

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Commonwealth of Pennsylvania :  
 :  
 v. : No. 1225 C.D. 2009  
 :  
 Gregory Woods, : Submitted: October 8, 2010  
 Appellant :

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
 HONORABLE PATRICIA A. McCULLOUGH, Judge  
 HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

MEMORANDUM OPINION  
BY JUDGE McCULLOUGH

FILED: February 18, 2011

Gregory Woods (Woods) appeals pro se from the April 13, 2009, order of the Court of Common Pleas of Luzerne County (trial court) denying Woods' motion for return of property.<sup>1</sup> We affirm.

As a result of various drug offenses, the Office of Attorney General, Bureau of Narcotics Investigation (Bureau), issued an arrest warrant for Woods. Following a traffic stop by the Pennsylvania State Police (PSP) on October 12, 2005, Woods was taken into custody pursuant to the warrant. At that time, PSP impounded the vehicle that Woods was driving, a 1998 Dodge Grand Caravan, and seized \$17,293.00 in cash that was found inside it. On October 13, 2005, agents for the Bureau executed a search warrant for Woods' residence and seized additional items,

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<sup>1</sup> Woods originally appealed the denial to our Superior Court. However, by order dated June 25, 2009, the Superior Court transferred the matter to this Court.

including two watches, a silver necklace, a 1991 Cadillac Deville, and a bank account with a balance of \$2,221.24. Woods subsequently was charged with conspiracy to deliver a controlled substance.

Woods later was indicted on similar federal charges, and in March of 2006, all state charges were dismissed in lieu of the federal charges. Nevertheless, on March 13, 2007, the Commonwealth filed a petition for forfeiture with the trial court. The Commonwealth personally served Woods with a copy of its petition three days later. The petition advised Woods that he had thirty days to file an answer and that failure to file the same will result in the entry of a decree of forfeiture against the property. Woods did not file an answer to the Commonwealth's petition. For unknown reasons, the Commonwealth took no further action until January of 2009, at which time it filed a motion for entry of a default order. The Commonwealth averred that a copy of this motion was served on Woods via first class mail. Woods did not respond to this motion.<sup>2</sup> By order dated January 15, 2009, the trial court granted the Commonwealth's forfeiture petition.

Woods did not appeal the trial court's order. Rather, approximately two months later, on March 4, 2009, Woods filed the present motion for return of property.<sup>3</sup> In this motion, Woods alleged that the forfeiture was premature and constituted an improper criminal punishment because the forfeiture occurred before he was convicted of any offense. A hearing was held before the trial court on April 13, 2009. At this hearing, the Commonwealth alleged that Woods' motion was

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<sup>2</sup> Woods would later allege that he never received a copy of this motion and proposed order.

<sup>3</sup> A motion for return of property is governed by Rule 588 of the Pennsylvania Rules of Criminal Procedure, whereas a petition for forfeiture is civil in nature and governed by sections 6801 and 6802 of the Judicial Code, commonly referred to as the Controlled Substances Forfeiture Act, 42 Pa. C.S. §§6801, 6802.

untimely because the property had already been forfeited. For the first time, Woods alleged that he never received notice of the Commonwealth's 2009 motion for a default order of forfeiture. Noting that Woods had been personally served with the Commonwealth's 2007 forfeiture petition, that he failed to respond to this petition, and that a forfeiture order had already been entered, the trial court denied Woods' motion for return of property. Woods thereafter filed a notice of appeal with the trial court as well as a statement of matters complained of on appeal.<sup>4</sup>

In his statement of matters complained of on appeal, Woods reiterates the allegations set forth in his motion, i.e., that the Commonwealth lacked jurisdiction to file the forfeiture petition once it dismissed the charges against him in lieu of the federal charges and, alternatively, that the forfeiture petition was premature since he has yet to be convicted of any offense. In addition, Woods raises allegations that the trial court erred in not allowing him to present evidence that the confiscated property was legally obtained and that the forfeiture, which also was included in a count in his federal indictment, violates the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution.

Importantly, Woods does not argue that the trial court erred in denying his motion on the grounds that it was untimely. As noted above, the trial court concluded that Woods' motion was untimely because an order of forfeiture had been

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<sup>4</sup> This Court's review of a trial court's decision on a petition for the return of property is limited to examining whether the findings of fact made by the trial court are supported by competent evidence and whether the trial court abused its discretion or committed an error of law. Boniella v. Commonwealth, 958 A.2d 1069 (Pa. Cmwlth. 2008), appeal denied, 600 Pa. 376, 966 A.2d 551 (2009).

entered approximately two months prior to the filing of the motion.<sup>5</sup> Given that Woods never raised an issue concerning the timeliness of his motion in his statement of matters complained of on appeal, this issue is waived. Pa. R.A.P. 1925(b)(3)(vii) (issues not included in statement of matters complained of on appeal are waived); Harrisburg Gardens, Inc. v. Susquehanna Township Zoning Hearing Board, 981 A.2d 405 (Pa. Cmwlth. 2009) (failure to state an error complained of and intended to be argued on appeal will be considered as a waiver thereof).

Woods' remaining allegations are that the Commonwealth lacked jurisdiction to file the forfeiture petition once it dismissed the charges against him in lieu of the federal charges, that the forfeiture petition was premature, that the trial court erred in not allowing him to present evidence that the confiscated property was legally obtained, and that the forfeiture constituted a violation of the Double Jeopardy Clause. However, Woods failed to raise these allegations at the hearing before the trial court and only first raises the same in his statement of matters complained of on appeal.<sup>6</sup> Thus, these allegations also are waived. Pa. R.A.P. 302(a) (issues not raised

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<sup>5</sup> Once forfeited, the property is transferred to the local district attorney or the Attorney General, depending on the jurisdiction of the law enforcement authority effecting the seizure. Section 6801(e) of the Controlled Substances Forfeiture Act, 42 Pa. C.S. §6801(e). The district attorney or Attorney General may then retain the property for official use or sell the property and distribute the proceeds in accordance with other provisions of the Controlled Substances Forfeiture Act. Sections 6801(e)(1) and (2) of the Controlled Substances Forfeiture Act, 42 Pa. C.S. §6801(e)(1), (2).

<sup>6</sup> The only issue Woods raised before the trial court concerned his alleged non-receipt of the Commonwealth's motion and proposed default order regarding the forfeiture. This issue relates to the forfeiture proceedings, however, and not the present proceedings regarding the motion for return of property (pursuant to Pa. R. Crim. P. 588, a party seeking a return of property must establish that is entitled to lawful possession thereof); Woods should have raised this issue in an appeal of the trial court's January 15, 2009, order granting the Commonwealth's forfeiture petition. Woods, however, did not file such an appeal.

in the lower court are waived); Ricci v. Matthews, 2 A.3d 1297 (Pa. Cmwlth. 2010) (issues raised for the first time in the statement of matters complained of on appeal are waived); Commonwealth v. DeLoach, 714 A.2d 483 (Pa. Cmwlth. 1998) (issues not raised at trial cannot be raised in the statement of matters complained of on appeal).<sup>7</sup>

Accordingly, the order of the trial court is affirmed.

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PATRICIA A. McCULLOUGH, Judge

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<sup>7</sup> Even if these issues had not been waived, we note that Woods would not have been successful on appeal. With respect to Woods' jurisdictional argument, we have previously rejected the argument that a state court loses jurisdiction over a forfeiture proceeding when state charges are withdrawn in lieu of federal charges and the latter include a count for forfeiture. Commonwealth v. \$3,222.00 United States Currency, 856 A.2d 288 (Pa. Cmwlth. 2004). In \$3,222.00 United States Currency, we further rejected an argument that the dismissal of a forfeiture count under the federal charges acted as res judicata as to the state forfeiture proceedings. With respect to Woods' argument that the forfeiture petition was premature prior to a conviction, we have previously indicated that the seizure and forfeiture of property under the Controlled Substances Forfeiture Act requires neither a criminal prosecution nor a conviction. Id. As to Woods' allegation that the trial court erred in not allowing him to present his case that the confiscated property was not gained illegally, this is an issue relating to the forfeiture proceedings which, similar to his notice argument above, is not appropriate in this proceeding. Finally, as to Woods' double jeopardy argument, we reiterate that the state court properly retained jurisdiction over the forfeiture action because the federal authorities never attained jurisdiction over the property and the simple inclusion of a forfeiture count in federal charges does not deprive the state court of jurisdiction. Id. Moreover, we fail to see any double jeopardy implications because the underlying state forfeiture proceedings essentially render the federal count moot.

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Appellant	:	

**ORDER**

AND NOW, this 18th day of February, 2011, the April 13, 2009, order of the Court of Common Pleas of Luzerne County is hereby affirmed.

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PATRICIA A. McCULLOUGH, Judge