

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

JAMELL LUNNON,)	
)	
Petitioner)	
v.)	C.A. No. 01M-05-020
)	
STATE OF DELAWARE)	
)	
(<i>In re</i> \$850.00 in United States Currency))	

Submitted: September 23, 2002
Decided: November 26, 2002

**On Petitioner’s *Pro Se* “Motion for Re-Argument.”
DENIED.**

ORDER

This 26th day of November, 2002, upon consideration of a *pro se* “Motion for Re-Argument” of a Superior Court Commissioner’s non case-dispositive order¹ filed by Jamell Lunnon (the “Petitioner”), it appears to the Court that:

1. Through the motion under consideration, Petitioner ultimately seeks to have an earlier Order of Forfeiture entered by this Court (resulting in Petitioner forfeiting \$1,052) vacated; the Court entered that order after Petitioner failed to timely file a Petition for Return of Property pursuant to

¹ According to Superior Court Civil Rule 132(a)(3)(ii), such a motion is required to be entitled “Motion for Reconsideration of Commissioner’s Order.”

title 16, section 4784(j) of the Delaware Code and Superior Court Civil Rule 71.3(c). Upon Petitioner's subsequent (untimely) filing of such a petition,² a Superior Court Commissioner granted a motion to dismiss filed by the State. Petitioner now requests that this Court review the Commissioner's order. Because the Court finds that the Commissioner's order was not clearly erroneous, contrary to law, or an abuse of the Commissioner's discretion, Petitioner's motion is **DENIED**.

2. During the execution of a search warrant in October 2000, the New Castle County Police seized \$1,052 from a residence located in New Castle, Delaware. Petitioner rented a room therein. Of the amount seized, \$850 was allegedly found in Petitioner's room.³ A large quantity of cocaine, a large quantity of phencyclidine (PCP), and drug paraphernalia used to weigh and store controlled substances were also found in the New Castle residence.

Petitioner later pleaded guilty to one count of Trafficking in Cocaine (title 16, section 4753A(a) of the Delaware Code) and Conspiracy Second Degree (title 11, section 512 of the Delaware Code). The State nolle prossed

² A woman named Geneva Miller, who was indicted as Petitioner's co-conspirator, allegedly also had an interest in the \$1,052 that was forfeited, but she neither joined in the untimely Petition for Return of Property or the motion currently under consideration.

³ Petitioner has moved for only \$850 of the \$1,052 forfeited to be returned to him.

the remaining charges relating to the PCP and the drug paraphernalia.

On November 6, 2000, the State sent by certified mail, return receipt requested a “Notice of Forfeiture” to Petitioner at the Gander Hill Prison (where he was being held until trial), and to Geneva Miller at the residence in New Castle. The notice informed the recipients that the State intended to file an application to this Court to order forfeiture of the \$1,052, and that the recipients could file a petition for return of the money within 45 days of the mailing of the notification or of any newspaper publication, whichever occurred later.⁴ Geneva Miller signed the return receipt on her notification, and the Department of Corrections signed the return receipt on that of the Petitioner. Additionally, a November 24, 2000 notification of seizure was published in *The Newark Post*. Petitioner and/or Geneva Miller therefore had until January 8, 2001 to submit a Petition for Return of Property.

On February 12, 2001, this Court entered an Order of Forfeiture in the amount of \$24,989.67⁵ stemming from a submission by the Department of Justice of a bulk application for forfeiture. The \$1,052 seized from the New Castle residence was included in that amount, as no Petition for Return of Property had been timely filed.

⁴ See DEL. CODE ANN. tit. 16, § 4784(j) (1995); SUPER. CT. CIV. R. 71.3(c).

⁵ In re \$24,989.67 in United States Currency, Del. Super., C.A. No. 01-M-02-005, Gebelein, J. (Feb. 12, 2001).

Petitioner then filed a Petition for Return of Property on May 4, 2001, after this Court had entered the Order of Forfeiture. The State filed a motion to dismiss on timeliness grounds. On May 20, 2002, a Superior Court Commissioner heard argument on both the petition and the motion. Relying on this Court's earlier Order of Forfeiture, the Commissioner dismissed the petition on grounds of timeliness.⁶ Petitioner now seeks reconsideration of the Commissioner's ruling.

3. Petitioner essentially argues two points in support of his motion. The first point, relating to the untimeliness of the Petition for Return of Property, states: "I was not given timely access to the DOC law library for reasons beyond my control [*i.e.*, prison overcrowding], therefore I was forced to file my...[] petition for return of property in a [un]timely manor [sic]."⁷ The second point Petitioner raises is that "I was denied an attorney [sic] and legal support of my...[petition][,] which I believe I...[was] entitled to."⁸

The State did not file a response to Petitioner's motion (although under Superior Court 132(a)(ii), it was entitled to do so).

⁶ Lunnon v. State, Del. Super., C.A. No. 01M-05-020, Vavala, Comm'r (May 20, 2002) (Bench Ruling).

⁷ Pet'r's "Motion for Re-Argument" ¶ 3.

⁸ Id., ¶ 4.

4. Superior Court Civil Rule 132(a)(iv) provides that “[a] [Superior Court] judge may reconsider any hearing or pretrial matter...[associated with a non case-dispositive issue and ruled upon by a Superior Court Commissioner]...only where it has been shown on the record that the Commissioner’s order is based upon findings of fact that are clearly erroneous, or is contrary to law, or is an abuse of discretion.”

5. Here, the Superior Court Commissioner granted the State’s motion to dismiss the Petition for Return of Property because this Court had already entered an Order of Forfeiture and Petitioner’s filing was thus untimely. Superior Court Civil Rule 71.3(c) states that in order for such a petition to be timely submitted, it must be filed “no later than 45 days after the date of the notice...[of forfeiture]...measured from the date of the mailing or the date of the publication[,], whichever shall be later[][,]” which, as stated above, was January 8, 2001. Petitioner did not submit his petition until May 4, 2001, and that filing was therefore untimely. Moreover, this Court has previously held that Rule 71.3(c) “is clearly written and even if one had a justifiable reason for failing to comply with its timing requirements...[such reason] would not merit relief.”⁹

⁹ In re \$18,000.00 and \$2,500.00 United States Currency (Lum v. State), C.A. No. 96M-08-001, 1996 WL 769329, at *2 (Del. Super. Dec. 20, 1996) (holding that when a petitioner fails to timely file a Petition for Return of Property the Court must dismiss the petition).

Although quasi-criminal in character, forfeitures under title 16, section 4784 of the Delaware Code are “characterized as civil in form[][,]” and “are considered wholly independent civil proceedings.”¹⁰ This Court has previously held that “it is well settled that ‘[t]he Sixth Amendment’s guarantee of a right to counsel has not been extended to civil proceedings’.”¹¹ Accordingly, Petitioner’s argument that he was entitled to assistance of counsel in preparing his Petition for Return of Property is erroneous.

6. With the above analysis in mind, the Court finds that Petitioner has not shown that “on the record...the Commissioner’s order [wa]s based upon findings of fact that [we]re clearly erroneous, or [wa]s contrary to law, or [wa]s an abuse of discretion.”¹² Accordingly, Petitioner’s “Motion for Re-Argument” is **DENIED**, and the Commissioner’s Order stands.

IT IS SO ORDERED.

Richard R. Cooch, J.

oc: Prothonotary
xc: Jamell Lunnon, *pro se*
James A. Rambo, Esquire, Deputy Attorney General

¹⁰ In re One 1987 Toyota, DE Reg. 461262 VIN #JT2AE8659HO256431, 621 A.2d 796, 799 (Del. Super. Ct. 1992).

¹¹ Seymour v. Delaware Real Estate Comm’n, C.A. No. 97A-04-010, 1998 WL 283398, at *2 (Del. Super. Mar. 23, 1998).

¹² SUPER. CT. CIV. R. 132(a)(iv).