

Exhibit "A"

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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NEW ORLEANS, LA 70130

June 06, 2023

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 22-40469 USA v. Chi
USDC No. 4:12-CR-155-1

Enclosed is a copy of the court's decision. The court has entered judgment under **FED. R. APP. P. 36**. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

FED. R. APP. P. 39 through **41**, and **5TH CIR. R. 35**, **39**, and **41** govern costs, rehearings, and mandates. **5TH CIR. R. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following **FED. R. APP. P. 40** and **5TH CIR. R. 35** for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

Direct Criminal Appeals. **5TH CIR. R. 41** provides that a motion for a stay of mandate under **FED. R. APP. P. 41** will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under **FED. R. APP. P. 41**. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, and advise them of the time limits for filing for rehearing and certiorari. Additionally, you **MUST** confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

06/20/2023

Sincerely,

LYLE W. CAYCE, Clerk

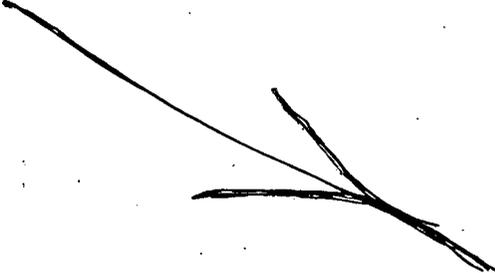
Dantrell Johnson

By:

Dantrell L. Johnson, Deputy Clerk

Enclosure(s)

Mr. Anson Chi
Mr. Robert Austin Wells



06/20/2023

United States Court of Appeals
for the Fifth Circuit

No. 22-40469
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 6, 2023

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANSON CHI,

Defendant—Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
USDC No. 4:12-CR-155-1

Before STEWART, DUNCAN, and WILSON, *Circuit Judges.*

PER CURIAM:^{*}

Anson Chi pleaded guilty to possession of an unregistered firearm and malicious use of explosive materials and was sentenced to 240 months of imprisonment. The district court also imposed restitution in the amount of \$28,127.77. In 2022, the Government filed a motion for a turnover order, asserting that the Bureau of Prisons (BOP) then held \$1,720.02 in cash in

^{*} This opinion is not designated for publication. See 5TH CIR. R. 47.5.

Chi's inmate trust account. The district court granted the motion and issued a turnover order. Chi now appeals. The Government has filed an opposed motion for summary affirmance or, in the alternative, a motion for an extension of time to file a merits brief.

Chi raises several issues regarding the district court's initial restitution judgment, its adjudication of his 28 U.S.C. § 2255 motion, our decisions in his various appeals, and prosecutorial misconduct. However, we lack jurisdiction to consider rulings not designated in Chi's notice of appeal, as well as decisions in Chi's other appeals. *See United States v. Clayton*, 613 F.3d 592, 594 (5th Cir. 2010); FED. R. APP. P. 3(c)(1); *see generally* 28 U.S.C. § 1291.

We review the district court's turnover order for an abuse of discretion standard and will only reverse "if the court has acted in an unreasonable or arbitrary manner." *Santibanez v. Wier McMahon & Co.*, 105 F.3d 234, 239 (5th Cir. 1997). In his brief, Chi states that his mother deposited \$2,000 of his COVID-19 stimulus funds from the IRS into his inmate trust account. Because the stimulus payment constituted "substantial resources from any source" and did not qualify for any exemptions to tax levy, federal and state law permitted the district court's turnover order. 18 U.S.C. § 3664(n); *see also* 18 U.S.C. § 3613(a), (c); TEX. CIV. PRAC. & REM. CODE § 31.002(a); *United States v. Stark*, 56 F.4th 1039, 1040-41 (5th Cir. 2023) (per curiam); *United States v. Diehl*, 848 F.3d 629, 631-33 (5th Cir. 2017).

To the extent Chi argues that the district court's turnover was unnecessary due to his agreement with the BOP to pay restitution in monthly installments, an inmate's compliance with a payment schedule does not preclude the Government from using other means of collection when, as here, the judgment provides that restitution is due immediately. *See Diehl*,

848 F.3d at 633–35. While Chi argues that the district court was required to determine the source of his funds before issuing the turnover order, he cites only nonbinding law from the Eighth Circuit to support his claims.

Chi also argues that the district court’s turnover order prevented him from paying court costs and fees, which prevented him from accessing the courts. However, he has not alleged that he was prevented from preparing and transmitting legal documents or shown that he has a nonfrivolous legal claim that was impeded. *See Lewis v. Casey*, 518 U.S. 343, 351–53 (1996); *Brewer v. Wilkinson*, 3 F.3d 816, 821 (5th Cir. 1993). As to Chi’s argument that he was not afforded notice or a meaningful opportunity to respond to the Government’s motion, he has not demonstrated that any response he may have filed would have affected the district court’s decision to enter the turnover order. *See United States v. Rand*, 924 F.3d 140, 144–45 (5th Cir. 2019) (per curiam).

The appeal of the judgment of the district court is AFFIRMED in part and DISMISSED in part for lack of jurisdiction. The Government’s motion for summary affirmance and alternative motion for an extension of time to file a brief are DENIED.