

THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

BENJAMIN BARRY KRAMER,)	
)	
Plaintiff,)	
)	
v.)	Case No. 3:15-cv-00420-JPG-RJD
)	
UNITED STATES OF AMERICA,)	
)	
Defendant.)	

MEMORANDUM AND ORDER

This matter comes before the Court *sua sponte* for reconsideration of its May 7, 2015, screening order under 28 U.S.C. § 1915A reviewing plaintiff Benjamin Barry Kramer’s motion for return of property under Federal Rule of Criminal Procedure 41(g) and allowing it to proceed (Doc. 3). In that order, the Court acknowledged that Rule 41(g) may not be the proper mechanism for securing the return of money collected from the sale of seized substitute property in excess of the forfeiture judgment against Kramer in his criminal case. The United States filed a motion to dismiss (Doc. 9) in which it only tangentially touched on this issue, instead primarily challenging the Court’s jurisdiction to hear a constitutional claim under the Tucker Act, 28 U.S.C. § 1491(a)(1), and the timeliness such a claim. The Court now reconsiders its decision to allow Kramer’s Rule 41(g) claim to proceed and instead dismisses it. “District judges have ample authority to dismiss frivolous or transparently defective suits spontaneously, and thus save everyone time and legal expense. This is so even when the plaintiff has paid all fees for filing and service.” *Hoskins v. Poelstra*, 320 F.3d 761, 763 (7th Cir. 2003).

I. Background

Kramer is an inmate at the United States Penitentiary Coleman II in Coleman, Florida. In the 1980s Kramer took part in a “vast enterprise which imported several hundred thousand

pounds of marijuana into the United States.” *United States v. Kramer*, 955 F.2d 479, 481 (7th Cir. 1992). In a fourteen-week jury trial before the Honorable James L. Foreman in 1988, Kramer was found guilty of conspiring to distribute marijuana and participating as a principal administrator, organizer, or leader in a continuing criminal enterprise (“CCE”). He was sentenced to life imprisonment without the possibility of parole on the CCE charge, along with a forty-year sentence on the conspiracy charge to be served concurrently.¹

As part of his conviction, Kramer was subject to a \$60 million *in personam* forfeiture judgment. To satisfy this judgment in part, the United States sought forfeiture of Kramer’s interest in the Bell Gardens Bicycle Club (“Bicycle Club”), a casino founded using drug proceeds and used to launder drug money, as substitute property under 21 U.S.C. § 853(p). Kramer’s and other co-defendants’ interests in the Bicycle Club were forfeited, and the United States sold the Bicycle Club in 1999 for \$5 million. The United States applied the proceeds attributable to Kramer’s interest toward satisfying his \$60 million forfeiture judgment. The gravamen of Kramer’s complaint is that the United States has not properly credited him for seized assets and that the value of his seized and sold interest in the Bicycle Club actually exceeded the \$60 million forfeiture judgment in his criminal case. According to Kramer, the United States owes *him* money, \$18,102,038.16 to be exact, the amount of the alleged over-collection.

II. Motion for Return of Property

On April 15, 2015, Kramer initiated the instant action under Rule 41(g) (Doc. 1), but there is a fundamental flaw with his pleading. Under Rule 41(g), a prisoner may seek the return of property seized by the United States during his criminal case where the property is no longer

¹ In 1998, the Court vacated the forty-year conspiracy sentence, *see Kramer v. United States*, No. 97-cv-4117-JLF (S.D. Ill.), leaving the CCE life sentence in place.

needed as evidence and where the property has not been forfeited in the criminal proceedings. *United States v. Sims*, 376 F.3d 705, 708 (7th Cir. 2004). It authorizes the return of the actual property seized as an equitable remedy, but it does not authorize monetary relief for the value of unreturned property no longer in the United States' possession. *United States v. Norwood*, 602 F.3d 830, 832-33 (7th Cir. 2010); *United States v. Stevens*, 500 F.3d 625, 628 n. 3 (7th Cir. 2007) (Rule 41(g) motion “will not support a claim against the Government for restitution or recovery of the proceeds of a forfeiture proceeding”).

Kramer is not entitled to relief under Rule 41(g). The property he seeks to have returned was lawfully seized and forfeited in his criminal case as substitute property under 21 U.S.C. § 853(p) and was sold. Rule 41(g) provides no relief for recovery of the proceeds of a forfeiture proceeding.

Kramer must find an alternative civil claim for damages from the United States, and the Court should allow him to try in an amended complaint. The Eight Circuit Court of Appeals has cautioned that

when a district court conducting a Rule [41(g)] proceeding learns that the government no longer possesses property that is the subject of the motion to return, the court should grant the movant (particularly a movant proceeding *pro se*. . .) an opportunity to assert an alternative claim for money damages.

United States v. Hall, supra, 269 F.3d 940, 943 (8th Cir. 2001), *quoted in Norwood*, 602 F.3d at 836-37. The *Norwood* decision suggests several possibilities for alternative civil causes of action, although it also discusses the weaknesses of those potential claims. *Norwood*, 602 F.3d at 833-36 (discussing the Federal Tort Claims Act, 28 U.S.C. § 1346(b)(1); the Little Tucker Act, 28 U.S.C. § 1491(a)(2); and *Bivens v. Six Unknown Names Agents of the Federal Bureau of Narcotics*, 403 U.S. 388, 397 (1971)).

III. Conclusion

For the foregoing reasons, the Court:

- **DISMISSES** Kramer's claim under Rule 41(g) (Doc. 1) **with prejudice** pursuant to 28 U.S.C. § 1915A(b)(1) for failure to state a claim, but **without prejudice** to filing an amended complaint asserting an alternative civil claim for relief;
- **DIRECTS** the Clerk of Court to enter judgment accordingly at the close of the case;
- **DENIES as moot** the United States' motion to dismiss (Doc. 9) and Kramer's motion for a briefing and discovery schedule (Doc. 33);
- **ORDERS** that Kramer shall have up to and including June 9, 2017, to file an amended complaint pleading an alternate civil theory for his damages claim, which shall be subject to review under 28 U.S.C. § 1915A; and
- **WARNS** Kramer that if he fails to amend his pleading in a timely manner, the Court will direct that final judgment be entered denying him all relief.

IT IS SO ORDERED.

DATED: April 5, 2017

s/ J. Phil Gilbert
J. PHIL GILBERT
DISTRICT JUDGE