

United States District Court
EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

JOHNNY LEE READER,

v.

UNITED STATES OF AMERICA

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Civil Action No. 4:16-CV-37
(Judge Mazzant/Judge Nowak)

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On September 8, 2016, the report of the Magistrate Judge (Dkt. #12) was entered containing proposed findings of fact and recommendations that Johnny Lee Reader's ("Petitioner") *pro se* Motion Pursuant to Federal Rules of Criminal Procedure, Rule 41(g) Requesting Return of Property ("Motion for Return of Property") (Dkt. #1) be granted in part and denied in part. Having received the report and recommendation of the Magistrate Judge (Dkt. #12), having considered each of Petitioner's objections (Dkt. #15) and the Government's Response to Petitioner's timely filed objections (Dkt. #16), and having conducted a de novo review, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct, and the Court hereby adopts the Magistrate Judge's report (Dkt. #12) as the findings and conclusions of the Court.

BACKGROUND

Petitioner was indicted and arrested for a violation of 21 U.S.C. § 846, Conspiracy to Possess with Intent to Distribute Cocaine in mid-2010 (Dkt. #3 at 1; Dkt. #1, Exhibit 2 at 1).

During Petitioner's arrest on August 3, 2010, the Government seized \$26,000 in United States currency¹ from Petitioner's home and another \$1,700 from Petitioner's person; in total, the Government seized \$27,700 at the time of Petitioner's arrest (Dkt. #3 at 1). The Mesquite, Texas, Police Department also seized a rifle from Petitioner's home during the arrest (Dkt. #3 at 4). Subsequent to Petitioner's arrest, the Government further seized \$2,691.56 from Bank of America account number 488078658231 ("Account x8231"), \$830.30 from Bank of America account number 488008309419 ("Account x9419"), and \$1,165.97 from a bank account ending in x3678 ("Account x3678") (Dkt. #3 at 2-3).

Following Petitioner's arrest, from August 6, 2010 to October 27, 2010, Petitioner was on pre-trial release (Dkt. #3 at 2). During Petitioner's pre-trial release, the United States Drug Enforcement Administration ("DEA")—an agency of the United States Department of Justice—initiated civil administrative (nonjudicial) forfeiture proceedings against Petitioner and notified Petitioner of its intent to seize and forfeit the aforementioned funds (Dkt. #3 at 2-4). The Magistrate Judge summarizes the DEA's timeline regarding these notices specifically as follows:

On September 20, 2010, the Drug Enforcement Administration ("DEA") sent written notice of the seizure and intent to administratively forfeit \$27,700 in United States currency to Petitioner (at two known addresses), Petitioner's attorney, and Ms. Lopez (at two known addresses). . . . Return receipts were received from the addresses related to Petitioner, Ms. Lopez, and Petitioner's attorney. . . . Notice was also published in the Wall Street Journal. . . . The Government contends that no claims were filed regarding the \$27,700 in United States currency, resulting in an administrative forfeiture to the DEA.

On September 27, 2010, the DEA sent a separate written notice of the seizure and intent to forfeit funds in bank account x9419 (\$830.30) to Petitioner (at two known addresses), and his attorney. . . . Return receipts were received from addresses related to both Petitioner and his attorney. . . . Notice was also published in the Wall Street Journal. . . . The Government contends no claims were filed regarding the \$830.30 seized from account x9419, and, thus, the funds were administratively forfeited.

¹ All references to dollar amounts hereinafter refer to dollars in United States currency.

On October 1, 2010, the DEA sent a written notice of the seizure and intent to forfeit funds in bank account x8231 (\$2,691.56) to Petitioner (at two known addresses), his attorney, and Ms. Lopez (at two known addresses). . . . Return receipts were received from addresses related to Petitioner, Ms. Lopez, and Petitioner's attorney. . . . Notice was also published in the Wall Street Journal. . . . The Government contends that no claims were filed regarding the \$2,691.56 seized from account x8231, resulting again in an administrative forfeiture.

Also on October 1, 2010, DEA sent written notice of the seizure and intent to forfeit funds in bank account x3678 (\$1,165.97) to Petitioner (at two addresses), his attorney, and Ms. Lopez (at two known addresses). . . . Return receipts were received from addresses related to Petitioner, his attorney, and Ms. Lopez. . . . Notice was also published in the Wall Street Journal. . . . The Government contends no claims were filed regarding the \$1,165.97 seized from account x3678, and the funds were administratively forfeited by the DEA.

(Dkt. #12 at 3-4). Petitioner's pre-trial release terminated when Petitioner was arrested on October 28, 2010 for violation of his pre-trial release terms (Dkt. #3 at 4). Petitioner thereafter entered a guilty plea in his underlying criminal proceedings and, as part of his plea agreement, agreed to forfeit "[a]ny and all funds located within [Account x3678] in the name of Wendy Lopez" (Dkt. #1, Exhibit 2 at 1, 4).

On November 14, 2014, Petitioner filed his Motion for Return of Property in the underlying criminal proceedings (Dkt. #206 in Cause No. 4:10-CR-139-2). The Government filed its Response to Motion for Return of Property Pursuant to Fed. R. Crim. P. 41(g) (Dkt. #210 in Cause No. 4:10-CR-139-2) on January 7, 2015, and Petitioner filed his Reply to the Government's Response on January 27, 2015 (Dkt. #211 in Cause No. 4:10-CR-139-2). On January 11, 2016, the Court construed Petitioner's Motion for Return of Property as a civil action, directing the Clerk of Court to open the present matter (Dkt. #220 in Cause No. 4:10-CR-139-2). The Court thereafter ordered that Petitioner's Motion for Return of Property be treated as a civil suit invoking the Court's 28 U.S.C. § 1331 equity jurisdiction (Dkt. #2).

Petitioner seeks through his Motion for Return of Property return of (1) \$27,000 in United States currency seized from Bank of America account numbers 488018658231 and 48800839419, (2) \$1,800 in United States currency seized from Petitioner at the time of his arrest, and (3) a 308 rifle seized from Petitioner's residence (Dkt. #1 at 2). As the Magistrate Judge observed, Petitioner misidentifies in his Motion for Return of Property the pre-arrest location (and amount) of the United States currency seized:

The forfeiture receipts reflect the Government seized \$27,700.00 from Petitioner's home and person upon Petitioner's arrest on August 3, 2010 \$26,000 of that amount was seized from the home, and \$1,700—not \$1,800—was seized from Petitioner's person. . . . Subsequently, the Government seized additional funds from bank accounts 488018658231 (\$2,691.56) and 488008309419 (\$830.30), as well as \$1,165.97 from a bank account ending in x3678.

(Dkt. #12 at 2 n.1). In any case, Petitioner argues that all of the identified property should be returned to him under Federal Rule of Criminal Procedure 41(g) because, as he claims, he never was informed during his criminal proceedings of the forfeiture of his property and never agreed—pursuant to his plea agreement—to such forfeiture (Dkt. #1 at 1). In particular, Petitioner asserts that his plea agreement described neither the \$27,000 he claims the Government seized from Accounts x8231 and x9419 nor the rifle seized from Petitioner's residence (Dkt. #1 at 2, Exhibit 2 at 4). Petitioner further argues that he would have been unable to agree to forfeiture of the funds located in Account x3678, for that account was “in the name of Wendy Lopez” and not of Petitioner (Dkt. #1, Exhibit 2 at 4).

The Magistrate Judge entered a report and recommendation on September 8, 2016, recommending Petitioner's Motion for Return of Property be granted in part and denied in part (Dkt. #12). Specifically, the Magistrate Judge recommended that the Court find as follows:

Petitioner is not entitled to the return of and has forfeited any right, title, and interest in the following: (1) \$27,700 in United States currency seized at the time

of Petitioner's arrest, (2) \$2,691.56 in United States currency seized from account x8231, (3) \$830.30 in United States currency seized from account x9419, or (4) \$1,165.97 in United States currency seized from account x3678. Petitioner is entitled to the return of the 308 rifle, but only to an appropriate designee of his choosing and only upon filing a petition with the Court for such relief.

(Dkt. #12 at 11). Subsequently, on September 26, 2016, Petitioner filed his objections to the Magistrate Judge's report and recommendation (Dkt. #15), and on September 27, 2016, the Government filed its Response to Petitioner's objections (Dkt. #16).

ANALYSIS

A party who files timely written objections to a magistrate judge's report and recommendation is entitled to a de novo review of those findings or recommendations to which the party specifically objects. 28 U.S.C. § 636(b)(1)(C); Fed. R. Civ. P. 72(b)(2)-(3). Petitioner's objections assert that the Magistrate Judge erred in denying his request for "return of the \$27,000 as well as the other funds taken from hi[m] when he was arrested" (Dkt. #15 at 6). Petitioner essentially reurges in his objections the arguments he made in his Reply to the Government's Response, namely that the Government should have been unable to pursue both criminal and civil forfeiture proceedings against either him and/or any of the funds seized from his home, his person, or Accounts x8231, x9419, or x3678 (*compare* Dkt. #11, *with* Dkt. #15). Petitioner raises no objection to the Magistrate Judge's recommendation regarding Petitioner's rifle (Dkt. #15). Accordingly, the Court holds this finding is correct and adopts that portion of the Magistrate Judge's report and recommendation as the finding of the Court, before turning to address Petitioner's objections.

Construing *pro se* Petitioner's objections liberally, *Haines v. Kerner*, 404 U.S. 519, 520 (1972) (per curiam), the Court finds that Petitioner objects specifically to the Magistrate Judge's finding that the Government (through the DEA) could seek forfeiture of the funds seized from



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