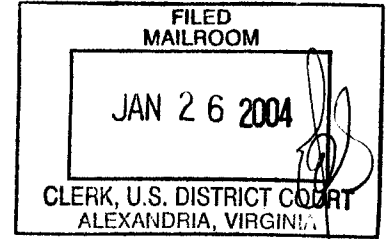


FILED: January 23, 2004

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 03-4870
(CR-01-455)



UNITED STATES OF AMERICA,

Plaintiff - Appellee,

versus

ZACARIAS MOUSSAOUI,

Defendant - Appellant.

ORDER

Zacarias Moussaoui is charged with multiple offenses stemming from his acknowledged membership in the terrorist organization al Qaeda and his alleged involvement in the September 11, 2001 terrorist attacks. In June 2002, the district court granted Moussaoui's request to represent himself and appointed standby counsel to assist him. In an order dated November 5, 2003, the district court recounted Moussaoui's history of submitting improper and abusive pleadings to the court and warned him that further submissions of this nature could result in forfeiture of his pro se status. One week later, Moussaoui filed two additional pleadings, both of which the district court deemed violative of its November 5 order. The court therefore vacated its previous order granting Moussaoui leave to represent himself and reappointed standby counsel as counsel of record. Moussaoui then filed a pro se notice of appeal.

The courts of appeals have jurisdiction over "appeals from all final decisions of the district courts of the United States." 28 U.S.C.A. § 1291 (West 1993). A "final" judgment is

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one “that ends the litigation on the merits and leaves nothing for the court to do but execute the judgment.” Coopers & Lybrand v. Livesay, 437 U.S. 463, 467 (1978) (internal quotation marks omitted). “In the criminal context, finality comes with the conviction and imposition of sentence.” United States v. Bertoli, 994 F.2d 1002, 1010 (3d Cir. 1993).

The Supreme Court gives the “finality” requirement of § 1291 a practical construction rather than a technical one. See Cohen v. Beneficial Indus. Loan Corp., 337 U.S. 541, 546 (1949). To this end, the Court has identified “a narrow class” of collateral orders “that do not terminate the litigation, but must, in the interest of achieving a healthy legal system, nonetheless be treated as final.” Digital Equip. Corp. v. Desktop Direct, Inc., 511 U.S. 863, 867 (1994) (internal quotation marks & citation omitted). Such orders, which are immediately appealable, meet three requirements: they conclusively determine a disputed question; they resolve an issue separate from the merits; and they are effectively unreviewable on appeal from a final judgment. See Coopers & Lybrand, 437 U.S. at 468.

At the very least, the order at issue here fails the last of these requirements. See generally Faretta v. California, 422 U.S. 806 (1975) (reviewing, after conviction, claim of denial of right of self-representation). Therefore, the order is not “final” for purposes of § 1291, and this court lacks jurisdiction to consider Moussaoui’s appeal. The appeal is therefore dismissed.

Entered at the direction of Chief Judge Wilkins, with the concurrences of Judge Williams and Judge Gregory.

For the Court

/s/ Patricia S. Connor

Clerk