

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA

Appellee

v.

STEVEN ANDREW VONEIDA

APPEAL OF: KENNETH L. VONEIDA

IN THE SUPERIOR COURT
OF PENNSYLVANIA

No. 1500 MDA 2017

Appeal from the Order Entered September 8, 2017
In the Court of Common Pleas of Dauphin County
Criminal Division at No.: CP-22-CR-0003356-2007

BEFORE: STABILE, NICHOLS, and PLATT,* JJ.

MEMORANDUM BY STABILE, J.:

FILED OCTOBER 10, 2018

Appellant Kenneth L. Voneida *pro se* appeals from the September 8, 2017 order entered in the Court of Common Pleas of Dauphin County (“trial court”), denying his self-styled petition for return of property. Upon review, we vacate and remand.

The facts and procedural history of this case are undisputed.¹ On April 27, 2007, Chief Kevin Stoehr of the Pennsylvania State University Police – Harrisburg Campus – contacted Steven Andrew Voneida (“Defendant”), who is Appellant’s son and the defendant in the above-captioned criminal matter, regarding threatening statements Defendant had posted on the internet. The

* Retired Senior Judge assigned to the Superior Court.

¹ Unless otherwise noted, these facts are taken from the Trial Court Opinion, 9/8/17, at 1–4.

postings concerned the then recent shooting spree undertaken by a student at Virginia Tech University, which Defendant suggested he would replicate on a much larger scale. When Chief Stoehr explained that people who viewed the postings had alerted the authorities, Defendant informed Chief Stoehr that he would restrict access to his web site.

On May 1, 2007, Defendant met with Chief Stoehr and Dr. Donald Holtzman, Senior Director of Student Life and Enrollment Services, to discuss the impact of his postings on his academic standing. During this meeting, Chief Stoehr asked Defendant if he possessed any weapons. Defendant stated that he had two hunting rifles at his home, located at 6111 Blue Stone Avenue, Harrisburg, Pennsylvania.

Subsequent to his meeting, Special Agent Christopher Nawrocki of the Federal Bureau of Investigation obtained an arrest warrant for Defendant alleging a violation of 18 U.S.C. § 875, threatening communications by wire. On July 2, 2007, Lower Paxton Township Police obtained a search warrant for Defendant's residence after Senior Deputy District Attorney Michael Consiglio verified that Defendant had been adjudicated delinquent of aggravated assault in 1997 and was therefore prohibited from possessing firearms pursuant to Section 6105 of the Crimes Code, 18 Pa.C.S.A. § 6105(a). That same day, federal agents arrested Defendant and Lower Paxton Police executed their search warrant at Defendant's residence. A semi-automatic rifle was found in Defendant's bedroom, while another rifle was discovered in a common area of the home.

Defendant eventually was charged with, *inter alia*, persons not to own or possess firearms. Following a bench trial, the trial court found Defendant guilty of persons not to possess. On March 18, 2008, the trial court sentenced Defendant to three to ten years' incarceration. On August 6, 2009, this Court affirmed the judgment of sentence. Defendant did not file a petition for allowance of appeal.

Defendant unsuccessfully petitioned twice for relief under the Post Conviction Relief Act ("PCRA"). In fact, on January 5, 2016, we affirmed the PCRA court's dismissal as untimely of Defendant's second PCRA petition. ***Commonwealth v. Voneida***, No. 1608 MDA, unpublished memorandum (Pa. Super. Filed January 5, 2016), ***appeal denied***, 145 A.3d 726 (Pa. 2016).

On March 29, 2017, Defendant's father, Appellant, *pro se* filed a "Petition For My Article I § 1, Article I § 9, 14th Amendment Right of Challenging Subject Matter Used For Obtaining Court Jurisdiction Over My Property," which spanned over 46 pages. In this self-styled petition, Appellant, who claimed to be the lawful owner of the rifles, sought, among other things, the rifles' return.² The trial court treated Appellant's petition as

² Generally, a criminal defendant must file a motion for return of property while the trial court retains jurisdiction, which is up to thirty days after disposition. ***See Commonwealth v. Allen***, 107 A.3d 709, 718 (Pa. 2014); 42 Pa.C.S.A. § 5505. However, a six-year statute of limitations, as set forth in 42 Pa.C.S.A. § 5527(b) (catchall provision), applies when the motion for return of property is filed by someone who is not a defendant in the underlying criminal case or against whom criminal charges were never filed. ***See re Return of Personal Property***, 180 A.3d 1288, 1293 (Pa. Cmwlth. 2018).

a petition for return of property under Pa.R.Crim.P. 588.³ On September 8, 2017, without the benefit of hearing, the trial court concluded that Appellant was not entitled to the return of the rifles. Appellant *pro se* timely appealed to this Court.⁴ The trial court directed Appellant to file a Pa.R.A.P. 1925(b) statement of errors complained of on appeal. Appellant complied. In response, the trial court issued a Pa.R.A.P. 1925(a) opinion, whereby it adopted its the September 8, 2017 opinion denying Appellant's petition.

On appeal, Appellant argues that the trial court abused its discretion in denying his petition for return of property.

Nonetheless, a statute-of-limitations defense can be waived if not raised before the trial court and should not be raised by a trial court on its own. ***Dash v. Wilap Corp.***, 495 A.2d 950, 954-55 (Pa. Super. 1985).

³ Appellant also sought (1) to strike from the record all references to Appellant and the rifles that allegedly belong to him, and (2) to have the trial court impose sanctions on law enforcement officers and attorneys who engaged in committing alleged violations of Appellant's civil rights.

⁴ Although the Commonwealth Court may have been the proper venue in which to file an appeal from the denial of a motion to return property, ***see In re One 1988 Toyota Corolla***, 675 A.2d 1290, 1296 (Pa. Cmwlth. 1996) (holding that the Commonwealth Court has the authority to hear appeals from orders disposing of motions for the return of property), neither party has objected to our exercise of appellate jurisdiction, and there is significant body of Superior Court decisional law on this subject. Accordingly, we have elected to decide the merits of this appeal rather than transfer it to the Commonwealth Court. ***See*** Pa.R.A.P. 741(a); ***accord Shumake v. Philadelphia Board of Education***, 686 A.2d 22, 24 n.5 (Pa. Super. 1996) (while the Commonwealth Court had jurisdiction over appeal in civil action against school district, Superior Court retained jurisdiction where neither party objected); ***see also Rosenberg v. Holy Redeemer Hospital***, 506 A.2d 408, 409-410 (1986) (accepting jurisdiction over appeal where Commonwealth Court had jurisdiction but where appellee did not object), ***appeal denied***, 523 A.2d 1132 (Pa. 1986).

Our standard of review in appeals from the denial of a motion for return of property is abuse of discretion. **See *Beaston v. Ebersole***, 986 A.2d 876 (Pa. Super. 2009) (*en banc*).

In conducting our review, we bear in mind that it is the province of the trial court to judge the credibility of the witnesses and weigh the testimony offered. It is not the duty of an appellate court to act as fact-finder, but to determine whether is sufficient evidence in the record to support the facts as found by the trial court.

Commonwealth v. Durham, 9 A.3d 641, 645 (Pa. Super. 2010) (quotation marks and internal citations omitted), ***appeal denied***, 19 A.3d 1050 (Pa. 2011).

Appellant's right to seek the return of his seized property (two rifles) is governed by Pennsylvania Rule of Criminal Procedure 588, which 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(A) and (B) (emphasis added). It is settled that "on any motion for return of property, the moving party must establish by a preponderance of evidence entitlement to lawful possession."
Commonwealth v. Matsinger, 68 A.3d 390, 397 (Pa. Cmwlth. 2013).

Differently put,

[o]n a motion for return of property, the moving party has the burden of proving ownership or lawful possession of the items. The burden then shifts to the Commonwealth to prove, by a preponderance of the evidence, that the property is contraband.

[D]erivative contraband is property which is innocent in itself but which has been used in the perpetration of an unlawful act. Property is not derivative contraband, however, merely because it is owned or used by someone who has been engaged in criminal conduct. Rather, the Commonwealth must establish a specific nexus between the property and the alleged criminal activity.

Durham, 9 A.3d at 645-46 (internal quotation marks, citations, and footnote omitted).

Instantly, based upon our review of the record, we are unable to engage in a meaningful appellate review. As noted earlier, the trial court here failed to conduct an evidentiary hearing on Appellant's *pro se* petition, as required under Rule 588, and, as a result, did not render any findings of fact with respect to the allegations contained in the petition. Thus, because the trial court failed to hold an evidentiary hearing and properly fulfill its fact-finding duties regarding, among other things, the issue of ownership of the rifles, we vacate the trial court's September 8, 2017, order and remand the matter to the trial court to conduct an evidentiary hearing.

Order vacated. Case remanded. Jurisdiction relinquished.

Judgment Entered.



Joseph D. Seletyn, Esq.
Prothonotary

Date: 10/10/2018