

CASE No. _____ APPENDIX

IN THE SUPREME COURT OF THE UNITED STATES

APPENDIX

STEPHEN MAYER,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

On Petition For Writ of Certiorari to the
United States Court of Appeals for the Eleventh Circuit

APPENDIX TO
PETITION FOR WRIT OF CERTIORARI

11th Circuit Appeal Court Case No. 17-13270

Stephen Mayer
Incarcerated Pro Se Petitioner
Inmate I.D. 02303-104
Federal Correctional Institution
P.O. Box 779800
Miami, FL. 33177.

Dated: July 29, 2018.

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IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13270-JJ

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

STEPHEN MAYER,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Florida

Before: WILSON, WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

BY THE COURT:

Stephen Mayer, proceeding *pro se*, appeals the district court's forfeiture order after he was convicted of conspiracy to commit wire fraud affecting a financial institution and eight counts of wire fraud affecting a financial institution. The government has moved for summary affirmance or to dismiss the appeal for lack of jurisdiction. Mayer has moved to supplement the record on appeal and to stay ruling on the government's motion to dismiss.

Summary disposition is appropriate either where time is of the essence, such as "situations where important public policy issues are involved or those where rights delayed are rights denied," or where "the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where, as is more frequently the case, the appeal is frivolous." *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158,

1162 (5th Cir. 1969). Where an appellant failed to raise an issue during his first direct appeal, and does so for the first time on appeal after remand, he has waived that issue. *United States v. Fiallo-Jacome*, 874 F.2d 1479, 1481-83 (11th Cir. 1989).

Under the law-of-the-case doctrine, our decisions on issues must be followed in subsequent district court proceedings in the same case unless: (1) substantially different evidence is produced at a subsequent trial; (2) a contrary, controlling decision of law is subsequently issued; or (3) our prior decision “was clearly erroneous and would work manifest injustice.” *In re Lambrix*, 776 F.3d 789, 793 (11th Cir. 2015) (quotation marks omitted). We have explained our “mandate rule” as:

simply an application of the law of the case doctrine to a specific set of facts. Accordingly, when acting under an appellate court’s mandate, a district court cannot vary it, or examine it for any other purpose than execution; or give any other or further relief; or review it, even for apparent error, upon a matter decided on appeal; or intermeddle with it, further than to settle so much as has been remanded.

United States v. Amedeo, 487 F.3d 823, 830 (11th Cir. 2007) (quotation marks and citation omitted). We recognize the same three exceptions to the mandate rule as we do for the law-of-the-case doctrine. *See id.*

We rarely supplement the record on appeal to include material not before the district court. *CSX Transp., Inc. v. City of Garden City*, 235 F.3d 1325, 1330 (11th Cir. 2000). However, we do have the equitable power to supplement the appellate record if it is in the interests of justice. *Id.* This decision is left to our discretion. *Dickerson v. Alabama*, 667 F.2d 1364, 1367 (11th Cir. 1982). We decide on a case-by-case basis whether a particular appellate record should be supplemented. *Ross v. Kemp*, 785 F.2d 1467, 1474-75 (11th Cir. 1986). A primary factor to consider is whether acceptance of the proffered material “would establish

beyond any doubt the proper resolution of the pending issues.” *CSX Transp., Inc.*, 235 F.3d at 1330.

Here, because Mayer raised the issue of FDIC-insured status with respect to his forfeiture judgment during his first appeal, and because he did not assert his related new arguments during that proceeding, summary affirmance is appropriate. Mayer argued, and we agreed, in his initial appeal that the district court included proceeds from mortgages obtained from non-FDIC-insured entities in its forfeiture order. In so doing, he conceded that those obtained from GreenPoint Mortgage Funding, Inc. (“GreenPoint”) were properly included in the order. We agreed with his position and remanded his forfeiture order on that basis. Accordingly, the determination that mortgages obtained from GreenPoint affected FDIC-insured financial institutions is the law of his case. *Amedeo*, 487 F.3d at 830.

While Mayer argues that he has new evidence warranting an exception from the law-of-the-case doctrine and the mandate rule, his arguments are without merit. First, there has been no subsequent trial that produced substantially different evidence, and the new evidence he asserts regarding FDIC-insured status is not new, as he could have raised it at the time of his trial. *See id.* Second, he has not demonstrated that implementation of our prior decision would result in manifest injustice, as he conceded in his initial appeal that mortgages obtained from GreenPoint were properly included in his forfeiture order. *See id.* Third, we affirmed Mayer’s conviction and sentences, remanding only his forfeiture judgment, and accordingly, the district court was unable grant him any relief on his arguments regarding his underlying convictions in his motion to reconsider. *See id.* Lastly, Mayer’s arguments as to GreenPoint’s, or any other entities’ FDIC status, in serving as bases for his underlying convictions have been waived because Mayer failed to assert them during his first appeal. *Fiallo-Jacome*, 874 F.3d at 1481-83.

We decline to supplement the record on appeal because none of Mayer's arguments are properly before this court due to the law of his case, the mandate rule, or waiver, and as a result, none of the information he seeks to add to the record would aid in resolving the present issues.

CSX Transp., Inc., 235 F.3d at 1330.

Finally, although Mayer argues that his Fed. R. Crim. P. Rule 33 motion for a new trial in the district court raises issues "significant" to his present appeal and alleges that the district court has made various errors in those proceedings, he does not explain why his current appeal should not be adjudicated or what effect the district court proceedings have on it.

Accordingly, the government is clearly right as a matter of law, and its motion for summary affirmance is GRANTED. *Groendyke Transp., Inc.*, 406 F.2d at 1162. The government's motion to dismiss the appeal for lack of jurisdiction is DENIED and its motion to stay the briefing schedule is DENIED AS MOOT. Mayer's motion to supplement the record on appeal is DENIED and his motion to stay ruling on the government's motion is DENIED.

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-13270-JJ

FILED
U.S. COURT OF APPEALS
ELEVENTH CIRCUIT

MAY 16 2018

UNITED STATES OF AMERICA,

David J. Smith
Clerk
Plaintiff-Appellee,

versus

STEPHEN MAYER,

Defendant-Appellant.

Appeals from the United States District Court
for the Middle District of Florida

Before: WILSON, WILLIAM PRYOR and ROSENBAUM, Circuit Judges.

BY THE COURT:

Stephen Mayer, proceeding *pro se*, has filed a petition for rehearing *en banc*, which we construe as a motion for reconsideration of our order summarily affirming the district court's forfeiture order after he was convicted of conspiracy to commit wire fraud affecting a financial institution and eight counts of wire fraud affecting a financial institution. Mayer argues that we improperly applied the law-of-the-case doctrine in our order.

We allow motions for reconsideration of our orders, provided that the motion is filed within 21 days of the entry of the order. 11th Cir. R. 27-2. A motion for reconsideration cannot be used to relitigate old matters, raise new arguments, or present evidence that could have been considered prior to the entry of judgment. *Wilchcombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 957 (11th Cir. 2009).

Here, Mayer has presented no ground for reconsideration. First, his argument that the law-of-the-case doctrine was inapplicable to him because our previous remand vacated all findings as to his forfeiture order is a new argument that he could have raised prior to the entry of judgment. *Wilchombe*, 555 F.3d at 957. Even if he had raised it, he would not have been entitled to any relief because, as we recognized in our order summarily affirming the current forfeiture order, we vacated only the portions of his original forfeiture judgment that did not constitute proceeds affecting an FDIC-insured parent entity. We specifically determined that \$1,114,200 came from mortgages from GreenPoint, which was FDIC-insured, and therefore, were proceeds to be included in his forfeiture judgment.

While Mayer argues that we vacated his entire sentence during his original appeal, we did not, as we affirmed his convictions and sentence and specifically remanded to amend only the forfeiture order. Finally, Mayer presented his arguments that the district court committed fraud by arguing that the GreenPoint mortgages affected an FDIC-insured entity during this case, and he cannot relitigate these matters in a motion to reconsider. *Wilchombe*, 555 F.3d at 957. To the extent that any are new arguments, none rely on new evidence that could not have been presented prior to the entry of judgment. *Id.*

Accordingly, Mayer's motion is DENIED.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA

v.

Case No. 8:14-cr-190-T-24EAJ

STEPHEN MAYER

FORFEITURE MONEY JUDGMENT

THIS CAUSE comes before the Court upon the United States' Motion for a Forfeiture Money Judgment in the amount of \$4,404,200 against defendant Stephen Mayer pursuant to 18 U.S.C. § 982(a)(2) and Rule 32.2(b)(2), Federal Rules of Criminal Procedure.

Stephen Mayer was charged in the superseding indictment with one count of conspiracy to commit wire fraud, affecting a financial institution, in violation of 18 U.S.C. §1349, and eight substantive wire fraud offenses, affecting a financial institution, in violation of 18 U.S.C. § 1343. Following a jury trial, the defendant was found guilty of all nine counts charged in the superseding indictment. As a result of the conspiracy charged in count one, the defendant obtained mortgages totaling \$4,404,200, which constitute the proceeds of the conspiracy.

Accordingly, it is **ORDERED** that the motion of the United States is GRANTED.

It is **FURTHER ORDERED** that, pursuant to 18 U.S.C. § 982(a)(2) and Rule 32.2(b)(2), Federal Rules of Criminal Procedure, defendant Stephen Mayer is liable for a forfeiture money judgment in the amount of \$4,404,200.

The Court retains jurisdiction to enter orders required for the forfeiture and disposition of any property belonging to the defendant that the government is entitled to seek under 21 U.S.C. § 853(p), as incorporated by 18 U.S.C. § 982(b)(1), as substitute assets in satisfaction of the defendant's money judgment.

ORDERED in Tampa, Florida, on May 5, 2015.



SUSAN C. BUCKLEW
UNITED STATES DISTRICT JUDGE

Copies to:

All Parties/Counsel of Record

**Additional material
from this filing is
available in the
Clerk's Office.**