

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-8638
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

LISA MICHELLE SILVAS,

Defendant-Appellant.

Appeal from the United States District Court
for the Western District of Texas
(91-CR-413-2)

(October 22, 1993)

Before KING, HIGGINBOTHAM, and BARKSDALE, Circuit Judges.

PER CURIAM:*

Lisa Michelle Silvas appeals from an Order for Issuance of Writ of Habeas Corpus ad Prosequendum, which she characterizes as an order denying pretrial bail. Because we do not have appellate jurisdiction to review the order appealed from, we **DISMISS** the appeal.

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 Pursuant to that rule, the court has determined that this opinion should not be published.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

On February 14, 1992, a jury found Silvas guilty of bank robbery and carrying a firearm during a crime of violence. That April, she was sentenced to 152 months imprisonment. Our court reversed her conviction on June 29, 1993, and remanded the case to the district court for a new trial.

On July 2, Silvas filed a motion for bond pending trial. The Government replied, opposing her motion, and Silvas responded. On August 9, Silvas filed a supplement to her motion, noting our court's denial of the Government's petition for rehearing; she further supplemented the motion on August 20, pointing out the issuance of our court's mandate.

On September 10, the district court entered an order denominated "Order for Issuance of Writ of Habeas Corpus ad Prosequendum", which established a deadline for plea bargaining, and set trial for November 1. The order directed the United States Marshal to transport Silvas from federal prison in Lexington, Kentucky, to San Antonio on October 22 for docket call, and thereafter, for trial. It further provided that, "[a]t the conclusion of the proceedings, the defendant shall remain in the custody of the United States Marshal until further order of the Court". Silvas has appealed from this order.

II.

With certain exceptions, appellate review in criminal cases is not available until after conviction and imposition of sentence. 28 U.S.C. § 1291; *Flanagan v. United States*, 465 U.S. 259, 263

(1984). An order denying pretrial bail, however, is reviewable under the "collateral order" exception. See *id.* at 266; Fed. R. App. P. 9(a).

Both Silvas and the Government interpret the "Order for Issuance of Writ of Habeas Corpus ad Prosequendum" as an implicit denial of her motion for pretrial release. Needless to say, we are not bound by their characterization, and have a duty to examine the basis of our jurisdiction, on our own motion if necessary. ***Hamilton v. Robertson***, 854 F.2d 740, 741 (5th Cir. 1988).

The order appealed from contains no indication that the district court made the required findings for detention or used the required analytical framework for a detention decision. See 18 U.S.C. § 3142(g) (factors to be considered "in determining whether there are conditions of release that will reasonably assure the appearance of the person as required and the safety of any other person and the community"); 18 U.S.C. § 3142(i) (requiring that detention orders include, *inter alia*, written findings of fact and a written statement of the reasons for detention); Fed. R. App. P. 9(a) ("Upon entry of an order refusing or imposing conditions of release, the district court shall state in writing the reasons for the action taken"). Accordingly, we do not accept the parties' characterization of the order as a denial of Silvas' motion for release pending the new trial.

The Supreme Court has "interpreted the collateral order exception 'with the utmost strictness' in criminal cases". ***Midland Asphalt Corp. v. United States***, 489 U.S. 794, 799 (1989) (quoting

Flanagan, 465 U.S. at 265). The order appealed from, which does not include findings regarding detention or release under the Bail Reform Act, and which merely sets dates for trial and otherwise, and directs the United States Marshal to take steps to ensure Silvas' presence at pretrial proceedings and trial, does not fall within that exception. Accordingly, we are without jurisdiction to review the order appealed from.

III.

The appeal is, therefore,

DISMISSED.