

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1727

Summary Calendar

IN THE MATTER OF THE SEARCH OF:
Office Building Known as
Global Fitness
4384-4386 Sunbelt Drive
Addison, Texas,

GARY ALLEN,

Movant-Appellant.

Appeal from the United States District Court
for the Northern District of Texas
(3:93-59-M)

(November 9, 1994)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Gary Allen appeals from the district court's resolution of his amended Fed. R. Crim. P. 41(e) motion for return of property seized under a search warrant. Upon review of the parties' supplemental briefs on jurisdiction, we find the case moot.

Allen's amended motion sought the return of books, customer files, records, computers, and computer equipment so that he could

*Local Rule 47.5 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

conduct his business. By the time the district court ruled on his motion, the government had provided or agreed to provide Allen with copies of those books, customer files, and records that it had not already returned. The court found that Allen's access to these copies prevented irreparable harm to his business and ruled that the government need not return the originals that it still held. The court did order the government to return the computers and computer equipment within twenty days. The government returned them.

Thus, everything that Allen sought to have returned has either been returned to him or made available to him. He implicitly concedes that his case is now moot by declining to ask this court to force the government to return anything more to him. His appeal instead requests a ruling that the district court erred in finding that the seizure would not cause him irreparable injury.

Even if we did this, however, the result in this case would not change. Allen does not intend to use our ruling to force the government to return any property. Instead, his supplemental brief on jurisdiction states that the "sole importan[ce]" of this appeal to him is to lay the foundation for his contemplated "civil suit for damages resulting from the confiscation of his property." Because the government has already returned Allen's property to his satisfaction, the case is moot. We decline Allen's invitation to revise the lower court's dicta for use in later litigation. Luckily for Allen, however, the judgment below will have no res judicata or precedential effect because we must vacate it as mooted on appeal. See United States v. Sarmiento-Rozo, 592 F.2d 1318,

1321 (5th Cir. 1979) (vacating judgment below when case becomes moot on appeal); see also 13A Charles A. Wright & Arthur R. Miller, Federal Practice and Procedure § 3533.10, at 425 (1984).

Allen also complains that the computers and equipment that the government returned to him are broken. Allen first raised the issue below in a Fed. R. Civ. P. 60(b) post-judgment motion. However, the present appeal challenges only the underlying judgment. Allen never amended his notice of appeal to request review of the district court's denial of his post-judgment motion. Without such an appeal, we cannot consider his post-judgment argument. Fed. R. App. P. 4(a)(4). Fed. R. App. P. 4(a) governs procedures for appeals of Fed. R. Crim. P. 41(e) motions. See Hunt v. U.S. Department of Justice, 2 F.3d 96, 97 (5th Cir. 1993).

APPEAL DISMISSED; JUDGMENT VACATED.