*

Here, counsel erred when he told the court that Mr. Duckworth should be responsible for paying restitution to the construction contractors where the debts that Mr. Duckworth owed to the contractors had already been discharged in bankruptcy and the restitution was sought only to make the construction contractors whole. *In re Barbour*, 77 B.R. at 531; *In re Covelli*, 550 B.R. 256, 266-67 (Bankr. S.D.N.Y. 2016); *Robinson*, 479 U.S. at 53 (explaining that restitution awards are not assessed for compensation of the victim).

The record demonstrates that the restitution award was improperly assessed by the circuit court, not to aid in Mr. Duckworth's rehabilitation, but in order to reimburse the construction contractors for their losses. (Pet. App. 47a-48a, 203a) (the sentencing order making the restitution directly payable to the construction contractors and not for the benefit of the State of Illinois); 11 U.S.C.A. 524(a)(2) (2018). An injunction was already in place preventing the restitution judgment. 11 U.S.C.A. 524(a)(2). Put another way, by requesting and receiving a restitution award in the instant case, the State of Illinois made an end-run around the bankruptcy judgment which discharged the very debts for which the court ordered restitution. Defense counsel failed to object to the restitution award which was imposed to make the construction contractors whole and was in violation of the permanent bankruptcy injunction. This resulted in an almost \$100,000 restitution award being improperly imposed and clearly prejudiced Mr. Duckworth.

Defense counsel failed to guarantee that the sentencing proceedings were a reliable adversarial testing process where he agreed to the imposition of restitution awards which were not legally authorized. *Strickland*, 466 U.S. 668. Had defense counsel objected to the restitution award, there is a reasonable probability that it would have never been imposed. (Pet. App. 192a) (the noting the State's willingness to forego a restitution award). Counsel's failure to argue that restitution was improper was both unreasonable and sufficient to undermine confidence in the outcome of the sentencing proceedings. *Strickland*, 466 U.S. 664.

In sum, this case involves a startling outcome following a process that is supposed to offer finality and a fresh start. The State of Illinois should not be permitted to upend the bankruptcy process and its guarantee of finality by standing in the place of creditors who were forbidden from seeking reimbursement and requesting that the court make those creditors "whole." The State's actions in the instant case violated the bankruptcy injunction, were improper, and throw the finality of bankruptcy proceedings in question. This Court should grant review and alleviate national confusion surrounding a court's ability to enter a restitution order following a successful bankruptcy discharge.

CONCLUSION

For the foregoing reasons, petitioner, Chuck Duckworth, respectfully prays that a writ of certiorari issue to review the judgment of the Illinois Appellate Court.

Respectfully submitted,

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