NONPRECEDENTIAL DISPOSITION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 March 6, 2024*
Decided March 7, 2024

Before

MICHAEL B. BRENNAN, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

THOMAS L. KIRSCH II, *Circuit Judge*

Nos. 22-3311, 23-1003, 23-1735, & 23-2582

UNITED STATES OF AMERICA, *Plaintiff-Appellee*,	Appeals from the United States District Court for the Central District of Illinois.
v.	No. 17-CR-40032-001
TIMOTHY B. FREDRICKSON, *Defendant-Appellant*.	Michael M. Mihm, *Judge*.

O R D E R

In these consolidated appeals, Timothy Fredrickson challenges the district court's denial of five motions challenging his conviction for sexual exploitation of a child. We lack jurisdiction to review interlocutory rulings on two of his motions because they

* These consolidated appeals are successive to appeal no. 20-2051 and under Operating Procedure 6(b) are decided by the same panel. 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).

arise from still-ongoing proceedings under 28 U.S.C. § 2255; the district court reasonably denied the remaining motions over which we have jurisdiction. Thus, we dismiss in part and affirm in part.

In 2020, a jury found Fredrickson guilty of sexually exploiting a minor, 18 U.S.C. § 2251(a), (e), and he was sentenced to 200 months' imprisonment. We upheld the conviction and sentence on direct appeal. *United States v. Fredrickson*, 996 F.3d 821, 823 (7th Cir. 2021). We also affirmed the denials of his two motions for compassionate release, where the district court ruled that Fredrickson did not present extraordinary or compelling grounds for release. *See* No. 23-1042, 2023 WL 6859761 at *1 (7th Cir. Oct. 18, 2023); No. 22-1542, 2022 WL 16960322 at *1 (7th Cir. Nov. 16, 2022).

Fredrickson's first three motions pertain to his postconviction challenge under 28 U.S.C. § 2255, which remains pending in the district court. As relevant to this appeal, Fredrickson initially moved for the district judge's recusal in the § 2255 proceeding, asserting that by overseeing both the trial and the collateral proceedings, the judge was biased. Second, he moved for a magistrate judge to oversee the § 2255 motion. Third, he moved for release on bail during the collateral proceedings.

The district court denied these three motions. First, it denied his motion for recusal because Rule 4(a) of the Procedural Rules Governing Section 2255 Proceedings requires that the judge who oversaw the trial also rule on the collateral attack. Second, the court rejected his motion to proceed before a magistrate judge, reasoning that the circumstances did not justify doing so. Third, the court denied his motion for bail by concluding Fredrickson had not shown that his § 2255 attack—consisting of what it described as 80 weak claims—was "exceptional and deserving of special treatment."

Fredrickson's fourth motion was for a new trial under Rule 33 of the Federal Rules of Criminal Procedure. He argued that he had recently discovered that the search yielding incriminating evidence in his criminal case was based on an invalid search warrant; therefore the court should have suppressed the results of that search. The court denied this motion because Fredrickson and his counsel already had access from the government to the evidence supposedly showing that the search was improper. Having no newly discovered evidence, a new trial was not warranted. *See* FED. R. CRIM. P. 33(b)(1).

Fifth and finally, Fredrickson moved under Rule 41(g) of the Federal Rules of Criminal Procedure for the return of seized property. He suggested that the

government no longer needed certain items seized during its investigation; therefore, he asked the district court to order the property's return. The court denied this motion, too, for two reasons. First, if Fredrickson succeeded with any of his ongoing collateral challenges, the government might need the seized evidence for retrial. Second, some of the property remained in the possession of state police, and the court could not compel state police to release the property.

We begin our analysis by focusing on Appeal No. 22-3311, which contests the interlocutory rulings on two motions arising out of Fredrickson's § 2255 case: the denials of his motions for recusal and for a magistrate judge. We lack jurisdiction to review them. Generally, we can review only the final decisions of the district court, 28 U.S.C. § 1291, and (as Fredrickson does not dispute) these two denials are not final decisions in the § 2255 case. *See United States v. Henderson*, 915 F.3d 1127, 1130 (7th Cir. 2019). Further, no exception to that general rule permits us to review these interlocutory orders—a final order in the § 2255 case must issue first. *See id.* at 1131. Indeed, we have already dismissed as premature the appeal of another interlocutory order arising out of those proceedings. *See* No. 23-2124 (7th Cir. Jul. 13, 2023).

We may, however, review the order denying bail, the subject of Appeal No. 23-2582. Under the collateral-order doctrine, denials of bail are appealable while § 2255 proceedings remain pending. *See Henderson*, 915 F.3d at 1130. Further, a certificate of appealability is not required. A defendant must receive a certificate of appealability when appealing an order denying collateral relief. *See* § 2253(c)(1)(B). But the Supreme Court has clarified that a certificate of appealability is not necessary for interlocutory orders such as a motion to appoint counsel because § 2253(c) applies only to final orders in the collateral proceeding. *Harbison v. Bell*, 556 U.S. 180, 183 (2009). The circuits to have considered the matter have extended that logic to motions denying bail, and we agree. *See Illarramendi v. United States*, 906 F.3d 268, 270 (2d Cir. 2018); *Pouncy v. Palmer*, 993 F.3d 461, 464 (6th Cir. 2021). Because a ruling on bail is collateral to the merits of the § 2255 claim, and because the ruling conclusively determines that collateral issue, no certificate of appealability is required. *See Illarramendi*, 906 F.3d at 270.

We now turn to the merits of that motion. District courts have the authority to consider motions for bail pending § 2255 review, *see Cherek v. United States*, 767 F.2d 335, 337 (7th Cir. 1985), and the court did not abuse its authority in denying Fredrickson's motion. We have warned that this is "a power to be exercised very sparingly." *Id.* Although we have not set forth our own standard for when district courts might grant bail pending § 2255 review, other circuits generally require that the petitioner show a

high likelihood of success on the merits and extraordinary circumstances that justify release on bond. *See Illarramendi*, 906 F.3d at 271; *Pouncy*, 993 F.3d at 463. The district court reasonably ruled that neither condition is present. It could not identify a likely winning claim in Fredrickson's petition, a conclusion that Fredrickson does not contest persuasively on appeal. And as the district court previously ruled in denying his two motions for compassionate release—rulings that we upheld on appeal—he identified no extraordinary or exceptional circumstances that justified his release.

That brings us to Federick's motion for a new trial. We review the denial of that motion—a final order—for abuse of discretion, *see United States v. O'Malley*, 833 F.3d 810, 813 (7th Cir. 2016), and the district court reasonably denied the motion here. As relevant on appeal, Fredrickson needed to prove that he discovered new evidence after trial and that he could not have earlier acquired the evidence through the exercise of due diligence. *See id.* But the district court permissibly ruled that his evidence was not new. As it explained, before trial the government gave Fredrickson access to the information upon which he now makes his claim about an improper search. And even if the government did not furnish the information on its own, nothing prevented Fredrickson or his attorney from requesting it. Thus the court reasonably found that Fredrickson could have obtained the evidence through the exercise of due diligence. *See United States v. Coscia*, 4 F.4th 454, 469–70 (7th Cir. 2021).

Fredrickson responds that the district court wrongly denied his motion for a new trial because it did not fulfill what he views as his constitutional right to appointed counsel for his motion for a new trial. But the right to counsel "extends to the first appeal of right, and no further." *Pennsylvania v. Finley*, 481 U.S. 551, 555 (1987). If during the pendency of a first appeal a defendant moves in the district court for a new trial, the defendant is entitled to counsel. *See United States v. Westmoreland*, 712 F.3d 1066, 1079 (7th Cir. 2013). But Fredrickson filed this motion well after his first appeal concluded. Thus, the district court was not compelled to appoint counsel for him. *See id.*

Next, the district court did not abuse its discretion by denying Fredrickson's motion under Rule 41(g) of the Federal Rules of Criminal Procedure for the return of seized property. *See United States v. Rachuy*, 743 F.3d 205, 211 (7th Cir. 2014). The district court may delay the return of seized property if it may be used in later proceedings, FED. R. CRIM. P. 41(g), and the court reasonably ruled that is so here. Fredrickson has several outstanding challenges to his conviction; if any succeed, the seized evidence may be necessary for a retrial. Further, Fredrickson does not deny that some of the evidence is in the possession of Iowa state police, and Rule 41(g) does not permit a

district court to order state police to return seized property. *See Okoro v. Callaghan*, 324 F.3d 488, 491 (7th Cir. 2003) ("[T]he fact that the government doesn't have [the property] is ordinarily a conclusive ground" to deny a Rule 41(g) motion.).

Finally, we note that Fredrickson has displayed a persistent pattern of filing repetitive, frivolous motions and immediately appealed nearly every ruling with little regard to the finality of the decision or the merits of the appeal. We therefore warn Fredrickson that he risks monetary sanctions and a filing bar under *Alexander v. United States*, 121 F.3d 312, 316 (7th Cir. 1997), if he files further interlocutory appeals with no statutory basis or other frivolous, repetitive, or excessive appeals.

Therefore, we DISMISS Appeal No. 22-3311 for lack of appellate jurisdiction and AFFIRM in Appeal Nos. 23-1003, 23-1735, and 23-2582 in all other respects.