

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-6134

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

May 22, 2018

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BILLY WAYNE LOCKE, aka Billy Lock,

Defendant-Appellant.

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)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE EASTERN DISTRICT OF
) TENNESSEE
)

ORDER

Before: SUHRHEINRICH, GILMAN, and SUTTON, Circuit Judges.

Billy Wayne Locke, a pro se federal prisoner, appeals the district court's order denying his motion to return property, filed under Federal Rule of Criminal Procedure 41(g).¹ This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2013, a federal jury convicted Locke of being a felon in possession of a firearm and ammunition, in violation of 18 U.S.C. § 922(g). The district court initially sentenced Locke to 235 months in prison, but resentenced him to 118 months in prison after determining that he no longer qualified as an armed career criminal in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). This court affirmed Locke's conviction. *United States v. Locke*, No. 13-5632 (6th Cir. Jan. 31, 2014).

¹ Rule 41(g) was formerly under Rule 41(e) until it was redesignated in 2002. *Brown v. United States*, 692 F.3d 550, 552 (6th Cir. 2012).

In 2015, Locke filed a Rule 41(g) motion, seeking to recover items seized in his case, including ammunition, a shotgun barrel, hearing protection, a revolver, and a handgun case. He requested that these items be transferred to his brother, who had purportedly agreed to pay \$50 for them. Locke also requested that the government return to him letters and \$400. The district court denied the motion, concluding that government did not possess the items sought.

On appeal, Locke argues that the district court erred by denying his motion, contending that the federal government “is and was in constructive possession of [his] property at all times.” He seeks the return of his property, requests \$50,000 in compensation, and generally argues that his conviction is invalid.

We review the denial of a Rule 41(g) motion under the abuse-of-discretion standard. *Savoy v. United States*, 604 F.3d 929, 932 (6th Cir. 2010). A court abuses its discretion “when it relies on clearly erroneous findings of fact, when it improperly applies the law, or uses an erroneous legal standard.” *Schafer v. City of Defiance Police Dep’t*, 529 F.3d 731, 736 (6th Cir. 2008) (quoting *Stough v. Mayville Cmty. Sch.*, 138 F.3d 612, 614 (6th Cir. 1998)); *see also United States v. Headley*, 111 F. App’x 808, 809-10 (6th Cir. 2004).

A Rule 41(g) motion that is filed after the conclusion of criminal proceedings is treated as a civil action in equity. *Savoy*, 604 F.3d at 932; *United States v. Oguaju*, 107 F. App’x 541, 542 (6th Cir. 2004). Generally, seized property other than contraband should be returned after criminal proceedings have concluded, provided that the person seeking the return of the property shows that he or she is lawfully entitled to possess it. *Savoy*, 604 F.3d at 932-33. However, prior to obtaining relief, the person seeking the return of property must carry “his burden of showing real or constructive possession of the property by the federal government.” *United States v. Obi*, 100 F. App’x 498, 499 (6th Cir. 2004); *see Bailey v. United States*, 508 F.3d 736, 740 (5th Cir. 2007) (noting that a Rule 41(g) motion must be denied “[i]f the district court finds that the government no longer possesses the [property sought] . . . because the government cannot return property it does not possess”).

We conclude that the district court did not abuse its discretion by denying Locke’s Rule 41(g) motion. In response to Locke’s Rule 41(g) motion, the government stated that the Tenth

Judicial District Drug Task Force (DTF) initially seized all of the items Locke mentioned in his motion, except the \$400, which it asserted was never seized. The government acknowledged that it presented the revolver and ammunition as evidence at Locke's trial, but stated that they were returned to the DTF on the day that the jury convicted Locke, and it argued that it never possessed the remaining items. The government stated that the DTF destroyed all the items, except for the revolver, which was "transferred . . . to a local gun store." In support, the government provided a memorandum from an evidence custodian agent, presumably for the DTF, stating that the items were destroyed.

First, as to the \$400, Locke has presented no evidence that it was actually seized. Next, given the DTF memorandum and Locke's failure to show that the items he sought are in the possession of the federal government, the district court did not abuse its discretion in denying the Rule 41(g) motion. And lastly, because Rule 41(g) does not allow a person to recover monetary damages for lost or destroyed property, Locke's request for compensation is misplaced. *See United States v. Droганes*, 728 F.3d 580, 589 (6th Cir. 2013).

We decline to address Locke's remaining arguments that challenge the validity of his conviction, because 28 U.S.C. § 2255 is the "primary avenue for relief for federal prisoners protesting the legality of their sentence," not a Rule 41(g) motion. *See United States v. Peterman*, 249 F.3d 458, 461 (6th Cir. 2001).

Accordingly, we **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

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