

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

No. 20-40244
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

June 26, 2020

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff–Appellee,

versus

BRUCE ALLEN RUTHERFORD, also known as Allen Bruce Rutherford,

Defendant–Appellant.

Appeal from the United States District Court
for the Eastern District of Texas
No. 4:19-CV-348
No. 4:17-CR-41-1

Before SMITH, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Bruce Rutherford, federal prisoner #27006-078, appeals the denial of

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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summary judgment and the denial of release on bail in a 28 U.S.C. § 2255 proceeding challenging his conviction and sentence for possession of child pornography. He asserts several claims of ineffective counsel. He also moves for bail pending appeal and for leave to appeal *in forma pauperis* (“IFP”). Rutherford’s motion to appeal IFP is granted, but we dispose of the appeal without further briefing.

The denial of the motion for summary judgment is not a final appealable judgment under 28 U.S.C. § 1291. *See Skelton v. Camp*, 234 F.3d 292, 295 (5th Cir. 2000). No recognized exception to the final judgment rule applies here. Accordingly, the appeal is DISMISSED in part for want of jurisdiction with regard to the denial of summary judgment.

Rutherford’s motion for release on bail pending appeal is DENIED because he fails to “raise[] substantial constitutional claims upon which he has a high probability of success” and because he fails to allege or show that “extraordinary or exceptional circumstances exist which make the grant of bail necessary to make the habeas remedy effective.” *Calley v. Callaway*, 496 F.2d 701, 702 (5th Cir. 1974). For the same reasons, the denial of release on bail pending the disposition of the § 2255 motion is AFFIRMED. *See id.*