

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-10518
Summary Calendar

UNITED STATES OF AMERICA,

Plaintiff-Appellee,

versus

CURTIS MITCHELL O'BRIEN,
a/k/a Rudolph P. (Peter) Heim,

Defendant-Appellant.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 6:89-CR-009-1
- - - - -

August 18, 1998

Before HIGGINBOTHAM, JONES, and DENNIS, Circuit Judges.

PER CURIAM:*

Curtis Mitchell O'Brien, federal prisoner # 17872-077, appeals the district court's denial of his Fed. R. Crim. P. 41(e) motion for return of property. O'Brien seeks the return of his aircraft seized on April 5, 1989. The district court denied his Rule 41(e) motion without a response from the Government and without giving any reasons for the denial. O'Brien argues on appeal that the district court erred in denying his motion without a response by

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

the Government and without giving reasons. He contends that he has shown that his right to due process was violated by no notice or hearing of forfeiture.

The allegations in O'Brien's motion are specific and warranted a response by the Government. The record contains no information to support the district court's summary denial of the motion without reasons. The district court's denial of the motion without a response and without reasons leaves this court with no opportunity for review. The district court abused its discretion. United States v. Dean, 100 F.3d 19, 21 (5th Cir. 1996). See United States v. McCormick, 54 F.3d 214, 220 n.7 (5th Cir. 1994) (entreating "the district courts of this circuit to discharge their obligation to make appropriate findings on the record whenever such findings are called for"). The district court's judgment is VACATED, and this case is REMANDED to the district court for further proceedings.

VACATED AND REMANDED.