

NOT RECOMMENDED FOR PUBLICATION

No. 22-1303

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 2, 2023
DEBORAH S. HUNT, Clerk

DONALD STANLEY LAVIGNE,

Petitioner-Appellant,

v.

UNITED STATES OF AMERICA,

Respondent-Appellee.

ON APPEAL FROM THE UNITED
STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF
MICHIGAN

ORDER

Before: SILER, GIBBONS, and MATHIS, Circuit Judges.

Donald Stanley Lavigne, who is awaiting trial on federal charges and is proceeding pro se, appeals a district court order denying his pretrial petition for a writ of habeas corpus. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In December 2021, Lavigne was arrested after being charged in the Eastern District of Michigan with seven counts of filing false tax returns, in violation of 26 U.S.C. § 7206(1); two counts of making a false statement in his bankruptcy case, in violation of 18 U.S.C. § 152(3); and making a false statement, in violation of 18 U.S.C. § 1001(a)(3). Lavigne elected to represent himself in the district court and in this appeal. Throughout the proceedings, he has challenged the charges against him based on arguments associated with the “sovereign citizen” movement, and in his habeas petition he asserts, among other things, that he is a “natural sovereign man” not subject to the jurisdiction of the federal government.

The district court denied the habeas petition, which it construed as seeking relief under 28 U.S.C. § 2241. The district court explained that Lavigne needed to exhaust his claims at trial and on appeal before seeking habeas relief and that, in any event, his claims lacked merit. Lavigne

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has since been released on bond and is awaiting a bench trial, currently scheduled to begin in January 2023. On appeal, Lavigne reasserts his challenges to the district court's jurisdiction and briefly asserts that exceptional circumstances warrant the grant of habeas relief before trial.

The government correctly argues that we lack appellate jurisdiction. Under 28 U.S.C. § 1291, we have jurisdiction over appeals from "final decisions" of the district courts. In a criminal case, where the finality requirement is critical, *see United States v. MacDonald*, 435 U.S. 850, 853-54 (1978), the final decision is the judgment of conviction and sentence, *see Midland Asphalt Corp. v. United States*, 489 U.S. 794, 798 (1989). Although Lavigne is correct that a "motion that the court lacks jurisdiction may be made at any time while the case is pending," Fed. R. Crim. P. 12(b)(2), the rules do not allow an appeal of the denial of such a motion at any time. *See Catlin v. United States*, 324 U.S. 229, 236 (1945) "[A] denial of a motion to dismiss, even when the motion is based upon jurisdictional grounds, is not immediately reviewable." There are rare exceptions to the finality requirement, *see, e.g., Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 545-47 (1949), but Lavigne points to no basis for an exception here. His criminal case remains pending. And although he styled his filing as a habeas petition, he asked the district court to dismiss the charges against him. The current filing is no different from his other motions to dismiss, and we have already determined that the denial of those motions is not immediately appealable. Similarly, the district court's order denying Lavigne's habeas petition is not appealable at this time. *See United States v. Pi*, 174 F.3d 745, 750 (6th Cir. 1999) (denial of motion to dismiss); *United States v. Young*, No. 99-3971, 1999 WL 644324, at *1 (6th Cir. Aug. 16, 1999) (denial of petition for writ of coram nobis and motion to dismiss).

For these reasons, we **DISMISS** the appeal for lack of jurisdiction.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk