IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

Summary Calendar
No. 93-1507

UNITED STATES OF AMERICA,

Petitioner-Appellee,

versus

JOHN DOES, Taxpayers Who Are Members of the Texas Liberty Association, etc., ET AL.,

Respondents,

MARTIN PYLE,

Respondent-Appellant.

Appeal from the United States District Court for the Northern District of Texas (3:92-CV-1568-H)

(April 22, 1994)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:[1]

Martin Pyle, *pro se*, appeals from an order holding him in contempt for failing to comply with a properly served Internal Revenue Service summons. We **AFFIRM**.

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[1] 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Pyle is the founder of the Texas Liberty Association (TLA), an organization which allegedly provides financial services to assist individuals who do not report all of their income to the IRS. In August 1992, the district court granted the IRS's ex parte petition for leave to serve Pyle with a "John Doe" summons for TLA's records concerning members who use its financial services. *See* 26 U.S.C. §§7402(b), 7602, & 7609(a) & (f). Although Pyle was served with the summons, he did not produce the requested documents. Accordingly, the district court entered an order to show cause why he should not be held in contempt.

At a hearing on January 8, 1993, Pyle asserted that the court lacked jurisdiction;[2] but the court rejected this argument, held that it had jurisdiction over the IRS petition, and entered an order denying the motion to dismiss and ordering that the summons be enforced. Pyle did not appeal the enforcement order or the denial of his motion to dismiss, and did not otherwise seek relief from this court at that time.[3]

When Pyle did not comply with the enforcement order, the Government moved to have him held in contempt, and the district

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[2] Pyle made several oral motions at that hearing, including an objection to "this so-called hearing" on the ground that "it is an alleged hearing and this is not a case. It is an alleged case".

[3] At the January 8, hearing, Pyle advised the district court that he wished to move "to appeal for a Writ of Prohibition to the Fifth Circuit Court of Appeals." The district court informed him that he would have to seek relief from this court in compliance with the court's rules, and denied Pyle's oral motion. Pyle, however, never took further action to seek review in this court.

court again entered a show cause order. Following another hearing, the court found Pyle in contempt and ordered him into custody, but stayed execution of the order for two weeks to give Pyle yet another opportunity to comply with the summons. But, instead of complying, Pyle filed a second motion to dismiss the petition for lack of subject matter jurisdiction.

At a hearing on March 25, 1993, the district court denied the motion to dismiss for lack of subject matter jurisdiction; found that Pyle was in civil contempt because he had not complied with the order enforcing the summons; and ordered Pyle committed to the custody of the United States Marshal until he purged himself of contempt or was otherwise discharged by law. Pyle has appealed this order.

II.

We have jurisdiction of this appeal under 28 U.S.C. §1291, because, as we held in ***In re Grand Jury Subpoena***, 926 F.2d 1423 (5th Cir. 1991), "[w]hen a civil contempt motion is not part of continuing litigation, ... an order granting or denying such a motion is a final decision for purposes of § 1291 because no underlying case awaits final resolution". 926 F.2d at 1429.

In order to address properly the issues raised by Pyle, it is important to understand the context in which this appeal was taken. This is *not* an appeal of an order enforcing an IRS summons, which order may be contested "on any appropriate ground" and appealed. ***Reisman v. Caplin***, 375 U.S. 440, 449 (1964). Pyle contested the

order enforcing the IRS summons only before the district court, and did not seek review of that order in this court.

This *is* the appeal of a civil contempt order for failure to comply with the enforcement order. Obviously, this is different from an appeal of the order enforcing the summons; and an individual who has been held in civil contempt of an IRS summons may *not* contest the merits of the summons in his appeal of the contempt order. ***United States v. Rylander***, 460 U.S. 752, 756-57 (1983). "[A] contempt proceeding does not open to reconsideration the legal or factual basis of the order alleged to have been disobeyed and [does not] thus become[] a retrial of the original controversy. The procedure to enforce a court's order commanding or forbidding an act should not be so inconclusive as to foster experimentation with disobedience." ***Id***. (quoting ***Maggio v. Zeitz***, 333 U.S. 56, 59 (1948)). Instead, in the contempt proceeding, the only issue is the summoned individual's ability to comply with the enforcement order. 460 U.S. at 757. This court reviews only for abuse of discretion the district court's order holding a defendant in contempt. ***Martin v. Trinity Industries, Inc.***, 959 F.2d 45, 46 (5th Cir. 1992).

Pyle makes three arguments that the district court lacked subject matter jurisdiction to issue the summons. Pyle, however, mischaracterizes these arguments as questions of jurisdiction, apparently in an attempt to avoid the prohibition of ***Rylander***;[4]

[4] The district court clearly had subject matter jurisdiction to issue the John Doe summons under 26 U.S.C. § 7609(h), and further had jurisdiction to enforce the summons under 26 U.S.C. § 7402.

instead, his arguments are simply that the summons contained various procedural defects.[5] In other words, Pyle is questioning the "legal or factual basis of the order alleged to have been disobeyed," ***Rylander***, 460 U.S. at 756 (quoting ***Maggio v. Zeitz***, 333 U.S. 56, 69 (1948)), which, under ***Rylander***, he cannot do on appeal of the contempt order.

Pyle's final argument, that the district court lacked personal jurisdiction, is likewise without merit. The court obtained personal jurisdiction through personal service of the petition and show cause order. *See* ***United States v. Gilleran***, 992 F.2d 232, 233 (9th Cir. 1993); ***Donaldson v. United States***, 400 U.S. 517, 529 (1971) (rules of civil procedure are not to impair summary enforcement proceeding when rights of party summoned are protected and adversary hearing is available). Needless to say, Pyle's repeated assertions that he was making a "special appearance" do not defeat the court's jurisdiction over him.

In sum, Pyle has not raised an issue in this court (or to the district court) that relate to the only pertinent issue: his ability to comply with the enforcement order. Therefore, the district court did not abuse its discretion in holding Pyle in contempt.[6]

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[5] Pyle asserts, *inter alia*, that the summons was defective because neither he nor TLA is a "third-party recordkeeper" under 26 U.S.C. § 7609; that the petition for issuance of the summons was supported by a declaration rather than an affidavit; and that the declaration contained conflicting and incorrect statements.

[6] In addition to the matters enumerated as issues on appeal, Pyle has filed a motion with this court to obtain information from the Attorney General of the United States regarding whether there

II.

For the foregoing reasons, the district court's order is **AFFIRMED**.

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exists a Justice Department referral against any member of TLA and a motion to supplement the record with papers he filed in the district court during the pendency of this appeal. These motions were never addressed to the district court, and are not properly before us. They are, therefore, denied.

Pyle also makes several allegations in his reply brief challenging the impartiality of the district court and the conduct of the Government. These issues also have never been presented to the district court, and, likewise, are not properly before us.