

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

NOV 13 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GEORGE VERKLER, AKA Kenneth P.
Goff, AKA Neal T. Pearson, AKA Neil T.
Pearson,

Defendant-Appellant.

No. 20-30161

D.C. No. 3:00-cr-05669-BHS-1
Western District of Washington,
Tacoma

ORDER

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

A review of the record and appellant's response to this court's August 6, 2020, order to show cause demonstrates that the court lacks jurisdiction over this appeal because the district court's orders denying appointment of counsel and denying reconsideration are not appealable as final judgments or orders that come within the collateral order doctrine. *See* 28 U.S.C. § 1291; *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949). We, therefore, dismiss the appeal.

Any pending motions are denied as moot.

DISMISSED.

APPENDIX

A i orders

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

GEORGE EARL VERKLER,

Defendant.

CASE NO. CR00-5669

ORDER DENYING MOTION FOR
RECONSIDERATION OF ORDER
DENYING APPOINTMENT OF
COUNSEL

This matter comes before the Court on Defendant George Earl Verkler's ("Verkler") motion, Dkt. 156, which the Court construes as a request to reconsider its order denying Verkler's motion to assign counsel, Dkts. 154, 155. The Court has reviewed the motion and the remainder of the file and hereby denies the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

This is a closed criminal matter, in which Verkler was sentenced on April 26, 2001 and terminated from supervised release on August 5, 2004. Dkts. 38, 153. More than fifteen years after completion of his sentence and supervision, on May 16, 2020, Verkler brought a motion for appointment of counsel for assistance in an apparent dispute over forfeited funds. Dkt. 154. The Court denied Verkler's motion on May 27, 2020, determining that any proceeding Verkler might pursue would be civil and therefore not

1 subject to a right to counsel. Dkt. 155. On June 10, 2020, Verkler filed a motion seeking
2 reconsideration of that order. Dkt. 156.¹

3 II. DISCUSSION

4 Motions for reconsideration are “disfavored” and “the court will ordinarily deny
5 such motions in the absence of a showing of manifest error in the prior ruling or a
6 showing of new facts or legal authority which could not have been brought to its attention
7 earlier with reasonable diligence.” Local Rules W.D. Wash. LCR 7(h)(1). Verkler’s
8 motion does not meet this standard.

9 There is no right to counsel in a civil case. *Aldabe v. Aldabe*, 616 F.2d 1089, 1093
10 (9th Cir. 1980). A court has discretion to “request” counsel in cases brought by
11 impecunious civil plaintiffs. 28 U.S.C. § 1915(e)(1). However, such requests are made
12 only under “exceptional circumstances,” based upon an evaluation of the likelihood of
13 success on the merits and the complexity of the legal issues involved. *Wilborn v.*
14 *Escalderon*, 789 F.2d 1328, 1331 (9th Cir. 1986). As the Court previously found, such
15 circumstances do not exist here.

16 Furthermore, there is no currently pending claim. Although Verkler’s
17 reconsideration motion was accompanied by a declaration and lengthy argument about
18 his apparent dispute over forfeited funds, he has not brought any proceeding seeking
19 relief. At this point, all that is pending is a request for appointment of counsel, which the
20 Court has denied. If Verkler seeks a remedy regarding his forfeiture dispute, he must

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22 ¹ Verkler filed his motion on June 10, 2020; it was docketed on June 11, 2020.

1 bring a civil action requesting relief. Verkler may file a civil lawsuit (and, if he qualifies,
2 may seek *in forma pauperis* status pursuant to 28 U.S.C. § 1915). Alternatively, the
3 Ninth Circuit has permitted criminal defendants seeking the return of property after their
4 criminal matters have closed to file motions in those matters pursuant to Fed. R. Crim. P.
5 41(g). *United States v. Ibrahim*, 522 F.3d 1003, 1007 (9th Cir. 2008); *United States v.*
6 *Ritchie*, 342 F.3d 903, 906 (9th Cir. 2003). Such motions are treated in equity as
7 equivalent to a civil complaint and are governed, as are civil actions, by the Federal Rules
8 of Civil Procedure. *Id.*

9 If Verkler wishes to seek relief with respect to his dispute regarding the forfeiture
10 and restitution orders in his closed criminal matter, he must file a claim. Because any
11 such claim would be civil in nature and Verkler has not shown the exceptional
12 circumstances required for a request for counsel pursuant to 18 U.S.C. §1915(e)(1), the
13 Court denies Verkler's motion for reconsideration of its prior order denying his request
14 for counsel.

15 III. ORDER

16 Therefore, it is hereby **ORDERED** that Verkler's motion for reconsideration, Dkt.
17 156, is **DENIED**.

18 Dated this 8th day of June, 2020.

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21 BENJAMIN H. SETTLE
22 United States District Judge

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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 UNITED STATES OF AMERICA,

9 Plaintiff,

v.

10 GEORGE EARL VERKLER,

11 Defendant.

CASE NO. CR00-5669

ORDER DENYING MOTION TO
APPOINT COUNSEL

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13 This matter comes before the Court on defendant George Earl Verkler's
14 ("Verkler") motion to assign attorney to resolve dispute re collected funds. Dkt. 154. The
15 Court has reviewed the motion and the remainder of the file and hereby denies the motion
16 for the reasons stated herein.

17 **I. PROCEDURAL HISTORY**

18 Verkler pled guilty to mail fraud, false claims and using false means of
19 identification on February 9, 2001. Dkt. 38. On April 26, 2001, the Court (United States
20 District Court Judge Franklin D. Burgess) sentenced Verkler to 15 months' incarceration,
21 three years of supervised release, the payment of a \$400 special assessment and
22 restitution of \$202,923. Dkt. 44. The Court entered a final order of forfeiture regarding

1 various assets on October 16, 2003. Dkt. 90. On August 5, 2004, the Court terminated
2 Verkler's supervised release. Dkt. 153.

3 On April 16, 2020, Verkler filed his motion, which seeks the appointment of
4 counsel to assist him in an apparent dispute over the amount of money collected in this
5 matter. Dkt. 154.

6 II. DISCUSSION

7 Plaintiff's criminal matter has long since terminated. Thus, any action to seek the
8 return of seized property, even if brought under Fed. R. Crim. P. 41(g), must be construed
9 as a civil matter. *United States v. Ibrahim*, 522 F.3d 1003, 1007 (9th Cir. 2008)
10 ("Because there were no criminal proceedings pending at the time of filing, the district
11 court properly treated [a motion under Fed. R. Crim. P. 41(g)] as a civil complaint
12 governed by the Federal Rules of Civil Procedure"); *United States v. Ritchie*, 342 F.3d
13 903, 906 (9th Cir. 2003) (citing *United States v. Martinson*, 809 F.2d 1364, 1366–67 (9th
14 Cir.1987)) ("If a Rule 41(e) [now 41(g)] motion is filed when no criminal proceeding is
15 pending, the motion is treated as a civil complaint seeking equitable relief.").

16 There is no right to counsel in a civil case. *Aldabe v. Aldabe*, 616 F.2d 1089, 1093
17 (9th Cir. 1980). A court has discretion to request counsel to represent an indigent civil
18 litigant, but only in "exceptional circumstances." *Id.* A finding of exceptional
19 circumstances requires at least an evaluation of the likelihood of the plaintiff's success on
20 the merits and an evaluation of the plaintiff's ability to articulate his or her claims "in
21 light of the complexity of the legal issues involved." *Wilborn v. Escalderon*, 789 F.2d
22 1328, 1331 (9th Cir. 1986) (quoting *Weygandt v. Look*, 718 F.2d 952, 954 (9th Cir.

1 1983)). Verkler's motion presents no facts supporting any such findings. Accordingly,
2 the Court denies Verkler's request.

3 **III. ORDER**

4 Therefore, it is hereby **ORDERED** that Verkler's motion to assign attorney, Dkt.
5 154, is **DENIED**.

6 Dated this 27th day of May, 2020.

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8 BENJAMIN H. SETTLE
9 United States District Judge
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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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AUG 6 2020

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GEORGE VERKLER, AKA Kenneth P.
Goff, AKA Neal T. Pearson, AKA Neil T.
Pearson,

Defendant-Appellant.

No. 20-30161

D.C. No. 3:00-cr-05669-BHS-1
Western District of Washington,
Tacoma

ORDER

A review of the record suggests that this court may lack jurisdiction over the appeal because the district court's orders entered on May 27, 2020, denying appointment of counsel, and July 8, 2020, denying reconsideration of the May 27, 2020, order, are not appealable as final judgments or orders that come within the collateral order doctrine. *See* 28 U.S.C. § 1291; *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-46 (1949).

Within 30 days of this order, appellant must 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 may result in the dismissal of the appeal

for failure to prosecute. *See* 9th Cir. R. 42-1.

Briefing is suspended pending further order of the court.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Manisha Munshi
Deputy Clerk
Ninth Circuit Rule 27-7

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

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MAR 3 2021

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

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

GEORGE VERKLER, AKA Kenneth P.
Goff, AKA Neal T. Pearson, AKA Neil T.
Pearson,

Defendant-Appellant.

No. 20-30161

D.C. No. 3:00-cr-05669-BHS-1
Western District of Washington,
Tacoma

ORDER

Before: THOMAS, Chief Judge, TASHIMA and W. FLETCHER, Circuit Judges.

Appellant's "petition for rehearing" (Docket Entry No. 6), which we treat as a motion for reconsideration, is denied. *See* 9th Cir. R. 27-10.

No further filings will be entertained in this closed case.

APPENDIX

B Judgment

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

MAR 11 2021

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

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

GEORGE VERKLER, AKA Kenneth P.
Goff, AKA Neal T. Pearson, AKA Neil
T. Pearson,

Defendant - Appellant.

No. 20-30161

D.C. No. 3:00-cr-05669-BHS-1
U.S. District Court for Western
Washington, Tacoma

MANDATE

The judgment of this Court, entered November 13, 2020, 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.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT

By: Rebecca Lopez
Deputy Clerk
Ninth Circuit Rule 27-7