

UNITED STATES COURT OF APPEALS  
FIFTH CIRCUIT

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No. 92-7445

(Summary Calendar)

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ROGER WILLIAM SIMS, Individually  
and on Behalf of Jacqueline James

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,

Defendant-Appellee.

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Appeal from the United States District Court  
For the Northern District of Mississippi  
(CA 3 92 MC017 S)

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(June 2, 1993)

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:\*

Roger William Sims and Jacqueline James were convicted of drug-related offenses. Subsequently, Sims, individually and on behalf of Jacqueline James, filed a motion in district court for the return of property forfeited to the United States. Sims appeals the district court's dismissal of his motion as frivolous. See 28 U.S.C. § 1915(d) (1988).

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\* Local Rule 47.5.1 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

State officers seized Sims's and James's property pursuant to a search warrant. Prior to their conviction, the Drug Enforcement Agency instituted administrative forfeiture proceedings against Sims's and James's property, and sent notices of the seizures to Sims and James.<sup>1</sup> Subsequently, the administrative proceedings divesting Sims and James of their property became final. Following their convictions, Sims, individually and on behalf of Jacqueline James, filed a motion to return the property seized pursuant to the search warrant. The district court dismissed Sims's suit as frivolous.

We may affirm the decision of the district court for reasons not advanced by that court. *Lavespere v. Niagara Mach. & Tool Works, Inc.*, 920 F.2d 259, 262 (5th Cir. 1990). Because the district court lacked jurisdiction, dismissal was appropriate. Sims instituted an action in district court against the United States by filing a "Motion for Return of Property," in which he argued that the search and seizure was unlawful. Although Sims did not state the district court's jurisdictional basis for entertaining his suit, we conclude that Sims intended to invoke jurisdiction pursuant to Fed. R. Crim. P. 41(e).<sup>2</sup> "Rule 41(e)

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<sup>1</sup> The DEA initiated administrative forfeiture proceedings against Sims's and James's property, as proceeds of unlawful activity in violation of 21 U.S.C. § 881(a)(6) (Comprehensive Drug Abuse Prevention and Control Act), pursuant to 19 U.S.C. § 1607 (1988) as incorporated by 21 U.S.C. § 881(d) (1988).

<sup>2</sup> Rule 41(e) provides:

Motion for Return of Property. A person aggrieved by an unlawful search and seizure or by the deprivation of property may move the district court for the district

cannot provide a jurisdictional basis in a civil action."<sup>3</sup> *United States v. Hernandez*, 911 F.2d 982, 983 (5th Cir. 1990). Therefore, the district court lacked jurisdiction to entertain Sims's motion for the return of forfeited property. See *id.* (where defendant filed rule 41(e) motion after his property was forfeited pursuant to the Drug Abuse Prevention Act, district court properly dismissed defendant's rule 41(e) motion for lack of jurisdiction).

Accordingly, we **AFFIRM** the district court's judgment, and **DISMISS** Sims's Motion to File an Amended Reply Brief, Motion of the Trial Transcript IFP, and his Motion for Stay Pending Ruling on the Motions.

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in which the property was seized for the return of the property on the ground that such person is entitled to lawful possession of the property.  
Fed. R. Crim. P. 41(e).

<sup>3</sup> In *Hernandez*, we stated that "a forfeiture procedure under the Drug Abuse Prevention Act was intended to be a 'civil in rem' proceeding, rather than a criminal sanction. Rule 41(e) is a *criminal* procedure. . . . [The Federal Rules of Criminal Procedure] do not apply to civil forfeiture of property for a violation of a statute." *Id.*, 911 F.2d at 983.