SUPREME COURT OF THE UNITED STATES

No. 09–367

BRIAN RUSSELL DOLAN, PETITIONER *v.*
UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[June 14, 2010]

JUSTICE BREYER delivered the opinion of the Court.

This case concerns the remedy for missing a statutory deadline. The statute in question focuses upon mandatory restitution for victims of crimes. It provides that "the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing." 18 U. S. C. §3664(d)(5). We hold that a sentencing court that misses the 90-day deadline nonetheless retains the power to order restitution—at least where, as here, the sentencing court made clear prior to the deadline's expiration that it would order restitution, leaving open (for more than 90 days) only the amount.

I

On February 8, 2007, petitioner Brian Dolan pleaded guilty to a federal charge of assault resulting in serious bodily injury. 18 U. S. C. §§113(a)(6), 1153; App. 17. He entered into a plea agreement that stated that "restitution . . . may be ordered by the Court." *Id.*, at 18. The presentence report, provided to the court by the end of May, noted that restitution was required. But, lacking precise information about hospital costs and lost wages, it did not

recommend a restitution amount. *Id.*, at 27.

On July 30, the District Court held Dolan's sentencing hearing. The judge sentenced Dolan to 21 months' imprisonment along with 3 years of supervised release. *Id.*, at 38. The judge, aware that restitution was "mandatory," said that there was "insufficient information on the record at this time regarding possible restitution payments that may be owed," that he would "leave that matter open, pending the receipt of additional information," and that Dolan could "anticipate that such an award will be made in the future." *Id.*, at 39–40. A few days later (August 8) the court entered a judgment, which, among other things, stated:

> "Pursuant to the Mandatory Restitution Act, restitution is applicable; however, no information has been received regarding possible restitution payments that may be owed. Therefore, the Court will not order restitution at this time." *Id.*, at 49 (boldface deleted).

The probation office later prepared an addendum to the presentence report, dated October 5, which reflected the views of the parties, and which the judge later indicated he had received. *Id.*, at 54. The addendum documents the "total amount of restitution" due in the case (about $105,000). *Id.,* at 52. Its date, October 5, is 67 days after Dolan's July 30 sentencing and 23 days before the statute's "90 days after sentencing" deadline would expire. §3664(d)(5).

The sentencing court nonetheless set a restitution hearing for February 4, 2008—about three months after the 90-day deadline expired. As far as the record shows, no one asked the court for an earlier hearing. At the hearing, Dolan pointed out that the 90-day deadline had passed. *Id.*, at 54–55. And he argued that the law no longer authorized the court to order restitution. *Id.*, at 60–64.

The court disagreed and ordered restitution. See

Memorandum Opinion and Restitution Order in No. CR 06–02173–RB (D NM, Apr. 24, 2008), App. to Pet. for Cert. 47a. The Court of Appeals affirmed. 571 F. 3d 1022 (CA10 2009). And, in light of differences among the Courts of Appeals, we granted Dolan's petition for certiorari on the question. Compare *United States* v. *Cheal*, 389 F. 3d 35 (CA1 2004) (recognizing court's authority to enter restitution order past 90 days) and *United States* v. *Balentine*, 569 F. 3d 801 (CA8 2009) (same), with *United States* v. *Maung*, 267 F. 3d 1113 (CA11 2001) (finding no such authority), and *United States* v. *Farr*, 419 F. 3d 621 (CA7 2005) (same).

II

A

There is no doubt in this case that the court missed the 90-day statutory deadline "for the final determination of the victim's losses." §3664(d)(5). No one has offered any excuse for the court's doing so. Nor did any party seek an extension or "tolling" of the 90 days for equitable or for other reasons. All the information needed to determine the requisite restitution amount was available before the 90-day period had ended. Thus, the question before us concerns the consequences of the missed deadline where, as here, the statute does not specify them.

In answering this kind of question, this Court has looked to statutory language, to the relevant context, and to what they reveal about the purposes that a time limit is designed to serve. The Court's answers have varied depending upon the particular statute and time limit at issue. Sometimes we have found that the statute in question imposes a "jurisdictional" condition upon, for example, a court's authority to hear a case, to consider pleadings, or to act upon motions that a party seeks to file. See, *e.g.*, *Bowles* v. *Russell*, 551 U. S. 205 (2007). But cf. *Kontrick* v. *Ryan*, 540 U. S. 443, 455 (2004) (finding bankruptcy rule

did not show legislative intent to "delineat[e] the classes of cases" and "persons" properly "within a court's adjudicatory authority"); see also *Reed Elsevier, Inc.* v. *Muchnick*, 559 U. S. ___, ___ (2010) (slip op., at 5–6) (discussing use of term "jurisdictional"). The expiration of a "jurisdictional" deadline prevents the court from permitting or taking the action to which the statute attached the deadline. The prohibition is absolute. The parties cannot waive it, nor can a court extend that deadline for equitable reasons. See *John R. Sand & Gravel Co.* v. *United States*, 552 U. S. 130, 133–134 (2008).

In other instances, we have found that certain deadlines are more ordinary "claims-processing rules," rules that do not limit a court's jurisdiction, but rather regulate the timing of motions or claims brought before the court. Unless a party points out to the court that another litigant has missed such a deadline, the party forfeits the deadline's protection. See, *e.g., Kontrick* v. *Ryan*, *supra*, at 454–456 (60-day bankruptcy rule deadline for creditor's objection to debtor discharge); *Eberhart* v. *United States*, 546 U. S. 12, 19 (2005) *(per curiam)* (7-day criminal rule deadline for filing motion for a new trial).

In still other instances, we have found that a deadline seeks speed by creating a time-related directive that is legally enforceable but does not deprive a judge or other public official of the power to take the action to which the deadline applies if the deadline is missed. See, *e.g., United States* v. *Montalvo-Murillo*, 495 U. S. 711, 722 (1990) (missed deadline for holding bail detention hearing does not require judge to release defendant); *Brock* v. *Pierce County*, 476 U. S. 253, 266 (1986) (missed deadline for making final determination as to misuse of federal grant funds does not prevent later recovery of funds); *Barnhart* v. *Peabody Coal Co.*, 537 U. S. 149, 171–172 (2003) (missed deadline for assigning industry retiree benefits does not prevent later award of benefits).

After examining the language, the context, and the purposes of the statute, we conclude that the provision before us sets forth this third kind of limitation. The fact that a sentencing court misses the statute's 90-day deadline, even through its own fault or that of the Government, does not deprive the court of the power to order restitution.

B

Several considerations lead us to this conclusion. *First*, where, as here, a statute "does not specify a consequence for noncompliance with" its "timing provisions," "federal courts will not in the ordinary course impose their own coercive sanction." *United States* v. *James Daniel Good Real Property*, 510 U. S. 43, 63 (1993); see also *Montalvo-Murillo*, *supra*, at 717–721. Cf., *e.g.,* Speedy Trial Act, 18 U. S. C. §3161(c)(1); §3162(a)(2) (statute specifying that missed 70-day deadline requires dismissal of indictment); *Zedner* v. *United States*, 547 U. S. 489, 507–509 (2006) ("The sanction for a violation of the Act is dismissal").

We concede that the statute here uses the word "shall," §3664(d)(5), but a statute's use of that word alone has not always led this Court to interpret statutes to bar judges (or other officials) from taking the action to which a missed statutory deadline refers. See, *e.g., Montalvo-Murillo, supra,* at 718–719 (use of word "shall" in context of bail hearing makes duty "mandatory" but does not mean that the "sanction for breach" is "loss of all later powers to act"); *Brock*, *supra*, at 262 (same in context of misuse of federal funds); *Barnhart*, *supra*, at 158–163 (same in context of benefits assignments). See also *Regions Hospital* v. *Shalala*, 522 U. S. 448, 459, n. 3 (1998) (same in respect to federal official's reporting date).

Second, the statute's text places primary weight upon, and emphasizes the importance of, imposing restitution upon those convicted of certain federal crimes. Amending

an older provision that left restitution to the sentencing judge's discretion, the statute before us (entitled "The Mandatory Victims Restitution Act of 1996") says "*[n]otwithstanding any other provision of law*, when sentencing a defendant convicted of [a specified] offense . . . , the court *shall* order . . . that the defendant make restitution to the victim of the offense." §3663A(a)(1) (emphasis added); cf. §3663(a)(1) (stating that a court "may" order restitution when sentencing defendants convicted of other specified crimes). The Act goes on to provide that restitution shall be ordered in the "full amount of each victim's losses" and "without consideration of the economic circumstances of the defendant." §3664(f)(1)(A).

Third, the Act's procedural provisions reinforce this substantive purpose, namely, that the statute seeks primarily to assure that victims of a crime receive full restitution. To be sure speed is important. The statute requires a sentencing judge to order the probation office to prepare a report providing "a complete accounting of the losses to each victim, any restitution owed pursuant to a plea agreement, and information relating to the economic circumstances of each defendant." §3664(a). The prosecutor, after consulting with all identified victims, must "promptly provide" a listing of the amount subject to restitution "*not later than 60 days prior to the date initially set for sentencing*." §3664(d)(1) (emphasis added). And the provision before us says:

> "If the victim's losses are not ascertainable by the date that is 10 days prior to sentencing, the attorney for the Government or the probation officer shall so inform the court, and the court shall set a date for the final determination of the victim's losses, not to exceed 90 days after sentencing." §3664(d)(5).

But the statute seeks speed primarily to help the victims of crime and only secondarily to help the defendant. Thus,

in the sentence following the language we have just quoted, the statute continues:

> "If the victim subsequently discovers further losses, the victim shall have 60 days after discovery of those losses in which to petition the court for an amended restitution order." *Ibid*.

The sentence imposes no time limit on the victim's subsequent discovery of losses. Consequently, a court might award restitution for those losses long after the original sentence was imposed and the 90-day time limit has expired. That fact, along with the Act's main substantive objectives, is why we say that the Act's efforts to secure speedy determination of restitution is *primarily* designed to help victims of crime secure prompt restitution rather than to provide defendants with certainty as to the amount of their liability. Cf. S. Rep. No. 104–179, p. 20 (1995) (recognizing "the need for finality and certainty in the sentencing process," but also stating that the "sole due process interest of the defendant being protected . . . is the right not to be sentenced on the basis of invalid premises or inaccurate information"); see also *ibid.* ("[J]ustice cannot be considered served until full restitution is made").

Fourth, to read the statute as depriving the sentencing court of the power to order restitution would harm those—the victims of crime—who likely bear no responsibility for the deadline's being missed and whom the statute also seeks to benefit. Cf. §3664(g)(1) ("No victim shall be required to participate in any phase of a restitution order"). The potential for such harm—to third parties—normally provides a strong indication that Congress did not intend a missed deadline to work a forfeiture, here depriving a court of the power to award restitution to victims. See *Brock*, 476 U. S., at 262 (parties concede and court assumes that official can "proceed after the deadline" where "inaction" would hurt third party); see also 3 N. Singer &

J. Singer, Sutherland on Statutory Construction §57:19, pp. 73–74 (7th ed. 2008) (hereinafter Singer, Statutory Construction) (missing a deadline does not remove power to exercise a duty where there is no "language denying performance after a specified time," and especially "where a mandatory construction might do great injury to persons not at fault, as in a case where slight delay on the part of a public officer might prejudice private rights or the public interest" (footnote omitted)).

Fifth, we have previously interpreted similar statutes similarly. In *Montalvo-Murillo*, 495 U. S. 711, for example, we considered the Bail Reform Act of 1984, which states that a "judicial officer shall hold a hearing" to determine whether to grant bail to an arrested person and that "hearing shall be held *immediately upon the person's first appearance* before the judicial officer." (A continuance of up to five days may also be granted.) 18 U. S. C. §3142(f) (emphasis added). The judicial officer missed this deadline, but the Court held that the judicial officer need not release the detained person. Rather, "once the Government discovers that the time limits have expired, it may [still] ask for a prompt detention hearing and make its case to detain based upon the requirements set forth in the statute." 495 U. S., at 721.

The Court reasoned that "a failure to comply" with the hearing deadline "does not so subvert the procedural scheme . . . as to invalidate the hearing." *Id.*, at 717. Missing the deadline did not diminish the strength of the Government's interest in preventing release to avert the likely commission of crimes—the very objective of the Act. *Id.*, at 720. Nor would mandatory release of the detained person "proportion[ately]" repair the "inconvenience and uncertainty a timely hearing would have spared him." *Id.*, at 721.

Here, as in *Montalvo-Murillo*, neither the language nor the structure of the statute requires denying the victim

restitution in order to remedy a missed hearing deadline. As in *Montalvo-Murillo*, doing so would defeat the basic purpose of the Mandatory Victims Restitution Act. And, here, as in *Montalvo-Murillo*, that remedy does not "proportion[ately]" repair the harm caused the defendant through delay, particularly where, as here, the defendant "knew about restitution," including the likely amount, well before expiration of the 90-day time limit. App. 62. Indeed, our result here follows from *Montalvo-Murillo a fortiori,* for here delay at worst postpones the day of financial reckoning. In *Montalvo-Murillo*, delay postponed a constitutionally guaranteed bail hearing with the attached risk that the defendant would remain improperly confined in jail. See 495 U. S., at 728 (STEVENS, J., dissenting) (noting the seriousness "of the deprivation of liberty that physical detention imposes").

Nor does *Montalvo-Murillo* stand alone. The Court there found support in similar cases involving executive officials charged with carrying out mandatory public duties in a timely manner. See *id.*, at 718 (citing *French* v. *Edwards*, 13 Wall. 506, 511 (1872); *Brock, supra,* at 260). Those cases, in turn, are consistent with numerous similar decisions made by courts throughout the Nation. See, *e.g., Taylor* v. *Department of Transp.*, 260 N. W. 2d 521, 522–523 (Iowa 1977); *Hutchinson* v. *Ryan*, 154 Kan. 751, 756–757, 121 P. 2d 179, 182 (1942); *State* v. *Industrial Comm'n*, 233 Wis. 461, 466, 289 N. W. 769, 771 (1940); see also 3 Singer, Statutory Construction §57:19, at 74 (citing cases).

Sixth, the defendant normally can mitigate any harm that a missed deadline might cause—at least if, as here, he obtains the relevant information regarding the restitution amount before the 90-day deadline expires. A defendant who fears the deadline will be (or just has been) missed can simply tell the court, which will then likely set a timely hearing or take other statutorily required action.

See §3664(d)(4) (providing that "court may require additional documentation or hear testimony"); §3664(d)(5). Though a deliberate failure of the sentencing court to comply with the statute seems improbable, should that occur, the defendant can also seek mandamus. See All Writs Act, 28 U. S. C. §1651(a); *La Buy* v. *Howes Leather Co.*, 352 U. S. 249 (1957). Cf. *Brock*, 476 U. S., at 260, n. 7 (noting availability of district court action to compel agency compliance with time-related directive).

C

Petitioner Dolan, however, believes we have understated the harm to a defendant that a missed deadline can cause. To show this he makes a three-part argument: (1) A defendant cannot appeal a sentence unless it is part of a "final judgment"; (2) a judgment setting forth a sentence is not "final" until it contains a definitive determination of the amount of restitution; and (3) to delay the determination of the amount of restitution beyond the 90-day deadline is to delay the defendant's ability to appeal for more than 90 days—perhaps to the point where his due process rights are threatened. Brief for Petitioner 28–33.

The critical problem with this argument lies in its third step. As we have said, a defendant who, like petitioner here, knows that restitution will be ordered and is aware of the restitution amount prior to the expiration of the 90-day deadline can usually avoid additional delay simply by pointing to the statute and asking the court to grant a timely hearing. That did not happen here. And that minimal burden on the defendant is a small cost relative to the prospect of depriving innocent crime victims of their due restitution. (Should the court still refuse, the defendant could seek mandamus—which we believe will rarely be necessary.)

Even in the unlikely instances where that delay does cause the defendant prejudice—perhaps by depriving him

of evidence to rebut the claimed restitution amount—the defendant remains free to ask the court to take that fact into account upon review. That inquiry might also consider the reason for the delay and the party responsible for its cause, *i.e.*, whether the Government or the victim. Cf., *e.g., United States* v. *Stevens*, 211 F. 3d 1, 4–6 (CA2 2000) (tolling 90-day deadline for defendant's bad-faith delay); *United States* v. *Terlingo*, 327 F. 3d 216, 218–223 (CA3 2003) (same). Adopting the dissent's approach, by contrast, would permit a defendant's bad-faith delay to prevent a timely order of restitution, potentially allowing the defendant to manipulate whether restitution could be awarded at all. But since we are not presented with such a case here, we need not decide whether, or how, such potential harm or equitable considerations should be taken into consideration.

In focusing upon the argument's third step, we do not mean to imply that we accept the second premise, *i.e.*, that a sentencing judgment is not "final" until it contains a definitive determination of the amount of restitution. To the contrary, strong arguments favor the appealability of the initial judgment irrespective of the delay in determining the restitution amount. The initial judgment here imposed a sentence of imprisonment and supervised release, and stated that restitution would be awarded. This Court has previously said that a judgment that imposes "discipline" may still be "freighted with sufficiently substantial indicia of finality to support an appeal." *Corey* v. *United States*, 375 U. S. 169, 174, 175 (1963) (internal quotation marks omitted). And the Solicitor General points to statutes that say that a "judgment of conviction" that "includes" a "sentence to imprisonment" is a "final judgment." 18 U. S. C. §3582(b). So is a judgment that imposes supervised release (which can be imposed only in conjunction with a sentence of imprisonment). *Ibid.;* §3583(a). So is a judgment that imposes a fine. §3572(c).

See Tr. of Oral Arg. 33–34.

Moreover, §3664(*o*) provides that a "sentence that imposes an order of restitution," such as the later restitution order here, "is a final judgment." Thus, it is not surprising to find instances where a defendant has appealed from the entry of a judgment containing an initial sentence that includes a term of imprisonment; that same defendant has subsequently appealed from a later order setting forth the final amount of restitution; and the Court of Appeals has consolidated the two appeals and decided them together. See, *e.g., United States* v. *Stevens*, *supra; United States* v. *Maung*, 267 F. 3d 1113, 1117 (CA11 2001); cf. *United States* v. *Cheal*, 389 F. 3d 35, 51–53 (CA1 2004).

That the defendant can appeal from the earlier sentencing judgment makes sense, for otherwise the statutory 90-day restitution deadline, even when complied with, could delay appeals for up to 90 days. Defendants, that is, would be forced to wait three months before seeking review of their conviction when they could ordinarily do so within 14 days. See Fed. Rule App. Proc. 4(b). Nonetheless, in light of the fact that the interaction of restitution orders with appellate time limits could have consequences extending well beyond cases like the present case (where there was no appeal from the initial conviction and sentence), we simply note the strength of the arguments militating against the second step of petitioner's argument without deciding whether or when a party can, or must, appeal. We leave all such matters for another day.

The dissent, however, creates a rule that could adversely affect not just restitution, but other sentencing practices beyond the narrow circumstances presented here. Consider, for example, a judge who (currently lacking sufficient information) wishes to leave open, say, the amount of a fine, or a special condition of supervised release. In the dissent's view, the entry of any such judgment would immediately deprive the judge of the author-

ity later to fill in that blank, in the absence of a statute specifically providing otherwise. See *post,* at 1–4 (opinion of ROBERTS, C. J.). Thus, the sentencing judge would either have to (1) forgo the specific dollar amount or potential condition, or (2) wait to enter any judgment until all of the relevant information is at hand. The former alternative would sometimes deprive judges of the power to enter components of a sentence they may consider essential. The latter alternative would require the defendant to wait—perhaps months—before taking an appeal.

As we have pointed out, our precedents do not currently place the sentencing judge in any such dilemma. See *supra,* at 5, 8–9. And we need not now depart from those precedents when *this* case does not require us to do so; when the issue has not been adequately briefed; when the lower court had no opportunity to consider the argument (which the petitioner may well have forfeited); and when the rule would foreclose the current practices of some district courts and unnecessarily cabin the discretion they properly exercise over scheduling and sentencing matters. Cf., *e.g., United States* v. *Stevens*, *supra*, at 3; *United States* v. *Cheal*, *supra*, at 47 (illustrating district court practices).

Certainly there is no need to create this rule in the context of restitution, for provisions to which the dissent refers are silent about whether restitution can or cannot be ordered after an initial sentencing. See, *e.g.,* §§3551(b), (c) ("A sanction authorized by [criminal forfeiture and restitution statutes] may be imposed in addition to the [rest of the] sentence"); §3663A(c)(1) (mandatory orders of restitution "shall apply in all sentencing proceedings [for specified offenses]"). And even on the dissent's theory, the statute elsewhere provides the necessary substantive authorization: "Notwithstanding any other provision of law, when sentencing a defendant convicted of [a specified] offense . . . , *the court shall order . . . that the defendant*

make restitution to the victim of the offense." §3663A(a)(1) (emphasis added). The dissent cannot explain why a *separate* statutory provision regarding procedures as to when a "court shall set a date for the final determination of the victim's losses," §3664(d)(5), automatically divests a court of this distinct substantive authority. While of course that provision does not "plainly" confer "power to act after sentencing," *post*, at 5 (emphasis deleted), neither does it "plainly" remove it or require that all sentencing matters be concluded at one point in time. (And the dissent's assertion, see *post*, at 6—that it uses the term "authority" not in its "jurisdictional" sense, but rather in the sense that a court lacks "authority" to "impose a sentence above the maximum"—introduces a tenuous analogy that may well confuse this Court's precedents regarding the term "jurisdictional." See *supra*, at 3–4.)

In any event, unless one reads the relevant statute's 90-day deadline as an ironclad limit upon the judge's authority to make a final determination of the victim's losses, the statute before us itself provides adequate authority to do what the sentencing judge did here—essentially fill in an amount-related blank in a judgment that made clear that restitution was "applicable." App. 49 (boldface deleted). Since the sentencing judge's later order did not "correct" an "error" in the sentence, Rule 35 does not apply. Compare Fed. Rule Crim. Proc. 35(a) with *post,* at 2–3. Hence the dissent's claim that there is no *other* statute that creates authority (even were we to assume all else in its favor, which we do not) is merely to restate the question posed in this case, not to answer it.

Moreover, the dissent's reading creates a serious statutory anomaly. It reads the statute as permitting a sentencing judge to order restitution for a "victim" who "subsequently discovers further losses" a month, a year, or 10 years after entry of the original judgment, while at the same time depriving that judge of the power to award

restitution to a victim whose "losses are not ascertainable" within 90 days. Compare §3664(d)(5) (first sentence) with §3664(d)(5) (second sentence). How is that a sensible reading of a statute that makes restitution mandatory for victims?

Finally, petitioner asks us to apply the "rule of lenity" in favor of his reading of the statute. Dolan has not provided us with an example of an instance in which the "rule of lenity" has been applied to a statutory time provision in the criminal context. See *United States* v. *Wiltberger*, 5 Wheat. 76 (1820) (applying rule in interpreting substantive criminal statute); *Bifulco* v. *United States*, 447 U. S. 381, 387, 400 (1980) (applying rule in interpreting "penalties"). But, assuming for argument's sake that the rule might be so applied, and after considering the statute's text, structure, and purpose, we nonetheless cannot find a statutory ambiguity sufficiently "grievous" to warrant its application in this case. *Muscarello* v. *United States*, 524 U. S. 125, 139 (1998) (internal quotation marks omitted). See *Caron* v. *United States*, 524 U. S. 308, 316 (1998) (rejecting application of rule where the "ambiguous" reading "is an implausible reading of the congressional purpose").

For these reasons, the judgment of the Court of Appeals for the Tenth Circuit is

Affirmed.