

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

**For the Seventh Circuit
Chicago, Illinois 60604**

Submitted May 4, 2023*

Decided May 15, 2023

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 22-2662

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

DANIEL E. SALLEY,
Defendant-Appellant.

Appeal from the United States District
Court for the Northern District of Illinois,
Eastern Division.

No. 1:01-cr-00750

Sharon Johnson Coleman,
Judge.

ORDER

Daniel Salley, a federal prisoner, appeals the denial of his motion to recover property that was allegedly seized during the government's investigation and prosecution of his criminal offenses. The district court denied this motion on the ground that Salley's sizable restitution balance precluded him from recouping anything from

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the government. We affirm, but on a separate ground. Because Salley filed his motion nine years after the statute of limitations expired, it is time-barred, and we therefore affirm.

The sentence for Salley's 2006 conviction for attempted murder and bank robbery, 18 U.S.C. §§ 1113, 2113(d), required him to pay approximately \$3.5 million in restitution. In May 2021, fifteen years into his prison term of life plus 132 years, Salley filed a "motion for the return of all properties." In it, he demanded the return of certain personal property and assets, such as bank accounts, that the government allegedly had seized around the time of his arrest in 2001 but had never acquired through forfeiture. He estimated "the equivalent of all property seized, interfered with, denied access to" to be \$555 quintillion and requested that sum as damages. Before receiving a ruling, on February 8, 2022, Salley filed another motion, this time asking for the return of funds allegedly seized under the Treasury Offset Program (TOP) on the grounds that the amount exceeded his debts to federal agencies. The government did not respond to either motion.¹

The district court denied the motion for return of TOP funds on February 17, 2022. The court noted that Salley had failed to show that he had paid \$3.5 million in restitution, which had grown to more than \$5 million. The court held that Salley had to repay that debt before he could seek to recoup any funds from the government. More than six months later, on September 2, 2022, the district court ruled on Salley's May 2021 motion for return of property, denying the motion "for the same reasons" that it had stated in the February 2022 order. Salley filed a notice of appeal on September 19, 2022.

On appeal, Salley primarily discusses issues related to his TOP motion, but the 60-day window to appeal the order of February 17, 2022, closed in April 2022. *See* FED. R. APP. P. 4(a)(1)(B); 28 U.S.C. § 2107(b)(1). Thus, we have no jurisdiction to review that ruling. *Bowles v. Russell*, 551 U.S. 205, 209–13 (2007). As to the district court's September 2, 2022, order, Salley's notice of appeal is timely.

Turning to that September 2, 2022, order, Salley's motion for the return of his property was properly denied. The government points out on appeal that Salley had six years from the conclusion of his criminal proceedings to seek the return of any seized

¹ Unlike with Salley's motion for compassionate release, which was pending at the same time, the district court did not set a briefing schedule.

property. *See* FED. R. CRIM. P. 41(g); *United States v. Sims*, 376 F.3d 705, 708–09 (7th Cir. 2004). His motion, filed 15 years after sentencing, was too late, and its denial was proper.

Finally, Salley appended a motion for sanctions to his reply brief, asserting that government counsel deliberately lied about the mailing date on a certificate of service. We do not consider purported motions made in briefs. *See* FED. R. APP. P. 38; *Kennedy v. Schneider Elec.*, 893 F.3d 414, 421–22 (7th Cir. 2018). We note, however, that Salley’s assertions appear unwarranted by the record.

AFFIRMED