

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE                    )  
  )  
          v.                                    ) C.A. No. 07M-04-020  
  )  
USHANGO OWENS,                    )  
  )  
                          Defendant.        )

Submitted: May 2, 2008  
Decided: August 5, 2008

On Petitioner Ushango Owens’ “Administrative Notice of Relief of Judgment or Order Rule 60. Authority Presented by Motion of Amicus Curiae.”

**DENIED.**

**ORDER**

Ushango Owens, *Pro Se*

JOHNSTON, J.

(1) By Order of Forfeiture dated January 16, 2008, a Superior Court Commissioner dismissed Ushango Owens' Petition for Return of Property. The Commissioner found that the property, consisting of \$663.00 in United States Currency, previously had been ordered forfeited by this Court's September 21, 2007 order sentencing Owens in connection with the charge of Resisting Arrest in Criminal I.D. Number 0702007817.

(2) Owens filed a notice of appeal in the Delaware Supreme Court on January 29, 2008. By Order dated February 14, 2008, the Supreme Court dismissed the appeal, ruling:

(4) This Court does not have the authority to hear an appeal directly from an order of a Superior Court commissioner without immediate review of that order by a Superior Court judge.<sup>1</sup> In order to obtain intermediate review of the commissioner's order, Owens must follow the procedures outlined in Superior Court Civil Rule 132.

(3) On May 2, 2008, Owens filed a document entitled "Administrative Notice of Relief of Judgment or Order Rule 60. Authority Presented by Motion of Amicus Curiae." Owens argues that the Superior Court's forfeiture order was "clear error because a Civil subject matter cannot be determined in a Criminal proceeding."

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<sup>1</sup>*Floyd v. State*, Del. Supr., No. 516, 2006, Ridgely, J. (Apr. 25, 2007); *Johnson v. Williams*, Del. Supr., No. 413, 2005, Steele, C.J. (Jan. 24, 2006).

(4) Property is subject to forfeiture when the Court determines that the property was used for criminal purposes or was obtained as the fruits of a criminal enterprise. The forfeiture in this instance was properly entered as part of the sentencing order, which is a criminal proceeding.<sup>2</sup>

(5) Superior Court Civil Rule 60 provides for relief from a judgment or order on the basis of mistake, inadvertence, excusable neglect, newly discovered evidence, fraud, or surprise. Owens has failed to demonstrate any of the grounds for Rule 60 relief.

**THEREFORE**, Petitioner Ushango Owens’ “Administrative Notice of Relief of Judgment or Order Rule 60. Authority Presented by Motion of Amicus Curiae” is hereby **DENIED**. The Court finds that the January 16, 2008 Order of Forfeiture of Superior Court Commissioner in C.A. No. 07M-04-020: is based upon findings of fact that are not clearly erroneous; is not contrary to law; and is not an abuse of discretion. The Court accepts the Forfeiture Order.<sup>3</sup>

**IT IS SO ORDERED.**

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The Honorable Mary M. Johnston

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<sup>2</sup>See 11 Del. C. § 4112.

<sup>3</sup>Super. Ct. Civ. R. 132.