

APPENDICES

Appendix A

Appendices 1-5

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

APR 25 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRENT DOUGLAS COLE,

Defendant-Appellant.

No. 19-10019

D.C. No.

2:14-cr-00269-GEB-1

Eastern District of California,
Sacramento

ORDER

APPENDIX 1
Page 1 of 1

Before: O'SCANNLAIN, W. FLETCHER, and WATFORD, Circuit Judges.

Upon review of the record and the responses to this court's February 14, 2019 order to show cause, we dismiss this appeal from the district court's January 3, 2019 order for lack of jurisdiction. *See* 28 U.S.C. § 1291 (providing for appeals from "all final decisions of the district courts"); *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949).

All pending motions are denied as moot.

DISMISSED.

APPENDIX 1
Page 1 of 1

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FEB 14 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

BRENT DOUGLAS COLE,

Defendant-Appellant.

No. 19-10019

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ORDER

APPENDIX 4
Page 1 of 1

A review of the record suggests that this court may lack jurisdiction over the appeal because the district court's January 3, 2019 order is not appealable as a final judgment or an order that comes within the collateral order doctrine. *See* 28 U.S.C. § 1291; *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541 (1949). Within 21 days after the date of this order, appellant shall move for voluntary dismissal of the appeal or show cause why it should not be dismissed for lack of jurisdiction. If appellant elects to show cause, a response may be filed within 10 days after service of the memorandum.

Failure to comply with this order shall result in the automatic dismissal of this appeal by the Clerk for failure to prosecute. *See* 9th Cir. R. 42-1.

Briefing is suspended pending further order of the court.

DL/AppComm Direct Criminal

APPENDIX 4
Page 1 of 1

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APPENDIX 5
Page 1 of 1

8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 BRENT DOUGLAS COLE,


14 Defendant.
15

CASE NO. 2:14-CR-0269 GEB

ORDER LIFTING STAY AND EXTENDING TIME
FOR FILING OF UNITED STATES' OPPOSITION

16
17 The Court has read and considered the United States' motion to lift stay and extend time for
18 filing its opposition to defendant's motions for new trial. IT IS HEREBY ORDERED that the stay
19 ordered by the Court on January 5, 2017 is lifted. IT IS FURTHER ORDERED that the United States'
20 request for an extension of time to file its opposition, up to and including March 1, 2019 is granted.

21 Dated: January 3, 2019
22

23
24 
25 GARLAND E. BURRELL, JR.
26 Senior United States District Judge
27
28

UNITED STATES COURT OF APPEALS

FILED

FOR THE NINTH CIRCUIT

OCT 30 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

No. 19-10019

Plaintiff-Appellee,

D.C. No.

v.

2:14-cr-00269-GEB-1

BRENT DOUGLAS COLE,

Eastern District of California,
Sacramento

Defendant-Appellant.

ORDER

Before: O'SCANNLAIN, W. FLETCHER, and WATFORD, Circuit Judges.

The motion for reconsideration en banc (Docket Entry No. 10) is denied on behalf of the court. *See* 9th Cir. R. 27-10; 9th Cir. Gen. Ord. 6.11.

No further filings will be entertained in this closed case.

APPENDIX 2
Page 1 of 1

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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NOV 07 2019

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

BRENT DOUGLAS COLE,

Defendant - Appellant.

No. 19-10019

D.C. No. 2:14-cr-00269-GEB-1
U.S. District Court for Eastern
California, Sacramento

MANDATE

The judgment of this Court, entered April 25, 2019, takes effect this date.

This constitutes the formal mandate of this Court issued pursuant to Rule
41(a) of the Federal Rules of Appellate Procedure.

APPENDIX 3
Page 1 of 1

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rhonda Roberts
Deputy Clerk
Ninth Circuit Rule 27-7

APPENDIX A

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES, & ORDINANCES

The Treaty of The Northwest Ordinance, July 13, 1787:

" ...It is hereby ordained and declared by the authority aforesaid, [Congress assembled], That the following articles shall be considered as articles of compact between the original States and the people and States in the said territory and forever remain unalterable, unless by common consent, to wit: ...

Art. 2. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and of the trial by jury; of a proportionate representation of the people in the legislature; and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offenses, where the proof shall be evident or the presumption great. All fines shall be moderate; and no cruel and unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers or the law of the land; and, should public exigencies make it necessary, for the common preservation, to take any person's property, or demand his particular services, full compensation shall be made to the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever be made, or have force in the said territory, that shall in any manner whatever, interfere with or affect private contracts or engagements, bona fide, and without fraud, previously formed."

The Constitution Of The United States

Article I, § 8. "The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defense and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States; [The following Police Powers :]

[Clause 6.] To provide for the punishment of counterfeiting the Securities and current Coin of the United States;

[Cl. 9] To constitute tribunals inferior to the supreme Court;

[Cl. 10] To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

[Cl. 17] To exercise exclusive Legislation in all cases whatsoever, over such District (not exceeding ten miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings; --And [Cl. 18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

§ 9, Cl. 2. "The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

Cl. 8. No Title of Nobility shall be granted by the United States?"

Art. II, Section 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

Section 4. The President, Vice President and all civil Officers of the United States, shall be removed from Office on Impeachment for, and Conviction of, Treason, Bribery, or other high Crimes and Misdemeanors.

Article III

Section 1. The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services a Compensation, which shall not be diminished during their Continuance in Office.

Section 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under the Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

In all Cases affecting Ambassadors, other public Ministers and Consuls, and those in which a State shall be a Party, the supreme Court shall have original Jurisdiction. In all the other Cases before mentioned, the supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

The Trial of all Crimes, except in Cases of Impeachment, shall be by Jury; and such Trial shall be held in the State where the said Crimes shall have been committed; but when not committed within any State, the Trial shall be at such Place or Places as the Congress may by Law have directed.

Section 3. Treason against the United States, shall consist only in levying War against them, or in adhering to their Enemies, giving them Aid and Comfort. No Person shall be convicted of Treason unless on the Testimony of two Witnesses to the same overt Act, or on Confession in open Court.

The Congress shall have Power to declare the Punishment of Treason, but no Attainder of Treason shall work Corruption of Blood, or Forfeiture except during the Life of the Person attainted.

Article IV

Section 1. Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof.

Art. IV, Section 4. "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion;" The Constitution of the United States.

Article VI. All Debts contracted and Engagements entered into, before the Adoption of this Constitution, shall be as valid against the United States under this Constitution, as under the Confederation.

This Constitution, and the Laws which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." [¶] The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the several States and the United States, shall be bound by Oath or Affirmation, to support this Constitution;..."

Amendment II [1791]

A well regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.

Amendment IV [1791]

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

AMENDMENTS TO THE CONSTITUTION:

Amendment V [1791]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property; without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VI [1791]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence.

Amendment VIII [1791]

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

Amendment X [1791]

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

Amendment XIV [1868]

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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