

IN THE SUPREME COURT OF THE STATE OF DELAWARE

RONALD L. CANNON, III,	§	
	§	
Petitioner/Cross Respondent	§	No. 24, 2004
Below-Appellant,	§	
	§	
v.	§	Court Below---Superior Court
	§	of the State of Delaware,
	§	in and for Sussex County
STATE OF DELAWARE,	§	C.A. Nos. 03M-03-011;
	§	03M-12-010
Respondent/Cross Petitioner	§	
Below-Appellee,	§	

Submitted: April 13, 2004

Decided: June 29, 2004

Before **STEELE**, Chief Justice, **HOLLAND** and **BERGER**, Justices

ORDER

This 29th day of June 2004, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) Ronald L. Cannon, III, filed an appeal from the Superior Court's December 19, 2003 order, which granted the State of Delaware's petition for forfeiture (C.A. No. 03M-12-010) and dismissed Cannon's petition for return of property (C.A. No. 03M-03-011). The State of Delaware has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and AFFIRM.

(2) On or about December 10, 2002, Probation and Parole conducted an administrative search of the apartment of Cannon's girlfriend, which is where Cannon was staying at the time. They found \$12,005 in cash in a bedroom closet, as well as a handgun and evidence of illegal drug activity in other areas of the apartment. Cannon, who was on probation at the time, was arrested. The State of Delaware notified Cannon of its intent to file a petition for forfeiture with respect to the \$12,005, first, on January 21, 2003, by placing a notice in the Delaware State News and, second, on January 27, 2003, by mailing certified letters to Cannon at his two last-known addresses.²

(3) On March 11, 2003, apparently in response to the notification, Cannon filed a petition for return of property.³ Subsequently, on April 4, 2003, he filed a motion to proceed in forma pauperis ("IFP").⁴ Cannon's petition alleged that he had earned the \$12,005 through his contracting business and, therefore, it was not subject to forfeiture.

¹ Supr. Ct. R. 25(a).

² One letter was sent to the Sussex Correctional Institution and the other to Cannon's girlfriend's apartment at 209 Little Creek Apartments, Laurel, Delaware.

³ Del. Code Ann. tit. 16, § 4784 (j) (2003); Super. Ct. Civ. R. 71.3.

⁴ Del. Code Ann. tit. 10, § 8804 (1999). Cannon filed the IFP petition after the Prothonotary notified him that his petition for return of property would be dismissed if he did not pay the filing fee.

(4) On April 8, 2003, the Superior Court denied Cannon's motion to proceed IFP after reviewing his affidavit, which reflected, among other things, that he had \$500 or \$600 in checking or savings accounts and owned a truck and a car. The Superior Court ordered Cannon to pay the filing fee on or before April 30, 2003, or his petition would be dismissed.

(5) On April 25, 2003, Cannon filed a letter in the Superior Court requesting reargument of the April 8, 2003 order on the ground that he had misunderstood the questions on the IFP form and, in fact, did not have any savings. Cannon also alleged that the search leading to the seizure of the cash was illegal. On May 7, 2003, the Superior Court denied Cannon's request, citing the information contained in the affidavit and the fact that the request for reargument was untimely.⁵

(6) On December 12, 2003, the State of Delaware filed a petition for forfeiture of the \$12,005. On December 19, 2003, the Superior Court granted the State's petition, stating that all the statutory requirements for forfeiture had been followed, and also dismissed Cannon's petition for return of property.

(7) In this appeal, Cannon does not address the issue of his failure to pay the filing fee or the untimeliness of his motion for reargument. Rather, he claims

⁵ Super. Ct. Civ. R. 59(e).

that the seizure of the cash was in violation of his Fourth Amendment rights because: the search was carried out without a warrant; the cash was not in plain view when it was seized; there was no consent to the search; and the search was more extensive than was permitted under the law.

(8) Property that is seized by the police during a search for illegal drugs shall automatically be forfeited to the State upon application to the Superior Court if, within 45 days of notification of the seizure by certified mail and publication, the person claiming title to the property does not institute proceedings in the Superior Court to establish that: a) they have the lawful possessory interest in the seized property; and b) the property was unlawfully seized or not subject to forfeiture.⁶

(9) While it appears that Cannon's petition for return of property was an attempt to "initiate proceedings" to establish his interest in the \$12,005, that attempt was unsuccessful due to his failure to pay the filing fee and the Superior Court's dismissal of the petition. We find no abuse of discretion on the part of the Superior Court either in dismissing Cannon's petition or in granting the State's petition for forfeiture where Cannon's IFP affidavit reflected that he had sufficient assets to pay the filing fee, Cannon did not pay the filing fee, Cannon's request for

⁶ Del. Code Ann. tit. 16, § 4784(j) (2003).

reargument was untimely, and the State provided Cannon with proper notice of its intention to seek forfeiture of the \$12,005.

(10) It is manifest on the face of Cannon's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice