

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF MISSISSIPPI**

IN RE:

CASE NO. 88-07888 ERG

**PETRO-SERVE, LTD.
DEBTOR(S)**

CHAPTER 7

OPINION

There came before the court the Verified Motion for Contempt (Dkt. No. #97) filed by Jerry Lampley (“Lampley”). Lampley requests an order to show cause as to why the State of Missouri, Judge James R. Hartenbach (Circuit Judge of St. Louis, County, Missouri) and Mr. Rex Burlison, (Assistant Attorney General for Missouri), should not be held in contempt of this Court in connection with proceedings in Missouri in which revocation of Lampley’s criminal probation and incarceration is sought, unless the Debtor pays restitution in connection with his criminal and bankruptcy proceedings. A preliminary hearing was held on the matter on December 17, 2008.

Having reviewed the matter, the court has determined that the issue is strictly a question of law and that no further hearing is necessary for a determination on the motion. Individual and business bankruptcy proceedings of Lampley were previously filed and concluded. Lampley was criminally prosecuted for fraudulent securities activities and violations in connection with his businesses. Restitution was ordered as a condition of probation, that involved claimants from various states including Missouri. Lampley filed his Motion for Contempt as a result of proceedings in Missouri seeking revocation of probation and incarceration. Lampley now contends that the State of Missouri is unable to identify claimants not involved with the debtor’s

bankruptcy proceedings for whom restitution is sought, and that the State is acting in bad faith and infringing upon the bankruptcy court's authority by attempting to re-impose discharged claims.

This court concludes that it should not interfere with criminal proceedings being conducted by the State of Missouri in connection with Lampley, and further notes the nondischargeability in bankruptcy of criminal restitution. *See*, 11 U.S.C. 523(a)(7), *Kelly v. Robinson*, 479 U.S. 36, 107 S.Ct. 353 (1986); *Simonini v. Bell*, 69 Fed.Appx. 169 (4th Cir. 2003) (district court did not have power under §105(a) to enjoin Nevada criminal proceeding); *U.S. v. Caddell*, 830 F. 2d 36 (5th Cir. 1987)(status as debtor in possession did not of itself discharge or suspend restitutory condition of probation to prevent revocation of probation for failure to comply); *Gruntz v. County of Los Angeles*, 202 F. 3d 1074 (9th Cir. 2000)(stay does not enjoin state criminal prosecutions even if underlying purpose of criminal proceedings is debt collection); *Troff v. Utah*, 488 F. 3d 1237 (10th Cir. 2007) (restitution as part of criminal sentence and condition of probation was not dischargeable); *Etzel v. American Standard Insurance Co.*, 2006 WL 2435082 (E.D Wis. 2006)(no discharge for criminal restitution even though restitution is forwarded to victim); *Thompson v. Hewitt*, 311 B.R. 415 (E.D. Pa. 2004)(postdischarge restitution was nondischargeable); *U.S. v. Sheinbaum*, 136 F. 3d 443 (5th Cir. 1998)(cites *Caddell*, noting that *Kelly* generally applies to both state and federal restitution orders); *U.S. v. White*, 466 F. 3d 1241 (11th Cir. 2006)(§524 injunction prohibits collection only with respect to dischargeable debts and does not apply to nondischargeable debts); *Pogue v. Roberts*, 357 B.R. 756 (Bankr. W.D. Ky. 2006)(attempt to collect restitution not discharged cannot be considered a violation of the discharge injunction).

The court concludes that the Verified Motion for Contempt filed by Jerry Lampley should

be denied. An order will be entered consistent with these findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 9021 and Federal Rule of Civil Procedure 58. This opinion shall constitute findings and conclusions pursuant to Federal Rule of Bankruptcy Procedure 7052 and Federal Rule of Civil Procedure 52.

This the 30th day of January, 2009.

/s/ Edward R. Gaines _____
EDWARD R. GAINES
UNITED STATES BANKRUPTCY JUDGE