

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 12, 2022

No. 21-50070
Summary Calendar

Lyle W. Cayce
Clerk

HENRY JONES,

Petitioner—Appellant,

versus

THOMAS BERGAMI, *Warden*; UNITED STATES OF AMERICA,

Respondents—Appellees.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 3:20-CV-132

Before HIGGINBOTHAM, GRAVES, and Ho, *Circuit Judges*.

PER CURIAM:*

Henry Jones appeals the district court's denial of his pro se petition seeking relief under the All Writs Act, 28 U.S.C. § 1651(a). On behalf of himself and David Lopez, another federal prisoner, he also has filed in this court a motion seeking compassionate release reductions in sentence based

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

No. 21-50070

on their underlying medical conditions and the COVID-19 pandemic. Lopez is not a party in this appeal. Moreover, we cannot rule on a compassionate release motion in the first instance. *See* 18 U.S.C. § 3582(c)(1)(A). Accordingly, that motion is DENIED.

The authority to issue writs of mandamus derives from the All Writs Act, which grants federal courts the power to issue all writs in aid of their jurisdiction. § 1651(a); *In re Gee*, 941 F.3d 153, 157 (5th Cir. 2019). The federal mandamus statute, 28 U.S.C. § 1361, gives “district courts . . . original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.” To obtain mandamus, “(1) the plaintiff must have a clear right to the relief, (2) the defendant must have a clear duty to act, and (3) no other adequate remedy must be available.” *Jones v. Alexander*, 609 F.2d 778, 781 (5th Cir. 1980).

In the district court, Jones asserted that the warden of the La Tuna Federal Correctional Institution failed to adequately address the risk of harm that the COVID-19 pandemic posed to inmates. He sought a writ of mandamus directing the Bureau of Prisons to take certain measures to mitigate those risks.

On appeal, Jones alleges that the district court intentionally misconstrued his claims so it could deny his petition and avoid addressing his complaints. However, the record refutes that assertion. The district court did not err in determining that Jones failed to show that his right to the writ was clear and indisputable and that he had no other adequate avenues of relief. *See Jones*, 609 F.2d at 781. Moreover, Jones has not shown any abuse of discretion in the district court’s determination that granting a writ of mandamus was not appropriate given the circumstances.

The district court’s judgment is AFFIRMED.

United States District Court
Central District of California

UNITED STATES OF AMERICA vs.

Docket No. CR 07-1076 PA P-SEND JS-3Defendant Henry Uliomereyon Jones
Dr. Henry Jones; Sam Joya Mama; Janson Rosso
akas: CostimeSocial Security No. 7 4 3 0
(Last 4 digits)

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government, the defendant appeared in person on this date.

MONTH 04 DAY 03 YEAR 2009COUNSEL WITH COUNSEL Henry Jones, Pro Se
(Name of Counsel)PLEA GUILTY, and the court being satisfied that there is a factual basis for the plea. NOLO NOT
CONTENDERE GUILTYFINDING There being a finding/verdict of GUILTY, defendant has been convicted as charged of the offense(s) of:
Mail Fraud in violation of 18 U.S.C. § 1341 as charged in Count 3 of the Indictment; Wire Fraud in violation of 18 U.S.C. § 1343 as charged in Counts 4, 5, 6, 9 and 13 of the Indictment; and Securities Fraud in violation of 15 U.S.C. §§ 78j(b), 78ff and 17 U.S.C. § 240.10b-5 as charged in Counts 15, 17, and 19 of the Indictment; Contempt in violation of 18 U.S.C. § 401 as charged in Counts 20 and 22 of the Indictment; Transactional Money Laundering, Aiding and Abetting and Causing an Act to be Done in violation of 18 U.S.C. § 1957, 2(b) as charged in Counts 27, 28, 29, 30, 31, 32, and 33 of the Indictment.
The Court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the Court, the Court adjudged the defendant guilty as charged and convicted and ordered that: Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Henry Uliomereyon Jones, is hereby committed on Counts 3, 4, 5, 6, 9, 13, 15, 17, 19, 20, 22, and 27 through 33 of the Indictment to the custody of the Bureau of Prisons for a term of 240 months. This term consists of 240 months on each of Counts 3, 4, 5, 6, 9, 13, 15, 17, 19; 120 months on each of Counts 27 through 33, and 30 months on Counts 20 and 22, all such terms to be served concurrently.

JUDGMENT AND PROB/ COMM ORDER Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 3, 4, 5, 6, 9, 13, 15, 17, 19, and 27 through 33 and one year on each of Counts 20 and 22, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U. S. Probation Office and General Order 318;
2. The defendant shall not commit any violation of local, state or federal law or ordinance;
3. During the period of community supervision the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment;
4. The defendant shall comply with the immigration rules and regulations of the United States, and if deported from this country, either voluntarily or involuntarily, not reenter the United States illegally. The defendant is not required to report to the Probation Office while residing outside of the United States; however, within 72 hours of release from any custody or any reentry to the United States during the period of Court-ordered supervision, the defendant shall report for instructions to the United States Probation Office, located at the United States Court House, 312 North Spring Street, Room 600, Los Angeles, California 90012;
5. The defendant shall not obtain or possess any driver's license, Social Security number, birth certificate,

USA vs. Henry Uliomereyon JonesDocket No.: CR 07-1076 PA

passport or any other form of identification in any name, other than the defendant's true legal name; nor shall the defendant use, for any purpose or in any manner, any name other than his true legal name or names without the prior written approval of the Probation Officer;

6. The defendant shall not engage, as whole or partial owner, employee or otherwise, in any business involving loan programs, telemarketing activities, investment programs or any other business involving the solicitation of funds or cold-calls to customers without the express approval of the Probation Officer prior to engagement in such employment. Further, the defendant shall provide the Probation Officer with access to any and all business records, client lists and other records pertaining to the operation of any business owned, in whole or in part, by the defendant, as directed by the Probation Officer;
7. The defendant shall cooperate in the collection of a DNA sample from the defendant; and
8. The defendant shall apply all monies received from income tax refunds greater than \$500, lottery winnings, inheritance, judgments and any anticipated or unexpected financial gains to the outstanding court-ordered financial obligation.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

It is ordered that the defendant shall pay to the United States a special assessment of \$1,800, which is due immediately.

It is ordered that the defendant shall pay restitution in the total amount of \$28,058,310, pursuant to 18 U.S.C. § 3663A to victims as set forth in a separate victim list prepared by the probation office, which this Court adopts and which reflects the court's determination of the amount of restitution due to each victim. The victim list, which shall be forwarded to the fiscal section of the clerk's office, shall remain confidential to protect the privacy interests of the victims. The amount of restitution ordered shall be paid as set forth on the list prepared by the probation office. If the defendant makes a partial payment, each payee shall receive approximately proportional payment unless another priority order or percentage payment is specified in this judgment.

Restitution shall be due during the period of imprisonment, at the rate of not less than \$25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, nominal monthly payments of at least \$100 shall be made during the period of supervised release. These payments shall begin 30 days after the commencement of supervision. Nominal restitution payments are ordered as the court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the amount ordered.

The defendant shall be held jointly and severally liable with his co-participants, Arthur Simburg and Robert Jennings, for the amount of restitution ordered in this judgment.

Pursuant to 18 U.S.C. § 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to 18 U.S.C. § 3612(g).

The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay.

Defendant is advised of his right to appeal.