

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 00-11310
Conference Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

JESSE JAMES HENDERSON,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:95-CR-284-3
- - - - -

June 13, 2001

Before WIENER, DeMOSS, and DENNIS, Circuit Judges.

PER CURIAM:*

Jesse James Henderson, federal prisoner # 27821-077, appeals the district court's denial of his Fed. R. Crim. P. 41 motion for return of property. Henderson seeks the return of \$18,936.55 in U.S. currency that was seized from his home and administratively forfeited. He argues that the Government failed to provide constitutionally-required adequate notice of the forfeiture of the currency and that the district court erred by not ordering its return because there was insufficient evidence that the funds were connected to illegal activity.

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Although Henderson has styled his claim as one involving Fed. R. Crim. P. 41(e), the criminal proceeding against him had already concluded when he brought this action. We therefore treat the Rule 41(e) motion as a civil action under 28 U.S.C. § 1331, seeking the return of property, and treat the district court's denial of that motion as the grant of summary judgment in favor of the Government. See Clymore v. United States, 217 F.3d 370, 373 (5th Cir. 2000). This court reviews the grant of summary judgment de novo. Horton v. City of Houston, 179 F.3d 188, 191 (5th Cir.), cert. denied, 528 U.S. 1021 (1999).

In his motion to dismiss the indictment, Henderson admitted that notice of the seizure had been sent to him at his home address. He, in fact, attached a copy of the notice. The Government also submitted evidence showing that it had published the notice of the seizure in the USA Today newspaper during three successive weeks. Henderson has not presented any evidence to support his allegation that he did not receive adequate notice. He therefore has failed to show that the district court erred in denying his motion. Accordingly, the judgment of the district is

AFFIRMED.