

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

**IN AND FOR KENT COUNTY**

**IN THE MATTER OF:** )  
 )  
**\$1,800.00 in United** ) C.A. No. 98M-10-015 HDR  
**States Currency:** )  
 )  
**Petitioner: PHILLIP DOWNS** )

**ORDER**

On this 13th day of March, 2002, upon consideration of Phillip Downs' Petition for Return of Property, the Commissioner's Report and Recommendation, the defendant's objections to the Commissioner's Report and Recommendation, the State's response and the record in this case, it appears that:

(1) Petitioner Phillip Downs ("Petitioner") filed a Petition for Return of Property pursuant to 16 *Del. C.* § 4784 and Superior Court Civil Rule 71.3. The property sought to be returned is \$1,800.00 in United States Currency seized by the Delaware State Police on August 27, 1998. The matter was referred to a Superior Court Commissioner for findings of fact and recommendation pursuant to 10 *Del. C.* § 512(b) and Superior Court Civil Rule 132.

(2) The Commissioner has filed a Report and Recommendation after an evidentiary hearing which recommend that the petition be denied because the State has established probable cause to have initiated the forfeiture proceeding and the Petitioner has not met his burden to rebut the presumption in favor of the forfeiture.

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(3) Downs filed written objections to the Commissioner's Report and Recommendation. He has not filed a transcript of the proceedings before the Commissioner as required by Superior Court Civil Rule 133(a)(4).

(4) The Court concludes that the Downs' motion for reconsideration and objections are subject to dismissal under Superior Court Civil Rule 132(b).

**NOW, THEREFORE**, after careful and *de novo* review of the record in this action, and for the reasons stated in the Commissioner's Report and Recommendation dated January 24, 2002,

**IT IS ORDERED** that:

(A) The well-reasoned Commissioner's Report and Recommendation is adopted by the Court;

(B) The petitioner's Petition for Return of Property is ***DENIED***.

/s/ Henry duPont Ridgely

President Judge

cmh

oc: Prothonotary

xc: Hon. Andrea Maybee Freud

James A. Rambo, Esquire

Mr. Phillip Downs, DCC

Order distribution (w/Report & Recommendation)

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James A. Rambo, Esq., Deputy Attorney General, Wilmington, Delaware, for the State of Delaware.

Phillip Downs, *pro se*.

**COMMISSIONER'S REPORT AND RECOMMENDATION**

**Upon Petition for Return of Property**

ANDREA M. FREUD, Commissioner  
January 24, 2002

Phillip Downs ("Petitioner" or "Downs") has filed a Petition for Return of Property pursuant to 16 *Del. C.* § 4784 and Superior Court Civil Rule 71.3. The property sought to be returned is \$1,800.00 in United States Currency seized by the Delaware State Police on August 27, 1998. The Petition was referred to the Court Commissioner pursuant to Superior Court Civil Rule 132(a)(3). For the reasons below, I recommend the Petition be denied.

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## **I. FACTS**

At the hearing on the petition, the State called Officer Dan Wright of Delaware State Police. Officer Wright explained that in August, 1998, he was involved with special investigations in Kent County and through his investigations he became aware of Downs' drug dealing. Through a confidential informant, Officer Wright arranged to purchase cocaine from Downs. On August 11, 1998, \$80.00 in twenty dollar bill increments was given to a Michael Ridgeway to purchase cocaine from Downs. Ridgeway completed the purchase and the substance he purchased from Downs field tested positive for cocaine. Officer Wright arranged for a second covert drug buy on August 24, 1998. On this date, Ridgeway was given \$100.00 in twenty dollar bills. The substance purchased again tested positive for cocaine.

Following the second drug buy, Officer Wright sought a search warrant for Downs' residence. The warrant was executed on August 27, 1998. Downs was present at the time of the search and the \$1,800.00 in United States Currency, which is the subject of this petition was discovered on his person during the search. Five of the \$20 bills seized from Downs had the serial numbers which match the numbers on the bills given to Ridgeway to purchase the cocaine from Downs on August 11 and 24, 1998. Also found during the search was a Tanita digital scale (often used in the drug trade, according to Officer Wright), 19 grams of marijuana, 5.2 grams of crack cocaine, 0.2 grams of powder cocaine, and several utility bills listing Downs as the resident of the location of the seizure.

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Officer Wright further testified that after Downs was mirandized, he told the police that they would find the drugs in a dresser. The drugs were found where Downs had indicated they would be. On January 26, 1999, Downs plead guilty to two counts of Delivery of Cocaine and one count of Possession with Intent to Deliver Cocaine.

Downs testified on his own behalf and claimed the money had been won by him at the Dover Downs Casino. Downs introduced several Internal Revenue Service Form W-2G's - Certain Gambling Winnings forms - in an attempt to prove the \$1,800.00 was the result of luck at the slots and not drug dealing. Under cross-examination, Downs admitted to not having a bank account and to only having odd jobs. He claimed to make money to afford his gambling by cutting grass. Downs also claimed his attorney had "duped" him into pleading guilty. He could not recall writing letters to his attorney praising the attorney for a job well done.

## **II. ANALYSIS**

The Delaware Forfeiture of Drug Profits Act authorizes the State to seize and forfeit various property associated with the trade in illegal drugs for the purpose of crippling the trafficking and sale of such drugs.<sup>1</sup> In a forfeiture proceeding, the State has the initial burden of proving that probable cause exists

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<sup>1</sup> *In the Matter of One 1987 Toyota*, Del. Super., 621 A.2d 796 (1992).

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for the institution of a forfeiture.<sup>2</sup> "Once the government has met its burden of showing probable cause, the burden shifts to the claimant to show by a preponderance of the evidence that the property was not subject to forfeiture."<sup>3</sup>

With specific regard to currency, the Forfeiture Act authorizes the forfeiture of "moneys . . . furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of [the Controlled Substances Act]; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of [the Controlled Substances Act]."<sup>4</sup> More particularly, the Forfeiture Act provides that "all

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<sup>2</sup> *In the Matter of One 1985 Mercedes Benz Automobile*, Del. Super., 644 A.2d 423 (1992).

<sup>3</sup> *In the Matter of One 1987 Toyota*, 621 A.2d at 799.

<sup>4</sup> 16 *Del. C.* § 4784(a)(7). Section 4784(A)(7) states:

(a) The following shall be subject to forfeiture to the State and no property rights shall exist in them:

\* \* \* \* \*

(7) All moneys, negotiable instruments, securities or any other thing of value furnished, or intended to be furnished, in exchange for a controlled substance or drug paraphernalia in violation of this chapter; all profits or proceeds traceable to securities, assets or interest used, or intended to be used, to facilitate any violation of this chapter. However, no property interest or any owner, by reason or any act or omission established by the owner to be committed or omitted without the owner's knowledge or consent shall be forfeited in the items listed in this paragraph:

(a) All moneys, negotiable instruments or securities found in close proximity to forfeitable controlled substances, or to forfeitable records of the importation, manufacture or distribution of controlled substances are presumed to be forfeitable under this paragraph. The burden of proof is upon Petitioner of the property to rebut this presumption.

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moneys . . . found in close proximity to forfeitable controlled substances . . . are presumed to be forfeitable under [the Controlled Substances Act]".<sup>5</sup>

In this case, the State has clearly met its burden, thus the burden of proof shifts to the Petitioner to rebut the presumption of forfeiture.<sup>6</sup> The Petitioner has clearly not met his burden. Given that he pled guilty to two counts of Delivery of Cocaine and one count of Possession of Cocaine with Intent to Deliver and he merely claims to have been "duped" by his attorney without any proof, his petition must fail.<sup>7</sup> The facts presented by the State were sufficient to support the forfeiture of the cash. Petitioner's evidence is clearly insufficient to rebut the presumption.

### **III. CONCLUSION**

After hearing testimony and reviewing the applicable authority, it is the Commissioner's recommendation that the Court find the State has established probable cause to have initiated the forfeiture proceeding, and that the Petitioner has not met his burden to rebut the presumption in favor of the forfeiture. Therefore, it is further recommended that the Court deny Claimant's Petition for Return of Property.

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<sup>5</sup> 16 *Del. C.* § 4784(a)(7)a.

<sup>6</sup> *Id.*

<sup>7</sup> In a motion for post conviction relief under Superior Court Criminal Rule 61, Downs claimed ineffective assistance of counsel. His motion was denied by this Court. *State v. Downs*, Del. Super., 2001 WL 884154, Ridgely, P.J. (July 26, 2001)(Order).

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/s/ Andrea M. Freud  
Commissioner Andrea M. Freud

dmh

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