

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 23-50812
Summary Calendar

UNITED STATES OF AMERICA,
Plaintiff-Appellee,
versus

GAVIN BLAKE DAVIS,
Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas

USDC No. 5:22-CR-219-1

Before SMITH, HIGGINSON, and
ENGLEHARDT, Circuit Judges.
PER CURIAM:*

Gavin Davis is a pre-trial detainee proceeding pro per. This is an interlocutory appeal of the denial of his purported 18 U.S.C. § 3164 motion for immediate release from detention.

We first examine the basis of our jurisdiction. *Mosely v. Cozby*, 813 F.2d 659, 660 (5th Cir. 1987). Federal appellate courts have

* This opinion is not designated for publication. See, 5TH CIR. R. 47.5.

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jurisdiction over appeals only from final orders per 28 U.S.C. § 1291; (2) orders that are deemed final per a jurisprudential exception, such as the collateral order doctrine; (3) interlocutory orders specified in 28 U.S.C. § 1292(a); and (4) interlocutory orders that are properly certified for appeal by the district court under Federal Rule of Civil Procedure 54(b) or 28 U.S.C. § 1292(b). *Dardar v. Lafourche Realty Co.*, 849 F. 2d 955, 957 (5th Cir. 1988).

Davis's notice of interlocutory appeal asserts that he is appealing the denial of his motion for immediate release under § 3164. But § 3164 became ineffective on July 1, 1980, when the provisions of 18 U.S.C. § 3162 took effect. *See* 18 U.S.C. § 3163(c); *United States v. Krohn*, 558 F. 2d 390, 393 (8th Cir. 1977). Section 3162 now provides for the dismissal of an indictment when the Speedy Trial Act is violated. 18 U.S.C. § 3162(a)(1), (2). But we lack jurisdiction to consider interlocutory appeals of denials of Speedy Trial Act rulings. *See United States v. Crawford Enters.*, 754 F. 2d 1272, 1273 (5th Cir. 1985).

In addition, Davis has filed motions in this court seeking to stay the trial in the district court, to consolidate this case with another pending interlocutory appeal (No. 23-50917), for the appointment of counsel, for release from detention per Federal Rule of Appellate Procedure 9, and to extend the time to file a

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reply to the government's response to his motion for release. In light of our determination that we lack jurisdiction, Davis's motion are DENIED. Because we lack jurisdiction to consider Davis's interlocutory appeal, the appeal is DISMISSED.

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ON PETITION FOR REHEARING

Before SMITH, HIGGINSON, and
ENGLEHARDT, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for
rehearing is DENIED.

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18 U.S.C. § 3164. Persons detained or designated as being of high risk

(a) The trial or other disposition of cases involving—

(1) a detained person who is being held in detention solely because he is awaiting trial, and

(2) a released person who is awaiting trial and has been designated by the attorney for the Government as being of high risk, shall be accorded priority.

(b) The trial of any person described in subsection (a)(1) or (a)(2) of this section shall commence not later than ninety days following the beginning of such continuous detention or designation of high risk by the attorney for the Government. The periods of delay enumerated in section 3161(h) [18 USCS § 3161(h)] are excluded in computing the time limitation specified in this section.

(c) Failure to commence trial of a detainee as specified in subsection (b), through

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no fault of the accused or his counsel, or failure to commence trial of a designated releasee as specified in subsection (b), through no fault of the attorney for the Government, shall result in the automatic review by the court of the conditions of release. No detainee, as defined in subsection (a), shall be held in custody pending trial after the expiration of such ninety-day period required for the commencement of his trial. A designated releasee, as defined in subsection (a), who is found by the court to have intentionally delayed the trial of his case shall be subject to an order of the court modifying his nonfinancial conditions of release under this title to insure that he shall appear at trial as required.

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