**FILED**
**United States Court of Appeals**
**Tenth Circuit**

**October 20, 2021**

**Christopher M. Wolpert**
**Clerk of Court**

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

LOS ROVELL DAHDA,

Defendant - Appellant.

No. 20-3185
(D.C. No. 2:12-CR-20083-DDC-1)
(D. Kan.)

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**ORDER AND JUDGMENT***

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Before **TYMKOVICH**, Chief Judge, **KELLY**, and **HOLMES**, Circuit Judges.

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Los Rovell Dahda appeals from the district court's denial in part and dismissal in part of his pro se motion to return seized property filed under Federal Rule of Criminal Procedure 41(g). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

## I. Background

Mr. Dahda was convicted of numerous drug-related offenses including a conspiracy involving 1,000 kilograms or more of marijuana and maintaining a drug-involved premises. This court upheld his convictions and prison sentence, but reversed the district court's imposition of a fine of almost $17 million as exceeding the statutory maximum. On remand, the district court waived the fine and sentenced Mr. Dahda to a shorter prison term. He filed a second appeal and we affirmed.

The current appeal involves Mr. Dahda's filing of a Rule 41(g) motion in the district court seeking the return of the following seized property: (1) a Dodge Ram truck, (2) a Harley Davidson motorcycle, (3) four Bank of America cashier's checks worth $36,865.42, and (4) $84,700 seized from a FedEx package. The Drug Enforcement Agency (DEA) gave Mr. Dahda notice that the truck, motorcycle, and cashier's checks were subject to civil forfeiture pursuant to 21 U.S.C. § 881, which extends to proceeds traceable to illegal drug trafficking, *see id.* § 881(a)(6). The forfeiture notices advised that Mr. Dadha could petition for remission or mitigation,[1] he could contest the seizure and forfeiture of the property in federal court, or he could do both. Mr. Dahda submitted responses to the forfeiture notices, each labeled as a "PETITION FOR REMISSION OF PERSONAL PROPERTY PURSUANT TO TITLE 28 CFR [PART-9]," and he also used the heading "REMISSION

[1] "A petition for remission or mitigation does not serve to contest the forfeiture, but rather is a request for an executive pardon of the property based on the petitioner's innocence." *United States v. Shigemura*, 664 F.3d 310, 312 (10th Cir. 2011) (ellipsis and internal quotation marks omitted); *see also* 28 C.F.R. § 9.1(a).

REQUESTED." 1st Suppl. R. at 196-97, 214-15, 249-50. But Mr. Dahda's submissions also contested the seizure of the truck, motorcycle, and cashier's checks and stated he would raise objections to the forfeiture claims, asserting he had not acquired the seized property by illegal means. *See id.* The DEA sent Mr. Dahda letters returning his submissions and seeking clarification whether he intended to file a claim or a petition for remission or mitigation or both. The DEA gave Mr. Dahda additional time to respond. When Mr. Dahda submitted nothing further, the DEA administratively forfeited the truck, motorcycle, and cashier's checks.

The $84,700 was treated differently for forfeiture purposes. In connection with the resolution of his criminal case, one of Mr. Dahda's co-defendants, Peter Park, agreed to forfeit $84,700 that had been seized from a FedEx package that Mr. Park had shipped to another co-defendant. Mr. Park agreed the money constituted or was derived from proceeds as a result of the drug conspiracy. After the government published notice of the preliminary order of forfeiture in Mr. Park's case, Mr. Dahda filed a petition for hearing pursuant to 21 U.S.C. § 853(n)(2) asserting a legal interest in the $84,700.

In his Rule 41(g) motion, Mr. Dahda sought return of the truck, motorcycle, cashier's checks, and the $84,700 seized from the FedEx package. As to the $84,700, the district court dismissed his motion because he had an adequate remedy at law in the ancillary forfeiture proceeding under § 853(n)(2) in his co-defendant Mr. Park's criminal case. Regarding the truck, motorcycle, and cashier's checks that had been administratively forfeited, the court construed Mr. Dahda's motion as requesting

relief under the Civil Asset Forfeiture Act of 2000 (CAFRA), 18 U.S.C. § 983(e). It then considered and rejected his claim that the DEA did not provide adequate notice or due process in the administrative forfeiture proceedings. The court concluded:

> The DEA reasonably could not ascertain whether Mr. Dahda intended to file a claim, a petition for remission, or both. And so, it sent Mr. Dahda notices asking him to clarify his intent. The notices advised Mr. Dahda that if he did not submit a timely response, the DEA could treat the original documents as nullities. The DEA's failure to construe Mr. Dahda's initial submissions as 'claims' did not violate due process principles because he received a clarification letter and he had an opportunity to resubmit the documents as claims after receiving that clarification.

R., Vol. 2 at 156. The district court ultimately denied Mr. Dahda's motion as to the truck, motorcycle, and cashier's checks.

## II. Discussion

Rule 41(g) provides:

> A person aggrieved by an unlawful search and seizure of property or by the deprivation of property may move for the property's return. The motion must be filed in the district where the property was seized. The court must receive evidence on any factual issue necessary to decide the motion. If it grants the motion, the court must return the property to the movant, but may impose reasonable conditions to protect access to the property and its use in later proceedings.

Fed. R. Crim. P. 41(g). Equitable principles govern the assumption of jurisdiction under Rule 41(g). *See United States v. Deninno*, 103 F.3d 82, 84 (10th Cir. 1996).[2] We review the district court's rulings on Mr. Dahda's Rule 41(g) motion for an abuse of discretion. *See id.* In doing so, we review questions of law de novo and factual determinations for clear error. *See United States v. Hardman*, 297 F.3d 1116, 1120

[2] "What was formerly Rule 41(e) is now Rule 41(g), with only stylistic changes." *Shigemura*, 664 F.3d at 311 n.1 (internal quotation marks omitted).

(10th Cir. 2002). Because Mr. Dahda is proceeding pro se, "we liberally construe his filings, but we will not act as his advocate." *James v. Wadas*, 724 F.3d 1312, 1315 (10th Cir. 2013).

**A. $84,700 Seized from a FedEx Package**

The district court dismissed Mr. Dahda's motion seeking return of the $84,700 that had been seized from a FedEx package sent by Mr. Park because Mr. Dahda had an adequate remedy at law in the ancillary forfeiture proceeding under § 853(n)(2) in Mr. Park's criminal case. The district court did not err in doing so because "[a] Rule 41([g]) motion should be dismissed if the claimant has an adequate remedy at law," *Deninno*, 103 F.3d at 84 (internal quotation marks omitted), and a judicial forfeiture action is an adequate remedy at law, *see Frazee v. IRS*, 947 F.2d 448, 449-50 (10th Cir. 1991) (affirming dismissal of a Rule 41(g) motion where the property was subject to a judicial forfeiture action). We note that, in the § 853(n)(2) proceeding, Mr. Dahda was able to raise, and the district court ruled on, his challenges to the forfeiture of the $84,700. *See* 2d Suppl. R. at 102-14.

**B. Truck, Motorcycle, and Bank of America Cashier's Checks**

Under CAFRA, if a claim is filed in response to a civil forfeiture notice, the government must file a judicial forfeiture complaint within 90 days or return the property pending the filing of a complaint. *See* 18 U.S.C. § 983(a)(3)(A). "A claim need not be made in any particular form," *id.* § 983(a)(2)(D), but it must (1) "identify the specific property being claimed," (2) "state the claimant's interest in such

property," and (3) "be made under oath, subject to penalty of perjury," *id.* § 983(a)(2)(C).

Mr. Dahda contends that he has a right to a judicial forfeiture proceeding notwithstanding that the truck, motorcycle, and cashier's checks were administratively forfeited. He bases this assertion on a claimed due process violation committed in the administrative forfeiture proceeding—namely, that the DEA did not construe his submissions in response to the forfeiture notices as claims when he failed to respond to the DEA's letters seeking clarification.

Mr. Dahda relies on *Deninno*, which allowed a collateral due process attack notwithstanding an administrative forfeiture. 103 F.3d at 84. In *Deninno*, we exercised jurisdiction to "decid[e] whether the forfeiture offended due process rights." *Id.*[3] But even under *Deninno*, Mr. Dahda's claims fail.

To succeed on a Rule 41(g) motion, the movant must demonstrate both lawful and equitable entitlement to the property. *United States v. Clymore*, 245 F.3d 1195, 1201-02 (10th Cir. 2001) ("If a motion for return of property is made while a criminal prosecution is pending, the burden is on the movant to show that he or she is entitled to the property"—"both lawfully and equitably." (internal quotation marks

[3] We recognize that, pursuant to 18 U.S.C. § 983(e)(5), a motion filed under § 983(e) is "the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute." But we need not address the precise contours of that remedy because neither party in this appeal argues that a court may not consider whether a forfeiture proceeding violated due process. *See* Aplee. Br. at 17 (stating that § 983(e) "would allow the court to review the administrative forfeitures for any due process violations").

omitted)).[4] After concluding that the movant's due process claim in *Deninno* was "not inconceivable" based on the record, 103 F.3d at 85, we turned to the merits of his Rule 41(g) motion, stating that the court could affirm the district court's decision on any ground supported by the record, *id.* at 85 & n.2. We concluded the motion should be dismissed as frivolous pursuant to the precursor to 28 U.S.C. § 1915(e)(2)(B)(i) because the movant offered no plausible legal theory to challenge the forfeitures; each of his allegations were "precluded by clear precedent." *Id.* at 85.

More specifically, we noted that the movant had been convicted of conspiracy to manufacture, possession with intent to distribute, and maintaining a place to manufacture methamphetamine—and that all of the property at issue was seized from the location where he was carrying out these crimes. *Id.* at 86. Yet his motion "fail[ed] to offer any reason why the property at issue [was] not subject to forfeiture under [§ 881]," and we reasoned that "[u]psetting the forfeitures because of the alleged procedural faults, when Mr. Deninno appears to have no basis for the return of the property once the faults are remedied in new proceedings, would serve no purpose other than to waste limited judicial resources." *Id.* We then proceeded to reject the movant's arguments that the forfeiture violated his Sixth Amendment right to counsel, was an excessive fine under the Eighth Amendment, or amounted to

[4] Mr. Dahda filed his Rule 41(g) motion on January 21, 2020, when his direct appeal was still pending. *See United States v. Dahda*, 842 F. App'x 243, 243-44 (10th Cir. Jan. 8, 2021) (affirming after resentencing following earlier remand after first appeal).

Double Jeopardy. *Id.* at 86-87. We therefore affirmed the district court's dismissal of the Rule 41(g) motion on this alternative basis.

Like the movant in *Deninno*, Mr. Dahda's Rule 41(g) motion raises no plausible challenge to the forfeitures. He was required to show prejudice from any claimed procedural defect in the forfeiture process, i.e., that his property was not subject to forfeiture. *See id.* at 86. The forfeiture notices stated that the property was subject to forfeiture pursuant to § 881. Mr. Dahda was convicted of a drug conspiracy involving 1,000 or more kilograms of marijuana and conspiracy to maintain drug-involved premises, as well as fourteen other drug-related charges.[5] The conspiracy was alleged to have spanned from 2005 until the middle of 2012 when he was indicted. In his Rule 41(g) motion, Mr. Dahda did not provide a reason why the seized property was not subject to forfeiture. He instead argued the government had not shown at his trial the required nexus between his property and the drug offenses. But that contention ignores that the government pursued administrative forfeiture regarding this property rather than criminal forfeiture, which it was permitted to do, *see* 18 U.S.C. § 983(a)(3)(C) (permitting the government to pursue civil and/or criminal forfeiture).

[5] On resentencing, the district court found that Mr. Dahda's attributable drug quantity was 614.62 kilograms. *See* R., Vol. IV at 29, *United States v. Dahda*, No. 19-3283 (10th Cir. July 24, 2020); *see also United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007) ("[W]e may exercise our discretion to take judicial notice of publicly-filed records in our court . . . concerning matters that bear directly upon the disposition of the case at hand.").

Mr. Dahda also argued in his motion that his truck and the other property could not be administratively forfeited because the truck's value exceeded $500,000, while 19 U.S.C. § 1607(a)(1) only permits administrative forfeiture of property with a value not exceeding $500,000. But the district court held that Mr. Dahda's assertion regarding the truck's value was frivolous based on his sworn statement after his arrest that the truck was worth $58,000. He ignores that ruling on appeal.

Mr. Dahda further contended that the forfeitures violated the Double Jeopardy Clause. That claim is meritless under *United States v. Ursery*, 518 U.S. 267, 270-71 (1996) (holding civil forfeitures "do not constitute 'punishment' for purposes of the Double Jeopardy Clause"). And his excessive fines argument also lacks merit. *See United States v. Lot 41, Berryhill Farm Ests.*, 128 F.3d 1386, 1395-96 (10th Cir. 1997) ("Because the amount of proceeds produced by an individual drug trafficker is always roughly equivalent to the costs that drug trafficker has imposed on society, the forfeiture of those proceeds can never be constitutionally excessive.").[6] We therefore conclude that Mr. Dahda's pro se Rule 41(g) motion seeking return of the truck, motorcycle, and cashier's checks should have been dismissed pursuant to 28 U.S.C. § 1915(e)(2)(B) because his contentions are either frivolous or they fail to state a claim on which relief may be granted. We affirm the district court's judgment on this alternative basis.

[6] All other contentions raised by Mr. Dahda lack merit or are not relevant to our disposition of this appeal.

## III. Conclusion

The district court's judgment is affirmed.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge