

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5282
(Summary Calendar)

VICTOR OLUSEGUN BENSON,

Petitioner-Appellant,

versus

U. S. ATTORNEY GENERAL,
IMMIGRATION & NATURALIZATION SERVICE,
and JOHN B. Z. CAPLINGER,

Respondents-Appellees.

Appeal from the United States District Court
for the Western District of Louisiana
(93-0216)

(February 14, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Petitioner-Appellant Victor Olusegun Benson appeals the district court's denial of his habeas corpus petition under

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

28 U.S.C. § 2241, implicating reduction in the amount of his bond or release on his own recognizance. Finding the issue moot, we dismiss.

I

FACTS AND PROCEEDINGS

Benson, a citizen of Nigeria incarcerated at the Federal Correctional Institute at Oakdale, Louisiana, filed this habeas petition against the Attorney General of the United States and John B. Z. Caplinger, Director of the Immigration and Naturalization Service (INS), New Orleans District Office, alleging constitutional rights violations in connection with a request to be released on bond pending a final decision on deportability. Benson is a temporary resident alien who pleaded guilty, pursuant to a plea agreement, to importing more than 100 grams of heroin into the United States. The agreement required Benson to assist the government in other drug investigations. On April 12, 1991, pursuant to the government's motion, the district court sentenced Benson to 24 months in prison, a downward departure from the 63 to 78 month sentencing range.

On July 24, 1992, the INS issued Benson an Order to Show Cause and Notice of Hearing, charging that he was subject to deportation under 8 U.S.C. § 1251(a)(2)(A) because he had been convicted of an aggravated felony. Upon completion of his sentence in September 1992, Benson was transferred to the custody of the INS and held without bond. Benson sought a redetermination of bond under 8 C.F.R. § 242.2(d). The immigration judge (I.J.) changed Benson's

bond status from "no bond" to \$25,000 bond. Benson appealed to the Board of Immigration Appeals (BIA), seeking a further reduction. The BIA affirmed the bond decision and dismissed the appeal.

After postponing the deportation hearing several times so that Benson could secure counsel, the I.J. ordered Benson to proceed pro se. Benson refused to participate in the hearing without counsel, but the I.J. nevertheless found Benson deportable and ordered him deported to Nigeria. The BIA affirmed the deportation order. Then, as Benson had been living in Detroit, Michigan, before his arrest, he sought review of the BIA's decisions in the United States Court of Appeals for the Sixth Circuit. While his petition for judicial review was pending, Benson moved to reopen the proceedings before the BIA. The BIA denied his motion, and the Sixth Circuit affirmed the denial and the deportation in an unpublished order. Benson v. INS, Nos. 93-3256 and 93-3575 (6th Cir. Oct. 8, 1993).

In his instant habeas petition, Benson alleged that he was entitled either to have his bond reduced to \$500 or to be released on his own recognizance under 8 U.S.C. § 1252(a)(1), because he was not a flight risk, he had significant family ties in the United States, he had provided substantial assistance to the government in connection with his criminal case, and there was no reasonable expectation that judicial review of his deportation proceedings would be completed in the foreseeable future. He maintained that the \$25,000 bond was excessive and violated his rights under the Due Process and Equal Protection clauses and the Eighth Amendment.

He also asserted that the bond was improper because he lacked the financial resources to pay it. In subsequent filings, Benson requested an expedited hearing because he had been diagnosed with a heart condition.

After the government answered the petition and Benson responded, the magistrate judge recommended denying relief. Benson objected to the magistrate judge's recommendation, but the district court overruled the objections and denied relief. Benson timely appealed.

II

ANALYSIS

On appeal, Benson reiterates the arguments he raised in the district court. The government contends that Benson's appeal is moot because an immigration judge found him deportable, the BIA affirmed that determination, and the Sixth Circuit affirmed the BIA's decision. Therefore, argues the government, the deportation order is final, rendering this appeal moot.

The government cites Bamidele v. Gerson, 93-4201, slip op. (5th Cir. Jun. 7, 1993) (unpublished) (copy attached), as support for this contention. Bamidele also invoked an appeal from a denial of a habeas petition seeking a reduction in the amount of bond set by an immigration judge and affirmed by the BIA. There we stated: "The record reflects that Bamidele's appeal is moot because he has been ordered deported, and his administrative appeal of this determination has been dismissed." Nevertheless, we addressed the merits of appellant's arguments, apparently because the record was

sketchy regarding the dismissal of the administrative appeal.

We have dismissed as moot an appeal from the denial of a habeas petition seeking relief from a bond determination. Ortez v. Chandler, 845 F.2d 573, 575 (5th Cir. 1988). There, the petitioner had been deported while the appeal was pending, and the INS moved for dismissal on the ground that the deportation rendered the appeal moot. We dismissed, reasoning that the appeal had become moot not because the petitioner had been deported, but rather, because "the habeas relief he requests--reduction of his bond--can no longer be effected." Id. at 575. Likewise, the Sixth Circuit in Dallo v. I.N.S., 765 F.2d 581, 589 (6th Cir. 1985) held that an appeal from the denial of a habeas petition seeking bond pending exhaustion of judicial review of a deportation order became moot once the appellate court's decision affirming the deportation order had been issued. Id.

Here, the Sixth Circuit has reviewed and affirmed the BIA's ruling on Benson's deportability. There is no indication that Benson has filed a petition for certiorari of the Sixth Circuit's decision. Thus, judicial review of the deportation order has been completed. Accordingly, the relief he seeks on appeal--a reduction of his bond pending judicial review of the deportation order--can no longer be granted. As Benson's appeal is moot, it is DISMISSED.