

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

v.

10-cr-141-wmc

GALE A. RACHUY,

Defendant.

In 2011, defendant Gale Rachuy pled guilty to charges of knowingly transporting stolen property across state lines in violation of 18 U.S.C. § 2312. On February 6, 2012, this court sentenced him to serve 90 months in prison. Now pending before the court are three motions by Rachuy seeking the return of seized property. For reasons set forth briefly below, these motions will be denied.

Following a joint investigation by federal and state officials in Minnesota and Wisconsin, Rachuy was charged with stealing six different vehicles, some of which were transported over the Wisconsin state line to Duluth, as part of a scheme to commit fraud.

Shortly before he was sentenced, Rachuy filed a motion for return of seized property in this case pursuant to Fed. R. Crim. P. 41(g). (Dkt. # 70). The court denied that motion based principally on the government's representation that the property at issue was in possession of state law enforcement officials.¹ (Dkts. # 72, # 79).

¹ Thereafter, Rachuy obtained more than one judgment in state court, directing officers to return items of Rachuy's property not used in his fraudulent scheme. *See Rachuy v. Superior Police Dep't, et al.*, Douglas County Case No. 12CV46 (Feb. 6, 2012) (Judge Glonek). Based on that ruling, another complaint filed by Rachuy was dismissed. *See Group File of Gale Rachuy*, Douglas County Case No, 07GF23 (June 29, 2012) (Judge Anderson).

On direct appeal in this case, Rachuy argued that the government breached its plea agreement by “opposing” his motion for the return of property. The Seventh Circuit rejected that argument. *United States v. Rachuy*, No. 12-1376, slip. op. at 9-10. In doing so, it noted that “[f]ederal courts hold no supervisory authority over state judicial proceedings.” (quoting *Smith v. Phillips*, 455 U.S. 209, 221 (1982)).

While his appeal was pending, Rachuy filed yet another motion with this court requesting the return of property seized by the government pursuant to Fed. R. Crim. P. 41(g). Specifically, Rachuy sought a court order directing officials with the Federal Bureau of Investigation in Milwaukee to return three computers seized by *state* law enforcement agents in February 2007. (Dkt. # 102). The government responds that the computers at issue were sent to the Duluth Police Department and returned to one of Rachuy’s family members. (Dkt. # 121). Because Rachuy’s request has apparently been satisfied, his motion for the return of this property will be denied as moot.

Rachuy also asks the court to order the FBI to disclose whether they have requested a state police investigator to “hold” any items of property belonging to Rachuy. (Dkt. # 108). Without specifying what the property at issue might be, Rachuy indicates that it was seized between 2006 and 2010 in the City of Superior, Wisconsin, or on September 2, 2010, in the City of Duluth, Minnesota. Rachuy argues that the government’s failure by to relinquish its hold over any such items would constitute a material breach of the plea agreement in this case and that he should be allowed to withdraw his guilty plea. (Dkt. # 112) (referencing ¶ 6 of the *Plea Agreement*, dkt. # 67, in

which the United States agreed not to oppose any request by Rachuy for the return of property held by state or local authorities). In response to this request, the government supplied an inventory list and reports from the Duluth Police Department detailing the chain of custody in three cases related to Rachuy, including Case Nos. 07-215055; 10-358333 and 10-359317. (Dkt. # 121). Because the government appears to have complied with Rachuy's request for information, no further action from the court would appear to be required at this time. In any event, as the Seventh Circuit has already explained, the government is not in breach of the plea agreement by opposing his request for the return of property. Accordingly, Rachuy's motion to withdraw his plea is also denied.

ORDER

IT IS ORDERED that all of the pending motions by defendant Gale A. Rachuy seeking the return of seized property (dkts. #102, #108) and to withdraw his plea (dkt. #112) are DENIED.

Entered this 20th day of February, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge