

IN THE SUPREME COURT OF THE STATE OF DELAWARE

PHILLIP W. DOWNS,	§
	§
Petitioner Below-	§ No. 165, 2002
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ C.A. No. 98M-10-015
Respondent Below-	§
Appellee.	§

Submitted: February 14, 2003

Decided: March 20, 2003

Before **WALSH, HOLLAND** and **BERGER**, Justices

**ORDER**

This 20th day of March 2003, upon consideration of the briefs on appeal, the record below, the Superior Court's December 30, 2002 report following remand and the appellant's supplemental memorandum,<sup>1</sup> it appears to the Court that:

(1) In October 1988, the petitioner-appellant, Phillip W. Downs, filed a petition for return of property in the Superior Court.<sup>2</sup> The property he sought to have returned was approximately \$1,800.00 in United States currency seized by the Delaware State Police on August 27, 1998. On March

---

<sup>1</sup>The State of Delaware waived its right to submit a supplemental memorandum.

<sup>2</sup> DEL. CODE ANN. tit. 16, § 4784 (1995); SUPER. CT. CIV. R. 71.3.

13, 2002, the Superior Court denied Downs' petition. Downs filed an appeal from the Superior Court's March 13, 2002 order<sup>3</sup> and from the Superior Court's April 10, 2002 order denying his motion for a transcript of the evidentiary hearing before the commissioner at State expense.

(2) On appeal, this Court determined that the Superior Court abused its discretion by denying Downs' request for a transcript of the evidentiary hearing without first determining whether he was able to afford the cost of the transcript and by adopting the commissioner's report and recommendation without reviewing the transcript.<sup>4</sup> We remanded this matter to the Superior Court for consideration of whether Downs was able to afford the cost of the transcript, for preparation of the transcript at State expense, if necessary, and for de novo review of the commissioner's findings.<sup>5</sup>

(3) Following remand, the Superior Court determined that Downs was indigent and directed the transcript to be prepared at State expense. Following a review of the transcript, and as noted in its report following remand, the Superior Court found that the commissioner's findings were supported by the testimony presented at the hearing. The Superior Court

---

<sup>3</sup>The Superior Court adopted the January 24, 2002 report and recommendation of the commissioner. DEL. CODE ANN. tit. 10, § 512(b) (1999); SUPER. CT. CIV. R. 132.

<sup>4</sup>*Downs v. State*, Del. Supr., No. 165, 2002, Holland, J. (Oct. 29, 2002).

<sup>5</sup>SUPER. CT. CIV. R. 132(b).

adopted the commissioner's report and recommendation and denied Downs' petition for return of property.<sup>6</sup> In his supplemental memorandum, Downs claims the seized currency should be returned to him because he proved at the hearing that it represented his gambling winnings.

(4) Where the State demonstrates probable cause to have initiated a forfeiture proceeding, the burden falls on the claimant to prove by a preponderance of the evidence that a) he or she has the lawful possessory interest in the seized property; and b) the property was unlawfully seized or not subject to forfeiture.<sup>7</sup>

(5) Downs' claim is without merit. The transcript of the hearing reflects that, after two controlled buys of illegal drugs at Downs' residence, the Delaware State Police executed a search warrant at the residence. Among the items seized were a digital scale, approximately 19 grams of marijuana, 5.2 grams of crack cocaine, .2 grams of powdered cocaine, and several letters addressed to Downs reflecting that he lived at the residence. The police also seized approximately \$1,800.00 from Downs' person. While Downs testified that the currency represented his gambling winnings, the serial numbers on several of the bills matched the serial numbers of bills

---

<sup>6</sup>DEL. CODE ANN. tit. 16, § 4784 (1995); SUPER. CT. CIV. R. 71.3.

<sup>7</sup>DEL. CODE ANN. tit. 16, § 4784(j) (1) and (2) (1995).

used by the police in the two previous controlled buys of illegal drugs. The decision of the commissioner, as adopted by the Superior Court, was, thus, supported by the facts adduced at the hearing and the record reveals no error or abuse of discretion on the part of the Superior Court in adopting the findings of the commissioner and accepting the commissioner's recommendation that Downs' petition for return of property be denied.<sup>8</sup>

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

BY THE COURT:

/s/ Randy J. Holland

Justice

---

<sup>8</sup>SUPER. CT. CIV. R. 132(a) (3).