

APPENDIX

— A —

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED Feb 22 2018

MOLLY C. DWYER, Clerk U.S. Court of Appeals.

UNITED STATES OF AMERICA, Plaintiff-Appellee,

v.

DRAGOMIR TASKOV, AKA Drago, Defendant-Appellant.

No. 17-10524

D.C. No. 2:10-cr-00217-RFB-PAL-1
District of Nevada, Las Vegas.

ORDER

Before: Trott and Fisher, Circuit Judges.

This appeal is from the district court's final order entered November 27, 2017.

Insofar as appellant appeals from the denial of his 28 U.S.C. § 2255 motion and related motion for discovery, the request for a certificate of appealability is denied. Appellant has not shown that "jurists of reason would find it debatable whether the [section 2255 motion] states a valid claim of the denial of a constitutional right and that jurists of reason would find it debatable whether the district court was correct in its procedural ruling." *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also* 28 U.S.C. § 2253(c)(2); *Gonzalez v. Thaler*, 565 U.S. 134, 140-41 (2012).

The forfeiture issues resolved by the district court's November 27, 2017, order do not require a certificate of appealability, *cf.* 28 U.S.C. § 2253(c)(1)(B), and briefing shall proceed as to those issues only. The opening brief and excerpts of record are due May 23, 2018; the answering brief is due June 22, 2018; and the optional reply brief is due within 21 days after service of the answering brief.

The Clerk shall serve on appellant a copy of the “After Opening a Case – Pro Se Appellants” document.

APPENDIX

- B -

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

DRAGOMIR TASKOV, Petitioner,

vs.

JEFFERSON B. SESSIONS, et al., Respondents.

Case No. 2:17-cv-01587-RFB-PAL

ORDER

Petitioner has paid the filing fee. The court has reviewed his petition for a writ of habeas corpus, and the court will dismiss it. See 28 U.S.C. § 2243.

In United States v. Taskov, Case No. 2:10-cr-00217-RFB-PAL, petitioner was convicted of two counts of receipt of converted and fraudulently taken property and aiding and abetting, one count of interstate transportation of converted and fraudulently taken property and aiding and abetting, and one count of mail fraud and aiding and abetting. Petitioner currently is pursuing a motion attacking his sentence under 28 U.S.C. § 2255 in that action.

Based upon documents attached to the petition, petitioner is a Canadian citizen of Bulgarian birth. The Department of Homeland Security has at least started, if not concluded, deportation proceedings at the Immigration Court in Dallas, Texas, because petitioner has been convicted of aggravated felonies under 8 U.S.C. § 1227(a)(2)(A)(iii) and because he overstayed his permission to be in the United States under 8 U.S.C. § 1227(a)(1)(B). ECF No. 1-2, at 52-55, 70-72.

The current petition under 28 U.S.C. § 2241 appears to contain challenges to both the deportation proceedings and to the criminal case. Grounds 1 and 2 clearly are challenges to the deportation proceedings, based upon petitioner's claim that he is a lawful permanent resident of

the United States. Ground 3 is a claim that petitioner was subject to unreasonable search and seizure. Ground 4 is a claim of ineffective assistance of counsel. Grounds 3 and 4 also appear to be related to petitioner's deportation proceedings, because he argues that some of the documents seized, and to which he has no access, are relevant to his claim that he is a lawful permanent resident.

To the extent that petitioner is raising challenges to his criminal case, he cannot raise them in a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. A motion attacking his sentence pursuant to 28 U.S.C. § 2255 is the correct way to present those challenges, and petitioner currently is pursuing such motion. See 28 U.S.C. § 2255(e).

To the extent that petitioner is raising challenges to his deportation proceedings, at the very least he has commenced this action in the wrong court. A habeas corpus petition must name as a respondent the person who has direct custody over petitioner, either the warden of the prison or other equivalent person, and it needs to be filed in the district where that custodian is located. When petitioner commenced this action, he was in custody in Cleburne, Texas, and he now is in custody in Okmulgee, Oklahoma. At no point during the pendency of this action was petitioner in custody within the District of Nevada. This court does not have jurisdiction over petitioner's custodian. The correct venue now for a habeas corpus petition, if at all, would be in the United States District Court for the Eastern District of Oklahoma.

Furthermore, no district court has jurisdiction to consider a habeas corpus petition. Petitioner invokes 8 U.S.C. § 1252(e)(2)(C). ECF No. 1-1, at 7. That statute provides:

- (e) Judicial review of orders under [8 U.S.C. §] 1225(b)(1) ...
- (2) Habeas corpus proceeding

Judicial review of any determination made under section 1225(b)(1) of this title is available in habeas corpus proceedings, but shall be limited to determinations of--

- (A) whether the petitioner is an alien,
- (B) whether the petitioner was ordered removed under such section, and
- (C) whether the petitioner can prove by a preponderance of evidence that the petitioner is an alien lawfully admitted for permanent residence, has been admitted as a refugee under section 1157 of this title, or has been granted asylum under section 1158 of this title, such status not having been terminated, and is entitled to such further inquiry as prescribed by the Attorney General pursuant to section 1225(b)(1)(C) of this title.

Section 1225(b)(1) concerns the inspection of an alien who is arriving in the United States and the expedited removal of that alien if the immigration officer determines that the alien is inadmissible for misrepresenting material facts or for lacking the correct documents. Based upon the documents attached to the petition, § 1225(b)(1) and the judicial-review provision of § 1252(e)(2)(C) is inapplicable to petitioner. Petitioner is subject to deportation because he has been convicted of aggravated felonies under 8 U.S.C. § 1227. ECF No. 1-2, at 54, 70. Judicial review of that determination is available, if at all, through a petition for review filed with the court of appeals, and not through a petition for a writ of habeas corpus. 8 U.S.C. § 1252(a)(1), (g).¹ Consequently, a transfer of this action to the Eastern District of Oklahoma would be futile. That court, like this court, lacks jurisdiction to consider petitioner's deportation-related claims.

To the extent that a certificate of appealability is necessary, reasonable jurists would not find the court's conclusions to be debatable or wrong, and the court will not issue a certificate of appealability.

Petitioner's motion for evidentiary hearing (ECF No. 11) is moot because the court lacks jurisdiction.

¹ No judicial review is available for the determination that petitioner is deportable because he has committed an aggravated felony, 8 U.S.C. § 1252(a)(2)(C), but the court of appeals still has jurisdiction to review constitutional claims or questions of law, 8 U.S.C. § 1252(a)(2)(D).

IT IS THEREFORE ORDERED that the clerk of the court file the petition for a writ of habeas corpus and exhibits, currently at ECF No. 1-1 and 1-2.

IT IS FURTHER ORDERED that this action is **DISMISSED** for lack of jurisdiction. The clerk of the court shall enter judgment accordingly and close this action.

IT IS FURTHER ORDERED that a certificate of appealability is **DENIED**.

IT IS FURTHER ORDERED that petitioner's motion for evidentiary hearing (ECF No. 11) is **DENIED** as moot.

DATED: January 9, 2018

Signature

RICHARD F. BOULWARE, II
United States District Judge

APPENDIX

– C –

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

UNITED STATES OF AMERICA, Plaintiff,

v.

DRAGOMIR TASKOV, Defendant.

Case No. 2:10-cr-00217-RFB-PAL

ORDER

SUBSTITUTION OF FORFEITURE ORDER

This Court, having read and considered the United States of America's Motion to Substitute and to Forfeit Property of Dragomir Taskov (ECF No. 361), and good cause appearing, finds the assets described below are owned by Dragomir Taskov ("Taskov") and that the property subject to criminal forfeiture (1) cannot be located upon the exercise of due diligence; (2) has been transferred to a third party; and (3) has been placed beyond the jurisdiction of the court.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the following assets are substituted and are forfeited to the United States of America pursuant to 21 U.S.C. § 853(p)(1)(A)-(C) and (p)(2):

1. Dewalt Pilot Point Drill Bits; 2. Dewalt Driver Accessory set; 3. Bernzomatic Welding Kit;
4. Dell Printer Cartridge, s/n OMF7907197182268;
5. Dell Printer Cartridge, s/n ONF5557197182293;
6. Dell Printer Cartridge, s/n OPF0307197182853;
7. Gerber Multi Tool, s/n ORF0127199182294;
8. Tipman Power Rack/ Paintball Gun, s/n 1356929;
9. Dyson Vacuum, s/n 260USE56078;
10. Dewalt 13M Impact Wrench, s/n 981614;
11. Dewalt saw blades;
12. Gerber Knife and sheath;
13. Century Gloves;
14. Stiga Ping Pong Paddle;
15. Stiga Ping Pong Paddle;
16. Apple Television System, s/n YM810104WH7;
17. Swiss Gear tent;
18. Swann

Monitoring CCTV 4 Channel; 19. Samsung Disc Player, s/n 036725607828; 20. Brass Eagle Paint Balls; 21. Brass Eagle Paint Balls; 22. Apple i-Mac computer, s/n W87404A5X89; 23. Home Sheet Set; 24. Dewalt Drill, s/n 972112; 25. Dewalt Saw, s/n 976061; 26. Dewalt Light, s/n 988904; 27. Dewalt Saw, s/n 98800, crescent wrench and carpet knife inside Dewalt bag; 28. Louis Vuitton Computer Bag, s/n C10212Y5; 29. Mitsubishi 73 Inch HDTV, model 1080P, s/n 55818022; 30. Mitsubishi Flatpanel LCD Television, s/n 853B601A60; 31. Bello TV Stand; 32. LG Model 7.0 Tormm Dryer, white, s/n 76638612002326120816; 33. LG Model 7.0 Tormm Washer, white, s/n 00911711011777110317; 34. Black Leather Sectional, two piece; 35. Top Assembly Jeep Wrangler; 36. Dual Top Window Kit/Jeep; 37. Dell Printer Cartridge; 38. Dewalt Jigsaw, s/n 999927; 39. Canon DC210 Digital Video Camera, Case & Accessories, s/n 642462043890; 40. Black Craftsman Tool Box; 41. GSPS Silver Tool Box; 42. Red 2 piece Tool Box with tools; 43. Red Craftsman Tool Box with tools; 44. Torin "Big Red 1500" Engine Stand; 45. Yellow Dewalt Air Compressor; 46. Red Floor Jack; 47. Grey Floor Jack; 48. Red 22 ton Hydraulic Jack; 49. Black Craftsman 3 ton Floor Jack; 50. Black Craftsman Floor Jack; 51. Yellow Pallet Jack; 52. Silver Crew Line Motorcycle Jack; 53. Yellow Engine Puller; 54. Yellow Tool Box with tools; 55. Toolbox with tools; 56. Toolbox with tools; 57. Black Air Compressor, 60 gallon; 58. Red Floor Jack; and 59. Tap and Die Stamps (all of which constitutes "property").

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the United States of America is now entitled to, and should, reduce the aforementioned property to the possession of the United States of America;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the United States of America should take into custody the aforementioned property;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all right, title, and interest of Dragomir Taskov in the aforementioned property is forfeited and is vested in the United States of America and shall be safely held by the United States of America until further order of the Court;

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the United States of America shall publish for at least thirty (30) consecutive days on the official internet government forfeiture website, www.forfeiture.gov, notice of this Order, which shall describe the forfeited property, state the time under the applicable statute when a petition contesting the forfeiture must be filed, and state the name and contact information for the government attorney to be served with the petition, pursuant to Fed. R. Crim. P. 32.2(b)(6) and Title 21, United States Code, Section 853(n)(2).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that any individual or entity who claims an interest in the aforementioned property must file a petition for a hearing to adjudicate the validity of the petitioner's alleged interest in the property, which petition shall be signed by the petitioner under penalty of perjury pursuant to Title 21, United States Code, Section 853(n)(3) and Title 28, United States Code, Section 1746, and shall set forth the nature and extent of the petitioner's right, title, or interest in the forfeited property and any additional facts supporting the petitioner's petition and the relief sought.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED a petition, if any, must be filed with the Clerk of the Court, 333 Las Vegas Boulevard South, Las Vegas, Nevada 89101, no later than thirty (30) days after the notice is sent or, if direct notice was not sent, no later than sixty (60) days after the first day of the publication on the official internet government forfeiture site, www.forfeiture.gov.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED a copy of the petition, if any, shall be served upon the Asset Forfeiture Attorney of the United States Attorney's Office at the following address at the time of filing:

Daniel Hollingsworth
Assistant United States Attorney
Lloyd D. George United States Courthouse
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED the notice described herein need not be published in the event a Declaration of Forfeiture is issued by the appropriate agency following publication of notice of seizure and intent to administratively forfeit the above-described property.

REMAINING MOTIONS

IT IS ORDERED that the Motion to Withdraw as Attorney (ECF No. 363) is GRANTED. Counsel for Taskov, Terrence M. Jackson, is directed to provide Taskov with his complete and unredacted file.

IT IS FURTHER ORDERED that the Motion to Extend Time on the Response to the Motion to Substitute and Forfeit Property (ECF No. 364) is DENIED AS MOOT.

IT IS FURTHER ORDERED that the Motion to Unseal and Access Judicial Documents (ECF No. 366) and Motion to Compel Counsel to Release Evidence (ECF No. 367) are DENIED AS MOOT.

IT IS FURTHER ORDERED that the Motion for Hearing (ECF No. 370) and the Motion for Order (ECF No. 371) are DENIED AS MOOT.

IT IS FURTHER ORDERED that the Motion to Vacate pursuant to 28 U.S.C. § 2255 (ECF No. 381) is DENIED. The Court does not find that the Motion was timely, as it was filed well after

the limitations period as set forth in subsection (f)(1) of the statute. On June 25, 2012, Judge Philip Pro entered an Order of Forfeiture against Taskov, ordering him to pay a criminal forfeiture money judgment in the amount of \$159,742.37. (ECF No. 266). On June 26, 2012, a Judgment was entered against Taskov, finding him guilty of two counts of aiding and abetting receipt of stolen property, one count of aiding and abetting interstate transportation of stolen property, and one count of aiding and abetting mail fraud. (ECF No. 367). On June 27, 2012, Taskov filed Notice of Appeal before the Ninth Circuit. (ECF No. 268). The Ninth Circuit issued its Mandate affirming the conviction on July 7, 2014 (ECF No. 339), and Judge Pro spread the Mandate on July 10, 2014 (ECF No. 341).¹ The Motion to Vacate was filed March 28, 2016, well over one year after the Mandate. The Court finds that subsections (f)(2) – (4) are inapplicable in this case.

IT IS FURTHER ORDERED that the Motion for Evidentiary Hearing (ECF No. 383) and Motion for Discovery (ECF No. 385) are DENIED.

The Clerk of Court is instructed to close this case and the companion civil case, 2:16-cv-00680-RFB. The Clerk of Court is also instructed to mail a copy of this Order to Taskov at his address on file.

DATED this 22nd day of November, 2017.

signature

RICHARD F. BOULWARE, II
UNITED STATES DISTRICT JUDGE

¹ The Court notes that Taskov's Motion for New Trial pursuant to Federal Rule of Criminal 33 did not toll the limitations period for the underlying conviction. The Motion for New Trial was filed on August 15, 2014. (ECF No. 343). Judge Pro denied the Motion on September 9, 2014. (ECF No. 346). The Ninth Circuit affirmed the district court's decision on September 28, 2015. (ECF No. 374). Taskov filed petition of certiorari to the United States Supreme Court on December 23, 2015 (ECF No. 376), which was denied March 7, 2016 (ECF No. 380). There is nothing in the record to indicate that Taskov challenged his underlying conviction in the petition for certiorari, but even if he had, the challenge would have been untimely.