

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

UNITED STATES OF AMERICA,

Plaintiff,

v.

BRIAN SMALL,

Defendant.

ORDER

14-cr-18-bbc

Paul Schlieve moved in this court for relief under Fed. Crim. R. P. 41(g), which allows a “person aggrieved by an unlawful search and seizure of property or by the deprivation of property” to move for the property’s return. He brought his suit in the context of this criminal case, alleging that the government had retained or lost materials he had turned over to the government in connection with its prosecution of Brian Small and others that included information petitioner had obtained about these persons while he was detained with them at Oxford. He was seeking the return of the documents, which he claimed were in his possession while incarcerated at the Federal Correctional Institution at Oxford, Wisconsin, but that he did not have after he was transferred to the Federal Correctional Institution at Big Sandy, Kentucky. Schlieve believes that the missing documents were lost either by the United States Attorney’s Office in this district or by the prison.

An evidentiary hearing was held in this case on August 19, 2015, in conformance with

United States v. Stevens, 500 F.3d 625, 628 (7th Cir. 2007) (“any factual determinations supporting the court’s decision [on motion for return of property] must be based on evidence received”). Schlieve appeared in person and by counsel, William Jones. The government was represented by Timothy O’Shea, Assistant United States Attorney.

After hearing the evidence, which included Schlieve’s testimony about his memory of the items he contends have been lost and the testimony of the officer at Oxford who packed petitioner’s personal property for transfer to Big Sandy, I conclude that Schlieve has failed to show that the government retains any materials in its possession that should be turned over to Schlieve. Accordingly, his motion for return of property must be denied.

ORDER

IT IS ORDERED that movant Paul Schlieve’s motion for return of property under Fed. Crim. R. P. 41(a) is DENIED.

Entered this 20th day of August, 2015.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge