

September 17, 2010

UNITED STATES COURT OF APPEALS

Elisabeth A. Shumaker
Clerk of Court

FOR THE TENTH CIRCUIT

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

No. 10-3220

EDUARDO KINDT,

Defendant - Appellant.

ORDER

Before **BRISCOE**, Chief Judge, **LUCERO** and **TYMKOVICH**, Circuit Judges.

The defendant filed a pro se notice of appeal from the district court's August 19, 2010 order. The defendant sought an order compelling the United States Marshals to move him to a correctional facility with a law library. The district court denied the motion to compel. The defendant filed a pro se notice of interlocutory appeal.

We issued an order to show cause as to why this court has jurisdiction to consider the appeal at this time. The defendant, through his counsel appointed on a stand-by basis by the district court, filed a response. Based on the response, in which the defendant concedes that jurisdiction is absent, and the applicable law, we dismiss the appeal.

This court ordinarily has jurisdiction to review only final decisions of district courts. 28 U.S.C. § 1291. Finality generally does not exist in a criminal case until the defendant has been both convicted and sentenced. *Midland Asphalt Corp. v. U.S.*, 489 U.S. 794, 798 (1989); *U.S. v. Phelps*, 17 F.3d 1334, 1336-67 & n.3 (10th Cir. 1994). “The exceptions to the final judgment rule in criminal cases are rare.” *Flanagan v. U.S.*, 465 U.S. 259, 270 (1984). The Supreme Court has repeatedly noted that the reasons for rigidly enforcing the final judgment rule are “‘especially compelling in the administration of criminal justice.’” *Id.* at 246 (quoting *Cobbledick v. U.S.*, 309 U.S. 323, 325 (1940)); *see also U.S. v. Hollywood Motor Car Co.*, 458 U.S. 263, 265 (1982).

The order the defendant is appealing now is not a final decision. The defendant has not been convicted of, and certainly not sentenced for, the crime of which he was accused in this particular case. We further find no exception to the final judgment rule applicable here. *See Abney v. U.S.*, 431 U.S. 651, 657-59 (1977).

Accordingly, this appeal is dismissed for lack of jurisdiction.

Entered for the Court,
ELISABETH A. SHUMAKER, Clerk

A handwritten signature in black ink, appearing to read "Lara Smith".

by: Lara Smith
Counsel to the Clerk