

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

UNITED STATES OF AMERICA

Plaintiff,

v.

CASE NO: 6:17-cr-148-Orl-40TBS

ANDRES FERNANDO CABEZAS

Defendant.

ORDER

This case comes before the Court without a hearing on Defendant Andres Fernando Cabezas' Motion for this Court to Reconsider its Order Denying Andres Fernando Cabezas' Rule 41(g) Motion (Doc. 123). Defendant cites no legal authority for the filing of a motion for reconsideration. He has not shown that the Court misapprehended his position or the material facts when it entered its Order. Nor has Defendant shown any intervening change in controlling law, the availability of new evidence, or the need to correct a clear error or manifest injustice. What Defendant has shown is that the Court believed, incorrectly, that he is currently represented by counsel who had not joined in his motion (Doc. 122 at 1). But that error is not material to the resolution of Defendant's Motion to Return Property Under 41(g) (Doc. 115).

The photographs Defendant seeks are part of the contents of an iPhone he agreed to forfeit to the United States as part of his plea agreement (Doc. 67 at 5). Defendant's plea was accepted (Doc. 77), and judgment and sentence were imposed (Doc. 101). Defendant is currently appealing his judgment sentence (Doc. 103). To the extent that forfeiture of the iPhone is a part of the judgment and sentence now being appealed, the Eleventh Circuit has jurisdiction of the issue.

Before Defendant filed any motion for relief under FED. R. CRIM. P. 41(g) the Court entered a separate Final Judgment of Forfeiture vesting title to the iPhone in the government (Doc. 114). In United States v. Guerra, 426 Fed. Appx. 694, 697-98 (11th Cir. 2011) the court “explained that Rule 41(g) cannot be used to recover property that has been forfeited to the government in a civil forfeiture proceeding.” Defendant’s remedy was to appeal the forfeiture judgment, which he failed to do.

For these reasons, the motion for reconsideration is **DENIED**.

DONE and **ORDERED** in Orlando, Florida on October 18, 2018.



THOMAS B. SMITH
United States Magistrate Judge

Copies furnished to:

Counsel of Record
Andres Fernando Cabezas