

UNPUBLISHED

**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 25-6052

MARKUS ODON MCCORMICK,

Plaintiff - Appellant,

v.

UNITED STATES OF AMERICA,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of North Carolina, at
Raleigh. Louise W. Flanagan, District Judge. (5:23-ct-03292-FL)

Submitted: October 31, 2025

Decided: November 14, 2025

Before WILKINSON, QUATTLEBAUM, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Markus Odon McCormick, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Markus Odon McCormick appeals the district court's order dismissing his civil suit seeking the return of seized funds for want of jurisdiction and its denial of his request for recusal.* We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's dismissal of McCormick's action seeking return of funds and denial of his motion for the district court judge to disqualify or recuse herself. *McCormick v. United States*, No. 5:23-ct-03292-FL (E.D.N.C. Jan. 8, 2025). We deny McCormick's petition for initial hearing en banc. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

* The district court also found that *Heck v. Humphrey*, 512 U.S. 477, 487 (1994), barred McCormick's claim regarding the return of two cell phones seized during the criminal investigation. McCormick did not challenge this finding in his informal brief or his petition for initial hearing en banc.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION

NO. 5:23-CT-3292-FL

MARKUS ODON MCCORMICK,)
)
Plaintiff,)
)
v.)
)
UNITED STATES OF AMERICA,)
)
Defendants.)

ORDER

This matter is before the court on defendant's status report regarding return of seized funds (DE 27), and plaintiff's motions for jury trial (DE 15), for speedy trial (DE 21), to disqualify judge (DE 22), for return of funds (DE 23, 24), for sanctions and objections (DE 26), and to transfer case (DE 30). The issues raised are ripe for ruling.

BACKGROUND

Plaintiff commenced this action October 13, 2023, by filing motion for return of seized property pursuant to Federal Rule of Criminal Procedure 41(g). Plaintiff seeks return of aggregate sum of \$1,370.00 and two cellular phones seized during investigation preceding his federal criminal indictment. See United States v. McCormick, No. 5:23-CR-276-FL-1 (E.D.N.C. Sept. 7, 2023). Subsequently, the court stayed this action pending resolution of the criminal proceedings, where plaintiff also was seeking return of the same property by motions filed in the criminal case.

Plaintiff was convicted of unlawful possession of a firearm in the criminal case, and the court held sentencing September 30, 2024. See Minute Entry, United States v. McCormick, No.

5:23-CR-276-FL (E.D.N.C. Sept. 30, 2024) (ECF No. 249). As relevant here, the court ordered fine of \$750 and special assessment of \$100, both of which must be paid out of any funds held by federal authorities and belonging to plaintiff. (Sept. 30, 2024, order (DE 14) at 1–2). The court then directed the balance of monies seized, \$520, returned to defendant or his designee. (Id. at 2).

At the close of the sentencing hearing, the court turned attention to the instant civil matter. (Id. at 1–2). Plaintiff stated that he intended to pursue civil claims asserted in this action, and the court therefore lifted the stay and directed the parties to file status reports regarding “next steps to be taken in this proceeding.” (Id. at 2). Notwithstanding, the court directed return of the \$520 remaining funds to plaintiff’s designee, which “should not be delayed by progress of the civil case.” (Id.). Finally, the court denied any request for return of cell phones seized from plaintiff because the government’s authority to retain these items “extends through the appellate process(es).” (Id.).

Following this order, plaintiff filed numerous motions in the instant civil matter. Plaintiff moves for jury trial, to disqualify the undersigned, for speedy trial, for return of the subject funds, to transfer the funds into his inmate trust account, for sanctions and objections, and to transfer case. Defendant responded in opposition to the request for jury trial and filed incorporated status report regarding return of funds to defendant.

On November 25, 2024, defendant filed updated status report stating that all seized monies were returned to plaintiff or his designee. On this basis, defendant requests that the court dismiss this action as moot. Plaintiff does not dispute that such monies have been returned to him, but he nevertheless requests that the instant civil matter continue. Although not a model of clarity,

plaintiff seems to argue alleged defects and errors in the criminal case somehow entitle him to further relief in this case. (DE 28). He further maintains that the filing fee paid in this case should be returned to him on the basis of defendant's agreement to return the seized funds. (Id.).

COURT'S DISCUSSION

A. Plaintiff's Motions

The court begins with plaintiff's motions to disqualify the undersigned and to transfer case, the latter of which the court construes as further request for disqualification. Plaintiff argues that the court erroneously permitted his criminal prosecution to continue despite evidence of perjured testimony during grand jury proceedings, and the fact that a material witness was not available for testimony. (DE 22). Plaintiff "strongly feels and believes [the undersigned] has a personal bias against him and her personal knowledge of disputed evidentiary facts concerning the [criminal] proceeding will cause her to rule unfairly." (Id.).

The court construes plaintiff's motions as arising under 28 U.S.C. § 455, which provides that federal judges have a general duty to disqualify themselves from proceedings in which their impartiality might reasonably be questioned, such as when a judge has a personal bias or prejudice concerning a party. Belue v. Leventhal, 640 F.3d 567, 572–73 (4th Cir. 2011). However, judicial rulings alone "almost never constitute a valid basis for a bias or partiality motion." Liteky v. United States, 510 U.S. 540, 555 (1994); United States v. Lentz, 524 F.3d 501, 530 (4th Cir. 2008). Here, plaintiff's arguments regarding the criminal case amount to disagreements with the court's rulings therein, and do not constitute a valid basis for recusal. As to the remaining arguments unrelated to judicial rulings, conclusory and unsupported assertions of bias also do not warrant recusal. See Liteky, 510 U.S. at 554–55.

Plaintiff's remaining motions also are without merit. With respect to plaintiff's request for jury trial, "a plaintiff in an action against the United States has a right to trial by jury only where Congress has affirmatively and unambiguously granted that right by statute." Lehman v. Nakshian, 453 U.S. 156, 168 (1981). Here, plaintiff's Rule 41(g) motion, in effect, is a civil equitable proceeding against the United States, and no statutory right to jury trial exists in this context. See United States v. Jones, 225 F.3d 468, 469–70 (4th Cir. 2000) (holding Rule 41(g) motions are equitable in nature and sovereign immunity principles bar recovery of monetary damages against the United States in these actions); United States v. Roca, 676 F. App'x 194, 194 (4th Cir. 2017) (stating that Rule 41(g) motions are civil equitable proceedings); Young v. United States, 489 F.3d 313, 315 (7th Cir. 2007) (same).

Turning next to the motion for sanctions, there is no basis for sanctions against defendant's counsel in this case, who has worked diligently to return all monies seized from plaintiff. (See DE 27). And plaintiff's motions for speedy trial and return of funds are now moot where the subject funds have been returned and no further relief is available to plaintiff for the reasons discussed below.

B. Mootness Analysis

As to plaintiff's substantive claim for return of property, defendant argues this case is now moot in light of return of the property. "The mootness doctrine is a limitation on federal judicial power grounded in the 'case-or-controversy' requirement of Article III of the U.S. Constitution." United States v. Springer, 715 F.3d 535, 540 (4th Cir. 2013); see also U.S. Const. art. III, § 2, cl. 1. "A case becomes moot – and therefore no longer a Case or Controversy for purposes of Article III – when the issues presented are no longer live or the parties lack a legally cognizable interest

in the outcome.” Plymail v. Mirandy, 8 F.4th 308, 314–15 (4th Cir. 2021). “If events subsequent to the commencement of the action resolve the dispute, the action should be dismissed as moot.” Genesis Healthcare, Inc. v. Becerra, 39 F.4th 253, 259 (4th Cir. 2022).

Here, all seized monies have been applied to the criminal monetary penalties or returned to plaintiff. (DE 25). This action is therefore moot because the underlying dispute is now resolved. See Genesis Healthcare, 39 F.4th at 259. To the extent plaintiff argues that the court erred when it imposed the criminal monetary penalties, ordered payment of same from the seized funds, or otherwise presents challenges to his conviction or sentence, he will need to assert those arguments in his pending criminal appeal. The court cannot override the criminal judgment, or revisit orders entered in that case, in this civil proceeding. See Heck v. Humphrey, 512 U.S. 477, 487 (1994). For this same reason, the court will not revisit here decision in the criminal proceeding allowing the government to retain possession of the cellular phones during the appeal process, and then return same to defendant’s grandmother if he is still in custody. See Sent’g Tr. at 52–53, United States v. McCormick, No. 5:23-CR-276-FL (E.D.N.C. Nov. 25, 2024) (ECF No. 266).

Plaintiff also argues that defendant should pay the costs of this proceeding, in particular the \$350 filing fee. The court declines to order this relief. Plaintiff identifies no authority for taxing civil filing fees against defendant in the context of a Rule 41(g) proceeding. See Fed. R. Civ. P. 54(d) (stating that “costs against the United States, its officers, and its agencies may be imposed only to the extent allowed by law”). To the extent plaintiff argues that the filing fee is part of his damages related to the seized funds, plaintiff cannot recover monetary damages against the government in this action. See Jones, 225 F.3d at 469–70.

Although not raised directly, plaintiff's filings could be construed liberally to seek an award of costs – specifically, the instant filing fee – pursuant to the Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412. In relevant part, the EAJA provides: “except as otherwise provided by statute, a judgment for costs . . . may be awarded to the prevailing party in any civil action brought . . . against the United States.” 28 U.S.C. § 2412(a)(1) (emphasis added). In the circumstances presented here, another statute expressly disallows costs against defendant. Pursuant to 28 U.S.C. § 1915(f), if the plaintiff proceeds in forma pauperis in the litigation, “the United States shall not be liable for any of the costs . . . incurred.” Plaintiff proceeded in forma pauperis in this action (DE 2, DE 7), and he therefore cannot obtain judgment for costs, which includes the filing fee for this action, against the United States. See 28 U.S.C. § 1915(f); see also Maida v. Callahan, 148 F.3d 190, 193 (2d Cir. 1998); Miller v. Colvin, No. 5:15-CV-00033-FDW, 2016 WL 110602, at *1-2 (W.D.N.C. Jan. 8, 2016). Accordingly, the court will not order return of the filing fee, or payment of same by defendant.

CONCLUSION

Based on the foregoing, this action is DISMISSED without prejudice for want of jurisdiction. Plaintiff's motions for return of funds (DE 23, 24) and speedy trial (DE 21) are DISMISSED as moot, and all remaining motions (DE 15, 22, 26, 30) are DENIED. The clerk is DIRECTED to close this case.

SO ORDERED, this the 8th day of January, 2025.


LOUISE W. FLANAGAN
United States District Judge

Appendix A

FILED: March 10, 2026

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 25-6052
(5:23-ct-03292-FL)

MARKUS ODON MCCORMICK

Plaintiff - Appellant

v.

UNITED STATES OF AMERICA

Defendant - Appellee

ORDER

The petition for rehearing en banc was circulated to the full court. No judge requested a poll under Fed. R. App. P. 40. The court denies the petition for rehearing en banc.

For the Court

/s/ Nwamaka Anowi, Clerk