

Appendix A

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NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 18-2241

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT**FILED**

May 09, 2019

DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,)
)
Plaintiff-Appellee,)
)
v.) ON APPEAL FROM THE UNITED
)
FRANCIS DAMIEN BLOCK,) STATES DISTRICT COURT FOR
)
Defendant-Appellant.) THE WESTERN DISTRICT OF
)
)
)

O R D E R

Before: MOORE, GRIFFIN, and MURPHY, Circuit Judges.

Francis Damien Block, a pro se federal prisoner, appeals the order of the district court denying his Federal Rule of Criminal Procedure 41(g) motion for the return of property. 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 2014, a jury convicted Block of conspiracy to distribute methamphetamine, possession with intent to distribute methamphetamine, conspiracy to intimidate and threaten witnesses, and witness tampering. The district court sentenced Block to three life sentences and a 240-month term of imprisonment, to be served concurrently. His convictions and sentences were affirmed on direct appeal. *United States v. Block*, No. 15-1147 (6th Cir. Oct. 11, 2016) (order).

In August 2018, Block filed a pleading for return of property pursuant to Rule 41(g). He argued that DEA Agent Theodore Westra stole a 1984 AMC Jeep Scrambler during the course of Westra's investigation of Block. Block claimed that this was done for Westra's personal gain and

enrichment and that Westra has tried to sell the "rare and sought after vehicle" over the internet. Block asserted that Westra has title to the vehicle and that the federal government has real or constructive possession of the Jeep.

The government filed a response, asserting that Michael Head, not Block, was the title-holder of the Jeep at the time it was seized. The government explained that the vehicle was seized by the City of Kalamazoo, Michigan, during the investigation of Block and that the city later sold the vehicle. The district court agreed with the government that Block was not the title-holder of the property and that the government was not in possession of the Jeep. The court therefore denied Block's motion.

On appeal, Block argues that that the district court erred by treating the government's response to his Rule 41(g) motion as a motion for summary judgment and by deciding the merits of the case. He argues that genuine issues of fact exist as to whether he was the owner of the Jeep and whether he received actual notice of the forfeiture.

Rule 41(g) permits federal criminal defendants to move for the return of unlawfully seized property "in the district where the property was seized." Fed. R. Crim. P. 41(g). "[T]he person seeking return of property must show that they are lawfully entitled to possess it." *Savoy v. United States*, 604 F.3d 929, 932-33 (6th Cir. 2010) (quoting *United States v. Headley*, 50 F. App'x 266, 267 (6th Cir. 2002)). In addition, for the district court to grant a Rule 41(g) motion, the federal government must have itself possessed the property at some point. *See Okoro v. Callaghan*, 324 F.3d 488, 491-92 (7th Cir. 2003). If the federal government did not, in fact, ever possess the property, it is ordinarily a conclusive ground for denial of the motion. *See, e.g., United States v. Solis*, 108 F.3d 722, 723 (7th Cir. 1997); *United States v. White*, 718 F.2d 260, 261 (8th Cir. 1983) (per curiam). We review the district court's decision to deny a Rule 41(g) motion for an abuse of discretion. *See Savoy*, 604 F.3d at 932.

The record establishes that, during the investigation into Block, Scott Vanderende of the Kalamazoo Valley Enforcement Team discovered that the Jeep was registered to Head. Vanderende seized the Jeep from Block's father's house on October 27, 2013. A Notice of Intent to Forfeit the Jeep was personally served to Head on October 30, 2013. The title to the Jeep was

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subsequently transferred to the City of Kalamazoo and the city sold it at auction on July 31, 2014, to Apple Mill Motors of Muskegon, Michigan.

Despite any possessory interest in the Jeep that Block claimed, the record clearly demonstrated that Head held the Jeep's title and was provided proper notice of its forfeiture. *See* Mich. Comp. Laws § 257.37 (explaining that an owner of a vehicle is the person who holds legal title); *United States v. Cooper*, 485 F. App'x 411, 414 (11th Cir. 2012) (rejecting movant's claim that he had an ownership interest in vehicles that he paid for but registered in someone else's name). Further, the record demonstrated that the Jeep was sold by Michigan authorities and that the federal government was not in possession of the Jeep that Block sought to be returned. The district court therefore properly denied Block's Rule 41(g) motion.

We **AFFIRM** the order of the district court.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,)
Plaintiff,)
) No. 1:13-cr-223
-v-)
) Honorable Paul L. Maloney
FRANCIS DAMIEN BLOCK,)
Defendant.)

ORDER DENYING DEFENDANT'S RULE 41 MOTION

A jury convicted Francis Block in October 2014, and this Court sentenced Block in February 2015. In 2017 and now in 2018, Block has filed several motions seeking an evidentiary hearing and the return of his property. This is his latest attempt.

Relying on Rule 41(g) of the Federal Rules of Criminal Procedure, Block seeks the return of a 1984 AMC Jeep Scrambler. Block contends the vehicle was stolen by a federal agent in 2013. Block requests this Court hold an evidentiary hearing. The Government filed a response, including exhibits.

Block is not entitled to the relief he seeks. Block faces two problems. First, he was not the title holder to the vehicle, Michael Head was the title holder. To his motion, Block attached the portion of the trial transcript where Head was asked about his application for the title to the vehicle. (ECF No. 365-4 PageID.4397.) Head explained that he applied for the title because Block did not want the Jeep registered in his name. (*Id.*) Second, the Government has put forth evidence that the State of Michigan seized and then forfeited the vehicle. (ECF No. 368-1.) The Investigation Report created by the Kalamazoo Valley

Enforcement Team (KVET), which is not a federal agency, establishes that the state secured, seized, and later forfeited the vehicle. (ECF No. 387-2 PageID.2749-50.) The notice of forfeiture was sent to Michael Head, the registered owner. (ECF No. 368-1 PageID.4410.) The City of Kalamazoo became the title holder to the vehicle on March 3, 2014. The City of Kalamazoo then sold the vehicle, through a broker, to Apple Mill Motors on July 31, 2014. These facts are entirely consistent with the exhibit attached to Block's motion, which shows that some individual listed the vehicle for sale on eBay Motors on August 5, 2014, and again on August 23, 2014. (ECF No. 365-2 PageID.4390.)

When a criminal proceeding has concluded, as it has here, a Rule 41 motion is treated as a civil action in equity. *United States v. Oguaju*, 107 F. App'x 541, 542 (6th Cir. 2004.) And, when civil forfeiture proceedings have been initiated, the property owner must pursue his or her remedies through the statutory procedures governing the forfeiture proceedings. *Id.* Because Block has or had an available remedy in law, this Court must dismiss his motion (a civil action in equity). *See Shaw v. United States*, 891 F.2d 602, 603-04 (6th Cir. 1989.)

IT IS SO ORDERED.

Date: October 9, 2018

/s/ Paul L. Maloney

Paul L. Maloney
United States District Judge

No. 18-2241

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Oct 10, 2019
DEBORAH S. HUNT, Clerk

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

FRANCIS DAMIEN BLOCK,

Defendant-Appellant.

ORDER

BEFORE: MOORE, GRIFFIN, and MURPHY, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

John S. Smith

Deborah S. Hunt, Clerk

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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

Case No. 1:13-CR-223

v.

Hon. Paul Maloney
U.S. District Judge

FRANCIS DAMIEN BLOCK,

Defendant.

Response to "Rule 41(g) Motion" (R.365)

The United States respectfully submits this response to Block's "letter/certification in lieu of a more formal re-newal [sic] of the Rule 41(g) Motion (EFC No. 339) based on newly discovered evidence." (R.365: Mot., PageID.4377.) For the reasons stated below, the Court should deny Block's motion because it was filed for an improper purpose; it is an improper attempt to attack civil forfeiture or his conviction; and Block fails to state a claim. If the Court disagrees, it should docket the matter as a civil action, direct Block to pay the filing fee, and allow the United States the opportunity to respond in the ordinary course to a civil case.

I. Procedural Background

On or about October 2, 2014, a jury convicted Block of a number of offenses involving drugs and witness tampering. (R.212: Verdict Form, PageID.887-889). The Court sentenced Block on February 10, 2015. (R.239: Judgment, PageID.1007.) Block appealed, but the Sixth Circuit affirmed his conviction and sentence. (R.305: Order, PageID.2056.) The Supreme Court denied certiorari on or about February 22, 2017. (R.308: Letter from Supreme Court, PageID.2065.) Block has not filed a motion pursuant to 28 U.S.C. § 2255, and this criminal matter has long been closed.

claims Westra has had the vehicle from 2013 to 2018, "because he stole it." (*Id.*, PageID.4381.) Block claims Westra stole the vehicle "for his own personal gain and enrichment," titled the vehicle "in his own name," twice listed the vehicle for sale on Ebay, and has a "personal monetary interest" in it. (*Id.*, PageID.4378-79). Block has attached an email from an undisclosed source as supposed proof of these claims, but even taking the document at face value, it does not support his claim. (R.365-2: Ex. B, PageID.4390.) In fact, the last date (3/3/2014) on the "Title Records" portion of that document corresponds to the date a Certificate of Title was issued to "City of Kalamazoo." (R.368-1: Attachment, PageID.4417.)

IV. Argument

A. Improper Purpose

Tellingly, Block nowhere seeks the return of the Jeep, although he purports to be proceeding under Rule 41(g). Instead, he demands a hearing so he can explore the "status" of his property. (R.365: Mot., PageID.4378.) Throughout his motion, he reveals his true purpose in seeking this hearing – to explore and develop his theory that the "prosecution team" perpetrated a "fraud on the Court" and violated his "Rights of Due Process, Full and Fair Trail, Equal Protection under the law, Confrontation of Witnesses against him, and the list [SC]rambles on." (*Id.*, PageID.4382 (alteration in original).) None of these claims have anything to do with the return of a Jeep, but they do sound like claims Block apparently hopes to pursue in a § 2255 motion.² Like the other motions Block has filed as of late, this one too appears to be little more than a fishing expedition aimed at turning up something he hopes he may be able to use in a later § 2255 motion. As this Court has previously noted, Block does not have a right to discovery to prepare a § 2255

² The United States denies all of Block's claims of wrongdoing. But as they have nothing to do with the substance of a Rule 41(g) motion, we need not address the substance of them here.

The action is subject to the district court filing fee. *Stiger v. United States*, 100 F. App'x 370, 372 (6th Cir. 2004).

Federal Rule of Civil Procedure 8 provides that a complaint must, among other things, contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A Rule 41(g) movant who asserts a post-conviction claim must first demonstrate that (1) he is entitled to the property and (2) the property is in the possession of the federal government. See *United States v. Obi*, 100 F. App'x 498, 499 (6th Cir. 2004); *Savoy v. United States*, 604 F.3d 929, 932–33 (6th Cir. 2010) (citation omitted).

Block’s Rule 41(g) claim fails because he has failed to establish that the federal government is in possession of the Jeep. Block claims Westra stole the vehicle “for his own personal gain and enrichment,” titled the vehicle “in his own name,” twice listed the vehicle for sale on Ebay, and has a “personal monetary interest” in it. (*Id.*, PageID.4378-79). Assuming for the sake of argument these claims were true – which they clearly are not – then Block’s argument crumbles under its own weight. If, as Block claims, the officer stole government evidence for his own *personal gain*, *personally* owns the vehicle, and has a “*personal* monetary interest” in it, then the federal government does not own it or have possession of it. Rather, an individual does. Thus, under his own theory, his claim fails.

D. Civil Case

If the Court disagrees with all of the foregoing and rules that Block has sufficiently plead a civil claim under Rule 41(g), then it should direct the clerk of the Court to docket his “letter/certification” (R.365) as a civil action, direct Block to pay the filing fee, and give the United States the opportunity to respond to this civil action, raising such civil and equitable defenses as may be applicable. By responding to Block’s current motion in this criminal case, the government

**U.S. Department of Justice
Federal Bureau of Prisons
Federal Correctional Complex
Terre Haute, Indiana**

Date: January 19, 2020

To: To Whom it May Concern

From: B. Klink *B. Klink*
United States Penitentiary
A-2 Case Manager

Subject: Block, Francis 17692-040

Inmate Block 17692-040 is assigned to USP Terre Haute unit A-2. Unit A-2 was placed on lock down status during the following dates.

12-15-2019 thru 12-16-2019
12-27-2019 thru 12-30-2019
01-02-2020 thru 01-06-2020
01-08-2020 thru 01-09-2020
01-11-2020 thru 01-14-2020

Subsequently, during these 17 days of lockdowns he had limited access to his legal property and the Law Library. Therefore, inmate Block was hindered from his ability to file a timely appeal.