APPENDIX A

NOT RECOMMENDED FOR PUBLICATION

Nos. 24-5189/5238

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE EASTERN DISTRICT OF
JEREMY JAMES DALTON,	)	TENNESSEE
	)	
Defendant-Appellant.	)	

ORDER

Before: SILER, KETHLEDGE, and MURPHY, Circuit Judges.

Jeremy Dalton, a federal prisoner proceeding pro se, appeals the district court's denial of his motion for property return under Federal Rule of Criminal Procedure 41(g). These cases have been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 2007, Dalton was convicted in two criminal cases of burglary and aiding and abetting the theft of property and was sentenced to 24 months of imprisonment, followed by three years of supervised release. The district court also ordered Dalton to pay $3,913.80 in restitution, due immediately. Dalton violated his supervised release in 2009 and again in 2014. After the 2014 violation, the district court issued an "Agreed Order of Revocation," which revoked Dalton's supervised release and sent him to jail for 30 days without an additional period of supervised release.

In 2020, the federal government issued stimulus checks in response to the COVID-19 pandemic. According to Dalton, he did not receive his stimulus check because it was routed to pay the restitution ordered as part of his 2007 sentence. In 2023, Dalton filed a motion in his

closed criminal case, seeking an order directing the United States Attorney to return his stimulus check. Dalton argued that he was not obligated to pay the restitution ordered in 2007 because the 2014 Agreed Order of Revocation constituted a new plea contract that said nothing about restitution. The district court denied his motion. This court dismissed his appeal as untimely.

Dalton then moved the district court for the return of his "seized" stimulus money under Federal Rule of Criminal Procedure 41(g). The district court denied the motion, holding that it "possess[ed] no power to grant the [requested] relief." The court explained that Rule 41(g) is an equitable remedy that cannot be used if an adequate legal remedy is available. The district court also said that even if it could consider Rule 41(g), Dalton's claim would fail because he "owes restitution pursuant to a valid restitution order."

Dalton filed an appeal in each of his criminal cases, and the United States has moved to consolidate the cases. We grant the motion because Dalton's appeals are from the same district court order and present the same arguments. Namely, Dalton argues that the district court erred in denying his motion because Rule 41(g) is the proper vehicle for the return of his property, and his 2007 restitution order is invalid because the 2014 Agreed Order of Revocation was a new contract that relieved him of the restitution imposed in the 2007 order. He makes a number of other arguments, which we will not consider because they are either too perfunctory to merit review or were raised for the first time on appeal. *United States v. Johnson*, 440 F.3d 832, 845-46 (6th Cir. 2006).

We review the denial of a Rule 41(g) motion for an abuse of discretion. *See United States v. Price*, 841 F.3d 703, 707 (6th Cir. 2016). A district court abuses it discretion when it "relies on clearly erroneous findings of fact, uses an erroneous legal standard, or improperly applies the law." *United States v. Wilson*, 75 F.4th 633, 636 (6th Cir. 2023) (quoting *United States v. Elias*, 984 F.3d 516, 520 (6th Cir. 2021)). "A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return." Fed. R. Crim. P. 41(g). The general rule is that so long as the defendant has shown that he is "lawfully entitled to possess" the property, the district court must return the property to the defendant once the government no longer

needs it. *Savoy v. United States*, 604 F.3d 929, 932-33 (6th Cir. 2010) (quoting *United States v. Headly*, 50 F. App'x 266, 267 (6th Cir. 2002)).

We question whether a Rule 41(g) motion is the proper vehicle for Dalton's claim, but we need not decide that question because Dalton's argument that he was no longer subject to a valid restitution order lacks merit.

A district court has the statutory authority to order restitution as "an element of the sentence of conviction" or as a "discretionary condition of supervised release or probation." *United States v. Webb*, 30 F.3d 687, 689 (6th Cir. 1994); *see* 18 U.S.C. §§ 3551, 3556, 3563(b)(3), 3583(d). If "restitution is a discretionary condition of probation or supervised release," then the "restitution obligations cease upon revocation of probation" or supervised release. *United States v. Gifford*, 90 F.3d 160, 162 (6th Cir. 1996). In *Gifford*, two factors were dispositive in our determination that restitution was an element of a sentence rather than a condition of probation. *Id.* First, the judgment in that case "listed the restitution obligation as a discrete part of [the] sentence, rather than as part of the section that imposed conditions of probation." *Id.*; *see also Webb*, 30 F.3d at 690-91 (holding that a revocation of supervised release does not remove a restitution obligation if the order was an independent element of the sentence, authorized under 18 U.S.C. §§ 3551, 3556, and the court ordered restitution to be paid before supervised release began). Second, the court's authority to grant restitution came from the Victim and Witness Protection Act (VWPA), "which contemplates restitution as a separate element of sentencing." *Gifford*, 90 F.3d at 162; *see* 18 U.S.C. § 3663(a)(1)(A) ("The court, when sentencing a defendant convicted of an offense under this title . . . may order, *in addition to or* . . . in lieu of any other penalty . . . that the defendant make restitution to any victim of such offense." (emphasis added)).

Here, the district court's 2007 judgment listed the restitution obligation as an independent part of Dalton's sentence, and it expressly stated that payment was due immediately. *Cf. Webb*, 30 F.3d at 690-91, 691 n.6. And although the district court did not state which statute it claimed its authority to order restitution under, the Mandatory Victim Restitution Act (MVRA) requires courts to order restitution where a defendant, like Dalton, commits a crime against property. *See* 18 U.S.C. § 3663A(c)(1)(A)(ii). The language in the MVRA resembles the language in the

VWPA, *see id.* § 3663(a)(1); *id.* 3663A(a)(1), so this act, too, "contemplates restitution as a separate element of sentencing," *Gifford*, 90 F.3d at 162. Thus, Dalton's 2007 restitution obligation was an independent element of his sentence, and the district court did not alter that obligation when it revoked Dalton's supervised release in 2014. Because the order was valid, it acted as a "lien in favor of the United States on all [of Dalton's] property and [any of his] rights to property." 18 U.S.C. § 3613(c). Accordingly, the government's interest in the stimulus money trumped Dalton's interest.

Because Dalton was subject to a valid restitution order, the district court did not abuse its discretion in denying the Rule 41(g) motion. We **GRANT** the government's motion to consolidate and **AFFIRM** the district court's order.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

Nos. 24-5189/5238

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

v.

JEREMY JAMES DALTON,

Defendant-Appellant.

Before: SILER, KETHLEDGE, and MURPHY, Circuit Judges.

JUDGMENT

On Appeal from the United States District Court
for the Eastern District of Tennessee at Knoxville.

THESE CAUSES were heard on the record from the district court and were submitted on the briefs without oral argument.

IN CONSIDERATION THEREOF, it is ORDERED that the order of the district court is AFFIRMED.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens

Kelly L. Stephens, Clerk

APPENDIX B

APPENDIX D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Nos.: 3:05-CR-89-KAC-DCP-1
	)	3:06-CR-49-KAC-DCP-1
	)	
JEREMY JAMES DALTON,	)	
	)	
Defendant.	)	

ORDER

This matter is before the Court on Defendant Jeremy Dalton's "Motion for Return of Seized Property" [Docs. 57; 40 in case number 3:06-CR-49].[1] Substantively, Defendant raises arguments the Court has previously rejected [*See* Docs. 49, 50; 31, 32 in case number 3:06-CR-49]. For similar reasons here—the Court possesses no power to grant the relief that Defendant requests—the Court denies his Motion for Return of Seized Property.

On August 2, 2005, a Grand Jury charged Defendant with (1) aiding and abetting the burglary of a motor vehicle with intent to commit theft in a territorial jurisdiction of the United States, in violation of Tennessee Code Annotated § 39-14-402(a)(4) and 18 U.S.C. §§ 13 and 2; and (2) aiding and abetting the theft of property within the territorial jurisdiction of the United States, in violation of 18 U.S.C. §§ 661 and 2 [Doc. 3 at 1-2]. On April 19, 2006, an Information charged Defendant with aiding and abetting the theft of property within the territorial jurisdiction of the United States, in violation of 18 U.S.C. §§ 661 and 2 [*See* Doc. 1 in 3:06-CR-49]. On April 19, 2006, Defendant pled guilty to the Indictment and Information [*See* Docs. 21; 2 in case number

[1]Unless otherwise noted, all citations are to the record in case number 3:05-CR-89.

3:06-CR-49]. On January 23, 2007, the Court sentenced Defendant to twenty-four (24) months' imprisonment and a three-year (3-year) term of supervised release [*See* Docs. 31 at 2-3; 13 at 2-3 in 3:06-CR-49]. The Court ordered Defendant to pay $3,913.80 in restitution to his victims [*See* Docs. 31 at 6; 13 at 6 in case number 3:06-CR-49]. The Court's Judgment instructed that "[a]ny portion of the restitution that is not paid in full at the time of [Defendant's] release from imprisonment shall become a condition of supervision" [Docs. 31 at 6; 13 at 6 in case number 3:06-CR-49]. Defendant did not appeal his conviction or sentence in either of his criminal cases.

After Defendant served his initial term of incarceration, the Court revoked his term of supervised release twice. ***First***, on October 6, 2009, the Court revoked Defendant's initial term of supervision and sentenced Defendant to six months' imprisonment to be followed by twenty-four (24) months of supervised release [Docs. 44 at 1-2; 25 at 1-2 in case number 3:06-CR-49]. The Court's first Agreed Order of Revocation provided that Defendant would "have the same [supervised release] conditions previously ordered" [Docs. 44 at 2; 25 at 2 in case number 3:06-CR-49]. ***Second***, on August 14, 2014, the Court revoked Defendant's second term of supervision and sentenced Defendant to thirty (30) days' imprisonment with no supervised release to follow [*See* Docs. 47 at 1-2; 29 at 1-2 in case number 3:06-CR-49]. Defendant's federal sentence including supervised release expired in 2014.

On December 27, 2024, nearly a decade after Defendant's federal sentence expired, and fifteen (15) years after his conviction became final, Defendant filed the instant Motion in both of his closed criminal cases. The Motion asks the Court to order the United States to return "IRS Stimulus monies that were given to the US Attorney in error," with a "punitive award" [Docs. 57 at 1, 7; 40 at 1, 7 in case number 3:06-CR-49]. Defendant makes two principal arguments. ***First***, he contends that he was denied due process of law by not being notified that the United States would

withhold stimulus funds to satisfy restitution debt [Docs. 57 at 3-4; 40 at 3-4 in case number 3:06-CR-49]. ***Second***, he maintains that he "fulfilled and satisfied all [of his restitution] obligations[s]" after the United States "restated" his plea agreement following a prior agreed order of revocation [Docs. 57 at 1; 40 at 1 in case number 3:06-CR-49; *see also* Docs. 49; 31 in case number 3:06-CR-49]. On January 10, the United States responded in opposition [Docs. 58; 41 in case number 3:06-CR-49].

Under Rule 41(g), a "person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return." Fed. R. Crim. P. 41(g). But where, as here, "criminal proceedings are no longer pending," a motion under Rule 41(g) is "equitable in nature." *See United States v. Dusenbery*, 201 F.3d 763, 768 (6th Cir. 2000) (citing *United States v. Duncan*, 918 F.2d 647, 654 (6th Cir. 1990)). Because "[a] Rule 41(g) motion is an equitable remedy," it "is available ***only when there is no adequate remedy at law.*** *See Brown v. United States*, 692 F.3d 550, 553 (6th Cir. 2012) (citation omitted) (emphasis added).

Defendant states that he moves under 41(g). Taking Defendant at his word, Rule 41(g) may give the Court jurisdiction. *See United States v. May*, 500 F. App'x 458, 460 (6th Cir. 2012). Even if the Court has jurisdiction, the Court would not be able to provide the equitable relief Defendant seeks under Rule 41(g) through his closed criminal cases. *Brown*, 692 F.3d at 553. Defendant has an adequate remedy at law. *See* 42 U.S.C. § 1983 (providing a cause of action for "the deprivation of any rights, privileges, or immunities secured by the Constitution and laws" caused by a person acting under color of law); *see also Brown*, 692 F.3d at 553. And even if the Court could consider 41(g), the Motion would fail because Defendant owes restitution pursuant to a valid restitution order. *See United States v. Gifford*, 90 F.3d 160, 162 (6th Cir. 1996); *see also United States v. Webb*, 30 F.3d 687, 690-91 (6th Cir. 1994).

Accordingly, the Court **DENIES** Defendant's "Motion for Return of Seized Property" [Docs. 57; 40 in case number 3:06-CR-49].

SO ORDERED.

KATHERINE A. CRYTZER
United States District Judge

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