

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID BUCHANAN,	§
	§
Defendant Below-	§ No. 248, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0801031784
Plaintiff Below-	§
Appellee.	§

Submitted: May 12, 2010

Decided: July 7, 2010

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 7<sup>th</sup> day of July 2010, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, David Buchanan, filed this appeal from the Superior Court's dismissal of his petition for return of property. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Buchanan's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Buchanan in September 2008 of third degree burglary, resisting arrest,

criminal contempt, three counts of possession of a firearm by a person prohibited, and two counts of carrying a concealed deadly weapon. On direct appeal, this Court reversed Buchanan's conviction for third degree burglary but affirmed his other convictions.<sup>1</sup> On December 15, 2009, Buchanan filed a motion in the Superior Court, pursuant to Superior Court Criminal Rule 41(e), seeking the return of a "firearm collection, computer, phones, documents, livestock, real estate deeds, land use leases, electronic stored material, house contents, food, vehicals [sic], seed grain, grain contracts, business plans, checks, tools, machinery, farm chemicals, fuel, and other personal property...." The Superior Court denied Buchanan's motion on the alternative grounds that it was untimely and it lacked merit. This appeal followed.

(3) After careful consideration of the parties' respective positions on appeal, we find it manifest that the judgment below should be affirmed. This Court has held that a petition for return of property pursuant to Superior Court Criminal Rule 41(e) must be filed within a year of the defendant's criminal sentencing.<sup>2</sup> In this case, Buchanan was sentenced on December 12, 2008.

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<sup>1</sup> *Buchanan v. State*, 981 A.2d 1098 (Del. 2009).

<sup>2</sup> *Crawford v. State*, 859 A.2d 624, 628 (Del. 2004).

He did not file his petition for return of property with the Superior Court until December 15, 2009, beyond the one-year limitations period.

(4) Moreover, Rule 41(e) provides, among other things, that “[a] person aggrieved by the deprivation of property seized by the police may move the court for the return of the property on the ground that such person is entitled to lawful possession of the property.”<sup>3</sup> In this case, most of the property that Buchanan seeks to have returned was not seized by the police during the course of Buchanan’s criminal proceedings and thus are not subject to return under Rule 41(e). Moreover, the guns that had been seized by police and used as evidence in Buchanan’s criminal trial are not subject to return under Rule 41(e) because Buchanan is legally prohibited from possessing weapons and ammunition as result of his criminal convictions.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>3</sup> Del. Super. Ct. Crim. R. 41(e) (2010).