

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 22-10564-HH

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

JUSTIN LEWIS,

Defendant - Appellant.

Appeal from the United States District Court
for the Northern District of Florida

ORDER:

Justin Lewis has filed a motion to discharge his Court-appointed counsel in this direct appeal from his conviction and sentence for aiding and abetting wire fraud, in violation of 18 U.S.C. § 1343. He seeks leave to proceed *pro se*.

Unlike at the trial court level, defendants do not have a constitutional right to represent themselves on appeal. *Martinez v. Ct. of Appeal of Cal., 4th App. Dist.*, 528 U.S. 152, 163 (2000). Whether to allow a defendant to proceed *pro se* is, instead, a matter of discretion for this Court, balancing the defendant's interest in autonomy and the government's interest in the "fair and efficient administration of justice." *Id.*

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Here, Lewis's motion is DENIED because he has no constitutional right to proceed *pro se* and because—based on the information available—it would not benefit him or serve the fair and efficient administration of justice to allow him to proceed without counsel.

/s/ Adalberto Jordan

UNITED STATES CIRCUIT JUDGE

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-12843-E

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JUSTIN LEWIS,

Defendant-Appellant.

Appeal from the United States District Court
for the Northern District of Florida

Before: ROSENBAUM, NEWSOM, and GRANT, Circuit Judges.

BY THE COURT:

Upon our review of the record and the responses to the jurisdictional question, we hereby DISMISS this appeal for lack of jurisdiction. To the extent that Justin Lewis seeks to challenge the district court's denial of pretrial release in N.D. Fla. 1:18-cr-00015-AW-GRJ-1, his appeal is moot because he has been convicted in that case. *See* U.S. Const. art. III, § 2 (confining the judicial power of federal courts to deciding actual cases or controversies); *C & C Prods., Inc. v. Messick*, 700 F.2d 635, 636 (11th Cir. 1983) (explaining that an appellate court does not have jurisdiction to decide questions which have become moot by reason of intervening events); *Murphy v. Hunt*, 455 U.S. 478, 481 & n.5 (1982) (explaining that any pending review of a pretrial detention order becomes moot upon the entry of a conviction).

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Further, to the extent that Lewis seeks in the instant appeal to challenge the district court's denial of the numerous other forms of relief he requested in his motion for release—namely, dismissal of the indictment on grounds of prosecutorial vindictiveness, dismissal of the indictment on grounds of insufficient evidence, suppression of evidence, and return of his property—his appeal is not taken from a final or otherwise appealable decision. *See* 28 U.S.C. § 1291 (providing that appellate jurisdiction generally is limited to final decisions of the district courts); *United States v. Curry*, 760 F.2d 1079, 1079 (11th Cir. 1985) (“In a criminal case the final judgment means the sentence. The sentence is the judgment.”); *United States v. Mulherin*, 710 F.2d 731, 743 (11th Cir. 1983) (explaining that the denial of a motion to dismiss an indictment is not immediately appealable if the motion is based on allegations of prosecutorial vindictiveness); *Abney v. United States*, 431 U.S. 651, 663 (1977) (explaining that the denial of a motion to dismiss an indictment is not immediately appealable if the motion is based on allegations of insufficient evidence); *United States v. Kirk*, 781 F.2d 1498, 1501 n.2 (11th Cir. 1986) (“The denial of a motion to suppress is a non-final order from which a defendant may not appeal.”); *Fraser v. United States*, 834 F.2d 911, 914 (11th Cir. 1987) (explaining that “orders denying return of seized property are nonappealable when the property is tied to a pending criminal investigation”).

Additionally, we note that Lewis's appeal from “case 1:18-cr-15-GRT in its entirety” following the district court's sentence is currently pending in appeal no. 22-10564. *See Curry*, 760 F.2d at 1079; *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 373-74 (1981) (explaining that “a party must ordinarily raise all claims of error in a single appeal following final judgment”). We also note that Lewis may file a new motion requesting release pending appeal notwithstanding the viability of any appeal from the district court's decision denying him pretrial release in N.D. Fla. 1:18-cr-00015-AW-GRJ-1. *See* 18 U.S.C. § 3143(b).

The government's motion to dismiss, and any other outstanding motions, are DENIED as MOOT.

UNITED STATES DISTRICT COURT

Northern District of Florida

UNITED STATES OF AMERICA

v.

JUSTIN LEWIS

JUDGMENT IN A CRIMINAL CASE

Case Number: 1:18CR00015-001

USM Number: 70700-018

Darren J. Johnson (AFPD)

Defendant's Attorney

THE DEFENDANT:

☐ pleaded guilty to count(s) _____

☐ pleaded nolo contendere to count(s) _____
which was accepted by the court.

☒ was found guilty on count(s) One through Six
after a plea of not guilty.

The defendant is adjudicated guilty of these offenses:

<u>Title & Section</u>	<u>Nature of Offense</u>	<u>Offense Ended</u>	<u>Count</u>
18 U.S.C. § 1343 and 18 U.S.C. § 2	Scheme to Defraud via Wire Fraud; Aiding and Abetting	12/06/2016	1-3
18 U.S.C. § 1343 and 18 U.S.C. § 2	Scheme to Defraud via Wire Fraud; Aiding and Abetting	01/13/2017	4-6

The defendant is sentenced as provided in pages 2 through 8 of this judgment. The sentence is imposed pursuant to the Sentencing Reform Act of 1984.

☐ The defendant has been found not guilty on count(s) _____

☐ Count(s) _____ ☐ is ☐ are dismissed on the motion of the United States.

It is ordered that the defendant must notify the United States attorney for this district within 30 days of any change of name, residence, or mailing address until all fines, restitution, costs, and special assessments imposed by this judgment are fully paid. If ordered to pay restitution, the defendant must notify the court and United States attorney of material changes in economic circumstances.

2/16/2022

Date of Imposition of Judgment

s/ Allen Winsor

Signature of Judge

Allen Winsor, United States District Judge

Name and Title of Judge

2/23/2022

Date

Appendix B

DEFENDANT: JUSTIN LEWIS
CASE NUMBER: 1:18CR00015-001

IMPRISONMENT

The defendant is hereby committed to the custody of the Federal Bureau of Prisons to be imprisoned for a total term of:
sixty-six (66) months imprisonment as to each of Counts 1 through 6, all terms to run concurrently with each other.

☒ The court makes the following recommendations to the Bureau of Prisons:
that the defendant be designated to an institution in or near Gainesville, Florida.

☒ The defendant is remanded to the custody of the United States Marshal.

☐ The defendant shall surrender to the United States Marshal for this district:

☐ at _____ ☐ a.m. ☐ p.m. on _____

☐ as notified by the United States Marshal.

☐ The defendant shall surrender for service of sentence at the institution designated by the Bureau of Prisons:

☐ before 2 p.m. on _____

☐ as notified by the United States Marshal.

☐ as notified by the Probation or Pretrial Services Office.

RETURN

I have executed this judgment as follows:

Defendant delivered on _____ to _____
at _____, with a certified copy of this judgment.

UNITED STATES MARSHAL

By _____
DEPUTY UNITED STATES MARSHAL

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DEFENDANT: JUSTIN LEWIS
CASE NUMBER: 1:18CR00015-001

SUPERVISED RELEASE

Upon release from imprisonment, you will be on supervised release for a term of:

three (3) years supervised release as to each of counts 1 through 6, all terms to run concurrently with each other.

MANDATORY CONDITIONS

1. You must not commit another federal, state or local crime.
2. You must not unlawfully possess a controlled substance.
3. You must refrain from any unlawful use of a controlled substance. You must submit to one drug test within 15 days of release from imprisonment and at least two periodic drug tests thereafter, as determined by the court.
 - ☐ The above drug testing condition is suspended, based on the court's determination that you pose a low risk of future substance abuse. *(check if applicable)*
4. ☒ You must make restitution in accordance with 18 U.S.C. §§ 3663 and 3663A or any other statute authorizing a sentence of restitution. *(check if applicable)*
5. ☒ You must cooperate in the collection of DNA as directed by the probation officer. *(check if applicable)*
6. ☐ You must comply with the requirements of the Sex Offender Registration and Notification Act (34 U.S.C. § 20901, *et seq.*) as directed by the probation officer, the Bureau of Prisons, or any state sex offender registration agency in the location where you reside, work, are a student, or were convicted of a qualifying offense. *(check if applicable)*
7. ☐ You must participate in an approved program for domestic violence. *(check if applicable)*

You must comply with the standard conditions that have been adopted by this court as well as with any other conditions on the attached page.

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DEFENDANT: JUSTIN LEWIS
CASE NUMBER: 1:18CR00015-001**STANDARD CONDITIONS OF SUPERVISION**

As part of your supervised release, you must comply with the following standard conditions of supervision. These conditions are imposed because they establish the basic expectations for your behavior while on supervision and identify the minimum tools needed by probation officers to keep informed, report to the court about, and bring about improvements in your conduct and condition.

1. You must report to the probation office in the federal judicial district where you are authorized to reside within 72 hours of your release from imprisonment, unless the probation officer instructs you to report to a different probation office or within a different time frame.
2. After initially reporting to the probation office, you will receive instructions from the court or the probation officer about how and when you must report to the probation officer, and you must report to the probation officer as instructed.
3. You must not knowingly leave the federal judicial district where you are authorized to reside without first getting permission from the court or the probation officer.
4. You must answer truthfully the questions asked by your probation officer.
5. You must live at a place approved by the probation officer. If you plan to change where you live or anything about your living arrangements (such as the people you live with), you must notify the probation officer at least 10 days before the change. If notifying the probation officer in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
6. You must allow the probation officer to visit you at any time at your home or elsewhere, and you must permit the probation officer to take any items prohibited by the conditions of your supervision that he or she observes in plain view.
7. You must work full time (at least 30 hours per week) at a lawful type of employment, unless the probation officer excuses you from doing so. If you do not have full-time employment you must try to find full-time employment, unless the probation officer excuses you from doing so. If you plan to change where you work or anything about your work (such as your position or your job responsibilities), you must notify the probation officer at least 10 days before the change. If notifying the probation officer at least 10 days in advance is not possible due to unanticipated circumstances, you must notify the probation officer within 72 hours of becoming aware of a change or expected change.
8. You must not communicate or interact with someone you know is engaged in criminal activity. If you know someone has been convicted of a felony, you must not knowingly communicate or interact with that person without first getting the permission of the probation officer.
9. If you are arrested or questioned by a law enforcement officer, you must notify the probation officer within 72 hours.
10. You must not own, possess, or have access to a firearm, ammunition, destructive device, or dangerous weapon (i.e., anything that was designed, or was modified for, the specific purpose of causing bodily injury or death to another person such as nunchakus or tasers).
11. You must not act or make any agreement with a law enforcement agency to act as a confidential human source or informant without first getting the permission of the court.
12. If the probation officer determines that you pose a risk to another person (including an organization), the probation officer may require you to notify the person about the risk and you must comply with that instruction. The probation officer may contact the person and confirm that you have notified the person about the risk.
13. You must follow the instructions of the probation officer related to the conditions of supervision.

U.S. Probation Office Use Only

A U.S. probation officer has instructed me on the conditions specified by the court and has provided me with a written copy of this judgment containing these conditions. For further information regarding these conditions, see *Overview of Probation and Supervised Release Conditions*, available at: www.uscourts.gov.

Defendant's Signature _____

Date _____

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DEFENDANT: JUSTIN LEWIS

CASE NUMBER: 1:18CR00015-001

ADDITIONAL SUPERVISED RELEASE TERMS

1. The defendant must participate in a mental health evaluation and any appropriate treatment as directed by the probation officer. He must continue to take medications as prescribed and comply with any current mental health treatment plan as directed.
2. Any unpaid portion of the restitution shall be paid in monthly installments of not less than \$200, to commence no later than 60 days from imposition of this sentence, or release from imprisonment.
3. The defendant must provide the probation officer all requested financial information, both business and personal.
4. The defendant must not incur new credit charges or open additional lines of credit without the approval of the probation officer unless the defendant has satisfied his financial obligations.
5. The defendant shall provide the probation officer with access to all requested financial information and report the source and amount of personal and/or business income and financial assets to the supervising probation officer as directed.
6. The defendant shall not transfer or dispose of any asset, or his interest in any asset, without prior approval of the supervising probation officer unless the defendant has satisfied his financial obligations.
7. As directed by the probation officer, the defendant must allow the installation of computer monitoring software on any computer (as defined in 18 U.S.C. § 1030(e)(1)) or other electronic communications or data storage devices or media, he uses. This computer monitoring condition may include enrolling in the probation office's Computer and Internet Monitoring Program (CIMP). If enrolled in CIMP, the defendant must abide by the requirements CIMP and the Acceptable Use Contract.
8. To ensure compliance with the computer monitoring condition, the defendant must allow the probation officer to conduct initial and periodic unannounced searches of any computers (as defined in 18 U.S.C. § 1030(e)(1)) in your possession or control. These searches shall be conducted to determine whether the computer contains any prohibited data, whether the monitoring software is functioning effectively after its installation and whether there have been attempts to circumvent the monitoring software after its installation. The defendant must notify any other people who use these computers that the computers may be subject to searches pursuant to this condition.
9. The defendant must not possess or use any data encryption technique or program.

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DEFENDANT: JUSTIN LEWIS
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CRIMINAL MONETARY PENALTIES

The defendant must pay the total criminal monetary penalties under the schedule of payments on Sheet 6.

	<u>Assessment</u>	<u>Restitution</u>	<u>Fine</u>	<u>AVAA Assessment*</u>	<u>JVTA Assessment**</u>
TOTALS	\$ 600.00	\$ 1,349,398.98	\$	\$	\$

☐ The determination of restitution is deferred until _____. An Amended Judgment in a Criminal Case (AO 245C) will be entered after such determination.

☐ The defendant must make restitution (including community restitution) to the following payees in the amount listed below.

If the defendant makes a partial payment, each payee shall receive an approximately proportioned payment, unless specified otherwise in the priority order or percentage payment column below. However, pursuant to 18 U.S.C. § 3664(i), all nonfederal victims must be paid before the United States is paid.

<u>Name of Payee</u>	<u>Total Loss***</u>	<u>Restitution Ordered</u>	<u>Priority or Percentage</u>
Verizon Wireless		\$1,349,398.98	

TOTALS	\$ 0.00	\$ 1,349,398.98
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☐ Restitution amount ordered pursuant to plea agreement \$ _____

☐ The defendant must pay interest on restitution and a fine of more than \$2,500, unless the restitution or fine is paid in full before the fifteenth day after the date of the judgment, pursuant to 18 U.S.C. § 3612(f). All of the payment options on Sheet 6 may be subject to penalties for delinquency and default, pursuant to 18 U.S.C. § 3612(g).

☒ The court determined that the defendant does not have the ability to pay interest and it is ordered that:

☒ the interest requirement is waived for the ☐ fine ☒ restitution.

☐ the interest requirement for the ☐ fine ☐ restitution is modified as follows:

* Amy, Vicky, and Andy Child Pornography Victim Assistance Act of 2018, Pub. L. No. 115-299.

** Justice for Victims of Trafficking Act of 2015, Pub. L. No. 114-22.

*** Findings for the total amount of losses are required under Chapters 109A, 110, 110A, and 113A of Title 18 for offenses committed on or after September 13, 1994, but before April 23, 1996.

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DEFENDANT: JUSTIN LEWIS
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SCHEDULE OF PAYMENTS

Having assessed the defendant's ability to pay, payment of the total criminal monetary penalties is due as follows:

- A ☒ Lump sum payment of \$ 1,349,998.98 due immediately, balance due
- ☐ not later than _____, or
☐ in accordance with ☐ C, ☐ D, ☐ E, or ☐ F below; or
- B ☐ Payment to begin immediately (may be combined with ☐ C, ☐ D, or ☐ F below); or
- C ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after the date of this judgment; or
- D ☐ Payment in equal _____ (e.g., weekly, monthly, quarterly) installments of \$ _____ over a period of _____ (e.g., months or years), to commence _____ (e.g., 30 or 60 days) after release from imprisonment to a term of supervision; or
- E ☐ Payment during the term of supervised release will commence within _____ (e.g., 30 or 60 days) after release from imprisonment. The court will set the payment plan based on an assessment of the defendant's ability to pay at that time; or
- F ☐ Special instructions regarding the payment of criminal monetary penalties:

Unless the court has expressly ordered otherwise, if this judgment imposes imprisonment, payment of criminal monetary penalties is due during the period of imprisonment. All criminal monetary penalties, except those payments made through the Federal Bureau of Prisons' Inmate Financial Responsibility Program, are made to the clerk of the court.

The defendant shall receive credit for all payments previously made toward any criminal monetary penalties imposed.

☐ Joint and Several

Case Number
Defendant and Co-Defendant Names
(including defendant number)

Total Amount

Joint and Several
Amount

Corresponding Payee,
if appropriate

- ☐ The defendant shall pay the cost of prosecution.
- ☐ The defendant shall pay the following court cost(s):
- ☒ The defendant shall forfeit the defendant's interest in the following property to the United States:
See Page 8 of Judgment

Payments shall be applied in the following order: (1) assessment, (2) restitution principal, (3) restitution interest, (4) AVAA assessment, (5) fine principal, (6) fine interest, (7) community restitution, (8) JVT A assessment, (9) penalties, and (10) costs, including cost of prosecution and court costs.

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DEFENDANT: JUSTIN LEWIS
CASE NUMBER: 1:18CR00015-001

ADDITIONAL FORFEITED PROPERTY

A. Real Property located at 14196 West Sanddollar Lane, Crystal River, Florida, with all improvements and appurtenances thereon, more particularly described as follows:

Tract of land being Lot 4, in Block B, of Sunny Isle Estates, Unit No. 1, an unrecorded subdivision being more particularly described as follows: Commence at a squared Cedar Stake at the Southeast corner of Section 34, Township 18 South, Range 16 East, Citrus County, Florida, and run due West 10,560.00 feet to the Southeast corner of Section 34, Township 18 South, Range 16 East, thence run due North 1786.05 feet; thence run North 51 degrees 16 minutes 51 seconds East 14.98 feet; thence run North 30 degrees 21 minutes 30 seconds East 139.30 feet; thence run North 59 degrees 38 minutes 30 seconds West 1195.00 feet to the Point of Beginning; thence continue North 59 degrees 38 minutes 30 seconds West 75.00 feet; thence run South 30 degrees 21 minutes 30 seconds West 238.73 feet to the Mean High Water line of a Salt Water Bay; thence run Southeasterly along the Mean High Water line of said Salt Water Bay to a point that is South 30 degrees 21 minutes 30 seconds West 267.00 feet from the Point of Beginning; thence run North 30 degrees 21 minutes 30 seconds East 267.00 feet to the Point of Beginning;

B. A portion of the Real Property located at 13280 SW 61st Place, Ocala, Florida, in the amount of \$102,107.03, with all improvements and appurtenances thereon, more particularly described as follows:

Lot 18, Block 142 of ROLLING HILLS UNIT FIVE, according to the plat thereof as recorded in Plat Book L, Pages 77-91, of the Public Records of Marion County, Florida;

C. Contents of Fidelity Investment Account Y98-179019 held in name of Justin Lewis in the amount of \$68,977.15, with any interest and/or dividends earned thereon, and any appreciation thereof;

D. A portion of the contents of Florida Credit Union Account #427885, Checking Account #0008, in the name of Justin Lewis in the amount of \$104,796.96;

E. A portion of the contents of Bank of Ozarks Account #2167201645 in the name of Justin Lewis, in the amount of \$460.51;

F. A portion of the contents of SunTrust Account #1000200461977 in the name of Justin Lewis, in the amount of \$80,505.72;

G. A portion of the contents of American Express High Yield Savings Account #1517746747 in the name of Justin Lewis, in the amount of \$76,053.89;

H. A portion of the contents of PayPal Account #1722173205911354000 in the name of Nicole Sorrentino, in the amount of \$820.20;

I. \$1,724.00 in United States currency;

J. Miscellaneous Telecommunications Equipment;

K. Contents of Centerstate Bank Account #1601194 in the name of Linda Maloney in the amount of \$37,058.70, with any interest earned thereon;

L. Contents of Centerstate Bank Account #5115738 in the name of Linda Maloney and Razor Repair, in the amount of \$3,569.26, with any interest earned thereon;

M. Contents of PayPal Account #2273239927849659254 in the name of Linda Maloney, in the amount of \$2,308.15;

N. The remainder of the Real Property located at 13280 SW 61st Place, Ocala, Florida, more particularly described in (B) above;

O. An additional portion of the contents of Florida Credit Union Account #427885, Checking Account #0008, in the name of Justin Lewis, in the amount of \$2,797.45;

P. An additional portion of the contents of Bank of Ozarks Account #2167201645 in the name of Justin Lewis, in the amount of \$19.18;

Q. An additional portion of the contents of SunTrust Account #1000200461977 in the name of Justin Lewis, in the amount of \$3,354.40;

R. An additional portion of the contents of American Express High Yield Savings Account #1517746747 in the name of Justin Lewis, in the amount of \$7,521.81; and

S. An additional portion of the contents of PayPal Account #1722173205911354000 in the name of Nicole Sorrentino, in the amount of \$144.74.

There is also a monetary judgment imposed in the amount of \$1,349,398.98, with the items listed above to be credited against this amount.

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