

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

\$1,560.00 :  
ex rel. Benjamin Wilson, :  
Appellant :  
v. : No. 2190 C.D. 2011  
Commonwealth of Pennsylvania : Submitted: June 29, 2012

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge  
HONORABLE MARY HANNAH LEAVITT, Judge  
HONORABLE ANNE E. COVEY, Judge

OPINION NOT REPORTED

MEMORANDUM OPINION  
BY JUDGE LEAVITT

FILED: January 10, 2013

Benjamin Wilson appeals an order of the Court of Common Pleas of Philadelphia County (trial court) dismissing as untimely his motion for return of property under Pennsylvania Rule of Criminal Procedure 588. We affirm.

On November 30, 1999, the property at issue, \$1,560 U.S. currency, was seized from Wilson when he was arrested for alleged narcotics offenses. The criminal charges against Wilson were dismissed with prejudice on June 19, 2000.

On March 6, 2000, while Wilson's criminal case was still pending, the Commonwealth filed a petition to forfeit the cash pursuant to Section 6801(a)(6)(i) of the Controlled Substances Forfeitures Act, 42 Pa. C.S. §6801(a)(6)(i). Wilson did not answer the Commonwealth's forfeiture petition, and the trial court granted a default judgment in favor of the Commonwealth on November 5, 2002.

On March 6, 2011, Wilson filed a petition for return of property pursuant to Pennsylvania Rule of Criminal Procedure 588<sup>1</sup> seeking return of the \$1,560. The Commonwealth filed a motion to dismiss Wilson's Rule 588 motion on the basis that it was untimely under *Commonwealth v. Setzer*, 392 A.2d 772 (Pa. Super. 1978). The trial court granted the Commonwealth's motion on October 17, 2011. The present appeal followed.

On appeal,<sup>2</sup> Wilson argues that the trial court erred in applying *Setzer* to find that his claim for return of property was waived. Wilson contends that his case is distinguishable from *Setzer* because he was never convicted of the underlying criminal charges. Wilson also argues that the trial court erred in denying his return motion because he never received adequate notice of the Commonwealth's forfeiture petition in 2002.

Recently, this Court rejected the waiver rule announced in *Setzer* and held that a motion for return of property must be filed within six years of the

---

<sup>1</sup> Rule 588 provides, in relevant part:

- (A) A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.
- (B) The judge hearing such motion shall receive evidence on any issue of fact necessary to the decision thereon. If the motion is granted, the property shall be restored unless the court determines that such property is contraband, in which case the court may order the property to be forfeited.

PA. R. CRIM. P. 588.

<sup>2</sup> Our scope of review on appeal from a trial court's decision on a motion for return of property is limited to determining whether the trial court's findings are supported by competent evidence and whether the trial court abused its discretion or committed an error of law. *In re One 1988 Toyota Corolla (Blue Two-Door Sedan) PA License TPV 291*, 675 A.2d 1290, 1296 n. 13 (Pa. Cmwlth. 1996).

conclusion of a criminal proceeding pursuant to 42 Pa. C.S. §5527(b). *Commonwealth v. Allen*, \_\_ A.3d \_\_ (Pa. Cmwlth., No. 1345 C.D. 2011, filed December 18, 2012). Wilson's motion for return of property, filed on March 6, 2011, was untimely because it was filed more than six years after his criminal case was concluded on June 19, 2000. Accordingly, we affirm on other grounds the order of the trial court finding that Wilson's claim for return of property was waived and dismissing his Rule 588 motion.<sup>3</sup>

---

MARY HANNAH LEAVITT, Judge

---

<sup>3</sup> Because Wilson's claim was waived we need not address his other issue, *i.e.*, that the trial court erred in denying his motion for return of property under Pa. R. Crim. P. 588 because he never received adequate notice of the Commonwealth's forfeiture petition in 2002. We agree with the trial court that a Rule 588 motion is not the appropriate avenue for setting aside a default judgment of forfeiture entered years earlier with respect to the same property. Wilson's only recourse for lodging such a challenge is to petition the trial court to open the judgment. *See* PA. R.C.P. NO. 237.3 (Relief From Judgment of Non Pros or by Default); *Schultz v. Erie Insurance Exchange*, 505 Pa. 90, 477 A.2d 471 (1984) (setting forth the requirements for opening a default judgment).

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

\$1,560.00	:	
ex rel. Benjamin Wilson,	:	
Appellant	:	
	:	
v.	:	No. 2190 C.D. 2011
	:	
Commonwealth of Pennsylvania	:	

**ORDER**

AND NOW, this 10<sup>th</sup> day of January, 2013, the order of the Court of Common Pleas of Philadelphia County in the above-captioned matter dated October 17, 2011, is AFFIRMED.

\_\_\_\_\_  
MARY HANNAH LEAVITT, Judge