IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Rennick Peart,	:	
Appellant	:	
	:	
v.	:	No. 2400 C.D. 2009
	:	Argued: October 12, 2010
Commonwealth of Pennsylvania and	:	
Lynne Abraham	:	

BEFORE: HONORABLE BERNARD L. McGINLEY, Judge
HONORABLE ROCHELLE S. FRIEDMAN, Judge
HONORABLE JIM FLAHERTY, Senior Judge

OPINION NOT REPORTED

MEMORANDUM OPINION
BY SENIOR JUDGE FRIEDMAN FILED: November 9, 2010

Rennick Peart appeals from the June 16, 2009, order of the Court of Common Pleas of Philadelphia County, Civil Trial Division (trial court), dismissing his complaint in mandamus filed against the Commonwealth of Pennsylvania (Commonwealth) and Lynne Abraham, District Attorney of Philadelphia (DA),[1] seeking to compel the Commonwealth and the DA to pay post-judgment interest under section 8101 of the Judicial Code, 42 Pa. C.S. §8101.[2] The Commonwealth

[1] Lynne Abraham was the DA at the time this action was filed. As of the date of this opinion, the current DA, Seth Williams, has not been substituted as a party.

[2] Section 8101 states:

> Except as otherwise provided by another statute, a judgment for a specific sum of money shall bear interest at the lawful rate from the date of the verdict or award, or from the date of the judgment, if the judgment is not entered upon a verdict or award.

42 Pa. C.S. §8101.

and the DA each filed preliminary objections to the complaint. The trial court sustained both sets of preliminary objections and dismissed Peart's complaint with prejudice. We affirm.

In February 1995, the Philadelphia Police Department conducted an undercover investigation of the "S & S Records" store owned by Peart and located at 5703 Chester Avenue in Philadelphia. After five days of surveillance, the police obtained and executed a search warrant for the property and seized U.S. currency and a large quantity of drug paraphernalia, but no controlled substances.[3] Later that day, the police obtained a search warrant for Peart's residence in Bala Cynwyd, Pennsylvania, where they found additional U.S. currency, drug paraphernalia, and bank documents.[4]

On May 3, 1995, the DA filed petitions for forfeiture against several of Peart's bank accounts under section 6801 of the Judicial Code, 42 Pa. C.S. §6801, commonly known as The Controlled Substances Forfeiture Act (Forfeiture Act).[5]

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[3] The following items were seized from the store: 589,400 plastic packets, baggies, and vials; a variety of cutting agents and scales; invoices for the sale and delivery of various items used to facilitate drug trafficking; personal money orders totaling $2,000.00; $185.00 in cash from Peart's wallet; $53.00 in cash from the register; assorted certificates and jewelry; and Peart's black Mercedes-Benz, which contained $1,100.00 in cash.

[4] The following items were seized from Peart's home: three cartons of bundled plastic baggies, similar to the ones found in the store; $6,003.00 in cash in a refrigerator in the garage; and $4,300.00 in cash and bank statements inside a briefcase.

[5] The Forfeiture Act requires forfeiture to law enforcement of, *inter alia*: drug paraphernalia; materials or equipment intended for use in delivering controlled substances; property intended for use as a container for controlled substances; and money or real property used or intended to be used to facilitate any violation of The Controlled Substance, Drug, Device &
(Footnote continued on next page…)

The DA sought forfeiture of U.S. currency and real property allegedly used by Peart in a criminal enterprise involving the sale and distribution of drug paraphernalia.[6]

After three evidentiary hearings, the trial court granted the forfeiture petitions. The trial court concluded that the evidence "overwhelmingly prove[d] that 'S&S Records' located at 5703 Chester Avenue was a 'front' for an illegal drug paraphernalia enterprise." (Trial Court Op., 11/30/98, at 9.) The trial court also found that the property was used to facilitate Peart's illegal sale of drug paraphernalia and there was a substantial nexus between the property and the unlawful activity. (*Id.*)[7] Thus, the trial court ordered the forfeiture of all real property, currency, and funds that Peart used in the criminal enterprise.

Peart appealed to this court, which affirmed in part, vacated in part, and remanded. Specifically, we asked the trial court to determine when Peart's illegal

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(continued…)

Cosmetic Act, Act of April 14, 1972, P.L. 233, *as amended*, 35 P.S. §§780-101 to 780-144. 42 Pa. C.S. §6801(a)(1), (3), & (6)(i).

[6] Peart was not convicted of any criminal charges. The controlled substance charges against him were dismissed in March 1995, and he was acquitted of the remaining drug paraphernalia charges in September 1996.

[7] To support a forfeiture, the law enforcement agency has the initial burden of proving, by a preponderance of the evidence, a nexus between the property seized and a controlled substance violation. *Commonwealth v. Three Hundred Ten Thousand Twenty Dollars*, 894 A.2d 154, 160-61 (Pa. Cmwlth. 2006). The burden then shifts to the person claiming the property to prove that he or she owns the property, lawfully acquired it, and did not unlawfully use or possess it. *Id.* at 161 (citing 42 Pa. C.S. §6802(j)).

drug paraphernalia business came into existence and what deposits were made into his bank accounts before that time. We then stated:

> All monies deposited in the Merrill Lynch and Corestates Accounts prior to the time when [Peart's] illegal drug paraphernalia business was in existence must be returned [to Peart] unless the evidence demonstrates that part or all of the funds were used to facilitate [Peart's] illegal drug paraphernalia business after it was in existence.

Commonwealth v. Funds in Merrill Lynch Account, Owned by Peart (*Peart I*), 777 A.2d 519, 527 (Pa. Cmwlth. 2001). Thus, we remanded the matter to the trial court for additional findings of fact and a new decision.

On remand, the parties stipulated that: (1) Peart's criminal enterprise began on October 11, 1989, and (2) before that date, Peart had a total of $151,211.17 in his Merrill Lynch and Corestates accounts. Moreover, the DA could not prove that any part of the $151,211.17 was used to promote the illegal business. Therefore, on October 13, 2006, the trial court amended its prior forfeiture order and directed that $151,211.17 be returned to Peart.

The DA appealed, and Peart filed a cross-appeal, asserting that he was entitled to 6% interest on the funds wrongly withheld from him since February 1995. This court concluded that Peart failed to establish either a common law or a statutory basis for his claim of interest. We also agreed with the trial court that the DA failed to prove that any part of the $151,211.17 was used to facilitate Peart's illegal business. *Commonwealth v. Funds in Merrill Lynch Account* (*Peart II*), 937 A.2d

595, 599-600 (Pa. Cmwlth. 2007), *appeal denied*, 598 Pa. 770, 956 A.2d 436 (2008). Therefore, we affirmed.

On October 2, 2008, after its petition for allowance of appeal was denied by the Pennsylvania Supreme Court, the DA returned $151,211.17 to Peart in accordance with the amended forfeiture order.[8] On December 23, 2008, Peart filed with the trial court a praecipe to enter judgment "in the amount of $19,959.88 in post-award interest up to December 23, 2008, plus $24.86 additional post-award interest for every day hereafter until the date of payment."

On February 23, 2009, Peart filed the instant mandamus action, demanding that both the Commonwealth and the DA pay post-judgment interest on the funds returned to him based on "the judgment entered December 23, 2008." (Complaint ¶ 11.) On March 27, 2009, the Commonwealth filed preliminary objections to the complaint. The DA also filed its own preliminary objections. On June 16, 2009, the trial court sustained both sets of preliminary objections and dismissed Peart's complaint with prejudice. Peart now appeals from that decision.[9]

Peart claims that the trial court erred in sustaining the Commonwealth's and the DA's preliminary objections because both entities are required to pay post-

[8] Before the DA returned the funds, Peart sent a letter to the DA's Office requesting the payment of post-judgment interest. Peart sent a second letter to the DA's Office requesting the payment of post-judgment interest on October 27, 2008. The DA denied both requests.

[9] Our scope of review of an order sustaining preliminary objections in the nature of a demurrer is whether, on the facts averred, the law states with certainty that no recovery is possible. *Baravordeh v. Borough Council of Prospect Park*, 699 A.2d 789, 791 n.6 (Pa. Cmwlth. 1997).

judgment interest on the amount of the returned funds. Peart asserts that: (1) he has a clear right to post-judgment interest; (2) the Commonwealth and the DA are obligated to pay post-judgment interest; and (3) he has no adequate remedy at law. Therefore, Peart claims that he is entitled to mandamus relief.[10]

1. The Commonwealth's Preliminary Objections

Peart asserts that the Commonwealth is obligated to pay post-judgment interest because the DA acted as the Commonwealth's agent in seizing his property and petitioning for forfeiture. We disagree.

As the trial court correctly concluded, liability against the Commonwealth cannot be maintained where the allegations in the complaint pertain to actions undertaken *exclusively* by the DA. (*See* Complaint ¶ 7.) The Forfeiture Act itself distinguishes between the Attorney General and the county district attorneys in terms of their rights and obligations under the Act. The ultimate beneficiary of a forfeiture is determined by which law enforcement agency seized the property at issue. Section 6801(e) of the Forfeiture Act provides that if the agency seizing the property has statewide jurisdiction, then the property is transferred to the Attorney General; if the agency seizing the property has only local jurisdiction, then the property is transferred to the DA. 42 Pa. C.S. §6801(e); *see Pettit v. Namie*, 931 A.2d 790, 792 (Pa. Cmwlth. 2007).

[10] Mandamus is an extraordinary remedy that may be granted only where: (1) the plaintiff has a clear right to the relief requested; (2) the defendant has a corresponding duty; and (3) the plaintiff has no other adequate remedy at law. *LVGC Partners, LP v. Jackson Township Board of Supervisors*, 948 A.2d 235, 237 n.4 (Pa. Cmwlth.), *appeal denied*, 600 Pa. 765, 967 A.2d 961 (2008).

Here, Peart's property was seized by the Philadelphia Police Department, which has only local jurisdiction. As such, the property was transferred to the custody of the DA pursuant to section 6801(e) of the Forfeiture Act, and the DA is the entity that returned the property to Peart. Peart does not dispute these facts. In fact, in his complaint, Peart avers that "[i]t was the [DA's] Office that held the $151,211.17 in Plaintiff's assets for more than eleven years, and it was the [DA's] Office that returned the $151,211.17 in principal to Plaintiff." (Complaint ¶ 7.) For this reason, Peart made written requests for post-judgment interest *only* with the DA, and the DA is the entity that declined to pay interest.

Accordingly, because Peart's complaint fails to state a claim against the Commonwealth, the trial court correctly sustained the Commonwealth's preliminary objections.

2. The DA's Preliminary Objections

Peart asserts that the DA is obligated to pay post-judgment interest on the amount of the returned funds pursuant to Section 8101 of the Judicial Code. Section 8101 states that interest shall accrue on "a judgment for a specific sum of money." 42 Pa. C.S. §8101. Peart claims that the amended forfeiture order, directing the return of $151,211.17 to Peart, constitutes a monetary "judgment" upon which interest shall accrue under section 8101. (Peart's Brief at 17.) This claim lacks merit.

First, Peart cites no authority establishing that post-judgment interest is an available remedy in a civil forfeiture proceeding.[11] To the contrary, the Forfeiture Act prescribes the available remedies, including the release of seized property, but does not provide for an award of interest. *See* 42 Pa. C.S. §6802(j), (k). Our court has stated that the Forfeiture Act is a "'comprehensive scheme of legislation fixing the rights and remedies of the parties.'" *Commonwealth v. 6969 Forest Avenue*, 713 A.2d 701, 706 (Pa. Cmwlth. 1998) (citation omitted). As such, "[t]he only remedy available under the Forfeiture Act is set forth in 42 Pa. C.S. §6802(j) and (k)," *id.* at 705, under which the claimant may prove that the property was lawfully acquired, possessed, and used by him or unlawfully used by another without his consent. If proven, the trial court may order the return of such property to the claimant, 42 Pa. C.S. §6802(k), as was done in this case.

Second, contrary to Peart's characterization, the amended forfeiture order was not a "judgment" for a sum of money. The order merely delineated what property belonging to Peart was subject to forfeiture and what portion of that property had to be returned to him by the agency that was holding it. Simply put, it was an order to *return property*, not an order to pay damages or otherwise compensate Peart for any wrongdoing on the part of the DA.[12] Thus, the amended forfeiture order did not turn Peart into a typical judgment creditor in a civil case.

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[11] Our court has recognized that forfeiture proceedings, while civil in form, are quasi-criminal in nature. *Commonwealth v. One 2001 Toyota Camry*, 894 A.2d 207, 209 (Pa. Cmwlth. 2006).

[12] Notably, Peart makes no allegation that the DA acted unlawfully in initially seizing his property in 1995.

Moreover, Peart's "praecipe for entry of judgment"[13] did not create a valid judgment upon which interest could be based. A praecipe to enter judgment is typically filed by a party seeking to compel the trial court to reduce its substantive rulings to final judgment so that an appeal may be taken. *See generally* Pa. R. Civ. P. No. 237 & Explanatory Comments (1973 & 2007). Here, the amended forfeiture order was clearly a final order, as *both the DA and Peart* appealed from that order, and this court affirmed the order in all respects. *See Peart II*, 937 A.2d at 600. Peart never made a request for post-judgment interest with the trial court during the forfeiture proceeding. The post-trial motion period and subsequent appeals were already completed when Peart filed his praecipe. Furthermore, the docket in the underlying forfeiture action ends with the filing of Peart's praecipe on December 23, 2008. It does not reflect the entry of any judgment or the prothonotary's giving of notice of any judgment. *See* Pa. R. Civ. P. No. 236(a), (b) (requiring prothonotary to immediately give written notice of entry of judgment to each party's attorney of record and to note in the docket the giving of such notice).

We also reject Peart's claim that he had no adequate remedy at law because the issue of post-judgment interest was "not ripe" during the forfeiture proceeding. (Peart's Brief at 20.) A request for post-judgment interest would have been ripe when the trial court ordered the return of funds at the October 13, 2006, hearing. Peart could have either orally moved for interest at the conclusion of the hearing or filed a written motion to amend the forfeiture order to include post-

[13] Peart claims that he presented his praecipe to the prothonotary's office for filing on December 23, 2008, but, due to a breakdown in the court system, the praecipe was not docketed at the time. It appears that the praecipe was not docketed until sometime during the pendency of the instant mandamus action in 2009.

judgment interest before the appeals were filed. *See, e.g., Green Valley Dry Cleaners, Inc. v. Westmoreland County Industrial Development Corporation*, 861 A.2d 1013, 1014-15 (Pa. Cmwlth. 2004) (reviewing trial court order partially granting and partially denying plaintiff's motion to amend reinstated jury verdict to include post-judgment interest).

Finally, Peart argues that while the issue of *pre-judgment* interest was fully litigated in the 2007 appeal, the issue of *post-judgment* interest was never raised or addressed. However, it appears that Peart's entitlement to any interest was litigated in the prior appeal. In addressing Peart's request for interest, this court concluded that:

> the Commonwealth properly sought to recover Defendant's money under the [Forfeiture] Act. It did not wrongfully withhold the money and has had no fixed duty to pay it pending court determination. As such, we conclude that the trial court did not err in denying Defendant's claim for interest.

Peart II, 937 A.2d at 600. While pre-judgment interest was certainly a component of Peart's claim on appeal, nothing in our court's opinion limited its ruling to pre-judgment interest. In fact, the opinion indicates that post-judgment interest *was* at issue. Our court specifically noted that Peart sought interest "on the funds wrongly held from him for twelve years," i.e., from the date of the initial seizure (1995)

through the date of the appeal (2007). *Id.* at 598; *see id.* at 600 (stating that Peart sought interest on funds withheld "since February 13, 1995").[14]

Accordingly, we agree with the trial court that Peart failed to establish a clear right to interest or a corresponding duty on the part of the Commonwealth or the DA to pay interest in this case. Because the trial court properly sustained both sets of preliminary objections, we affirm.

ROCHELLE S. FRIEDMAN, Senior Judge

[14] The trial court likewise found that the issue of post-judgment interest was litigated during the prior forfeiture proceeding:

> [T]he Court already entertained but rejected the request for interest, whether it be prejudgment or postjudgment interest. . . . The propriety and adequacy of the imposition of interest, as a remedy, was thus entertained and declined as a tenable remedy.

(Trial Court Order, 6/16/09, at 2 n.1.)

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O R D E R

AND NOW, this 9th day of November, 2010, we hereby affirm the June 16, 2009, order of the Court of Common Pleas of Philadelphia County, Civil Trial Division.

ROCHELLE S. FRIEDMAN, Senior Judge