

UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 93-4818
Summary Calendar

OLYMPIO TETEVÍ MARTINS,

Petitioner,

VERSUS

IMMIGRATION AND NATURALIZATION SERVICE,

Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE
IMMIGRATION AND NATURALIZATION SERVICE
(A26 303 064)

(December 16, 1993)

Before DAVIS, JONES and DUHÉ, Circuit Judges.

DAVIS, Circuit Judge:¹

Martins challenges the order of the Board of Immigration Appeals (BIA) dismissing his appeal from the Immigration Judge's deportation order. We find no error and affirm.

The sole issue presented in this appeal is whether petitioner's multiple convictions of second degree forgery, forgery and obtaining money by fraud arose out of a single scheme of criminal misconduct as provided by § 241(a)(2)(A)(ii) of the

¹Local 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Immigration and Nationality Act. The Act provides for deportation of an alien convicted of two crimes involving moral turpitude which do not arise out of a single scheme of criminal misconduct."

The evidence presented to the Immigration Judge reveals that Martins is a native and citizen of Nigeria. He last entered the United States as an immigrant in March 1988. In December 1989, Mr. Martins deposited bogus checks in two banks, the First Interstate Bank-South in Larimer, Colorado and the Rocky Mountain Federal Bank in Laramie, Wyoming. Martins' two convictions arise from his fraudulent withdrawal of funds from the accounts by depositing bogus checks. In December 1991, Martins was convicted in Wyoming of forgery and obtaining money fraudulently from the Wyoming bank. The evidence revealed that Martins presented a fraudulent check to the Wyoming bank on December 27, 1989, and that he again obtained money by fraud from that same bank on December 28, 1989. In August 1991, Martins was convicted in Colorado of forgery arising out of the presentation of a falsely made and uttered check drawn on the Colorado bank. The Colorado conviction was predicated on petitioner's obtaining money through a falsely made and uttered check drawn on the Colorado bank on December 28, 1989.

Petitioner essentially argues that the conclusion of the BIA that his crimes were not "planned and executed as a single act" is not supported by substantial evidence. The crimes for which petitioner was convicted occurred over a two-day period. Petitioner relies on a Ninth Circuit decision **Gonzalez-Sandoval v. INS**, 910 F.2d 614 (9th Cir. 1990), a case in which the alien

planned and conceived several robberies, two of which took place within two days of each other. The Ninth Circuit found that the crimes arose out of a single scheme. However, we have rejected **Gonzalez-Sandoval** and its rationale, **see Iredia v. INS**, 981 F.2d 847, 849 (5th Cir. 1993); **Animashaun v. INS**, 990 F.2d 234, 237 (5th Cir. 1993), and, in this circuit, "[w]hen an alien performs an act that in and of itself constitutes a complete, individual, and distinct crime, he is deportable when he again commits such an act, even though one may closely follow the other, be similar in character, and even be part of an overall plan of criminal misconduct." **Animashaun**, 990 F.2d 237-38.

The BIA was entitled to conclude that the fraudulent withdrawal of funds from the Wyoming bank on December 27 was a completed and distinct crime from the two offenses committed the following day. The evidence amply supports the BIA's conclusion that the crimes were not planned and executed as a single act.

AFFIRMED.