

**IN THE DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN**

AKEEM R. GUMBS,	)	
	)	
Plaintiff,	)	
	)	Case No. 3:16-cv-0030
v.	)	
	)	
LOUIS PENN, JR.,	)	
	)	
Defendant.	)	
_____	)	

APPEARANCES:

Akeem R. Gumbs
Pro se.

ORDER

BEFORE THE COURT is the motion of Akeem Gumbs seeking a refund of the filing fee paid for his appeal in this matter. (ECF No. 31.) For the reasons outlined below, the Court will deny the motion and direct the Clerk of Court to transmit a copy of Gumbs's motion for a refund of the filing fee to the Clerk's Office for the United States Court of Appeals for the Third Circuit.

On June 2, 2011, the Grand Jury returned a thirty-one-count indictment against Akeem Gumbs ("Gumbs"). Counts One through Five alleged production of child pornography, in violation of federal law. Count Six alleged possession of child pornography, in violation of federal law. Counts Seven through Thirty One alleged aggravated rape in the first degree, in violation of Virgin Islands law. (The June 2, 2011 criminal matter is referred to as the "pornography case.")

On February 14, 2012, a jury found Gumbs guilty of all counts. Thereafter, on September 6, 2012, the Court¹ sentenced Gumbs to the following terms of imprisonment: 300 months on the production of child pornography charges; 120 months on the possession of child pornography charges; and 20 years on the rape charges. All terms of incarceration

¹ District Judge Curtis Gomez presided over the trial, sentencing, and post-judgment proceedings. On May 8, 2020, this matter was reassigned from Judge Gomez to the undersigned.

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were to be served concurrently. Subsequently, on October 29, 2012, the Court entered a judgment of acquittal on Counts Seven, Twenty Nine, and Thirty.

On March 28, 2014, the Third Circuit affirmed Gumbs's conviction. *See United States v. Gumbs*, 562 F. App'x 110 (3d Cir. 2014).

On April 19, 2016, Gumbs filed a complaint in this matter against Louis Penn, Jr. ("Penn"), a Special Agent with the Department of Homeland Security, alleging a violation under 42 U.S.C. § 1983. *See* Complaint, ECF No. 1. Gumbs claimed that Penn violated Gumbs's Sixth Amendment rights. Gumbs asserted that Penn obtained a search warrant in the pornography case that failed to inform Gumbs of the date of Gumbs's alleged crime of production of child pornography. Gumbs sought damages from Penn for loss of employment and for past and future lost earnings.

On March 24, 2017, the Court dismissed this matter, finding that Gumbs had failed to state a claim. *Gumbs v. Penn*, No. CV 2016-30, 2017 WL 1115161 (D.V.I. Mar. 24, 2017), *appeal dismissed*, 691 F. App'x 57 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 481, 199 L. Ed. 2d 367 (2017). Gumbs appealed.

On June 28, 2017, the Third Circuit dismissed the appeal of the dismissal of this matter. The Third Circuit held that the appeal was "frivolous because it lacks an arguable basis either in law or in fact." *Gumbs v. Penn*, 691 F. App'x 57, 58 (3d Cir. 2017), *cert. denied*, 138 S. Ct. 481, 199 L. Ed. 2d 367 (2017) (internal quotation marks and citations omitted).

On August 25, 2020, Gumbs filed a motion seeking a refund of "the filing fee payments of case 17-1849 of the Third Circuit Appeals Court." *See* Mot. to refund filing fee at 3, ECF No. 31.

Significantly, this Court does not have the authority to order the Clerk's Office for the United States Court of Appeals for the Third Circuit to refund a filing fee paid to the Court of Appeals for the Third Circuit.

The premises considered, it is hereby

ORDERED that the motion of Gumbs for a refund of the filing fee for his appeal in this matter is **DENIED**; and it is further

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ORDERED that the Clerk of Court shall **TRANSMIT** a copy of the motion of Gumbs for a refund of the filing fee for his appeal in this matter, ECF No. 31, to the Clerk's Office for the United States Court of Appeals for the Third Circuit.

Dated: March 30, 2021

/s/ Robert A. Molloy
ROBERT A. MOLLOY
District Judge