

NON-PRECEDENTIAL DECISION – SEE SUPERIOR COURT I.O.P 65.37

COMMONWEALTH OF PENNSYLVANIA,	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
Appellant	:	
	:	
v.	:	
	:	
DONALD J. CHRISKO,	:	
	:	
Appellee	:	No. 778 WDA 2012

Appeal from the Order April 9, 2012,
Court of Common Pleas, Cambria County,
Criminal Division at No. CP-11-CR-0001885-2003

BEFORE: DONOHUE, SHOGAN and WECHT, JJ.

MEMORANDUM BY DONOHUE, J.:

Filed: February 6, 2013

The Commonwealth of Pennsylvania (“the Commonwealth”) appeals from the April 9, 2012 order entered by the Court of Common Pleas, Cambria County, granting the Motion for Return of Property filed by Donald J. Chrisko (“Chrisko”). As detailed later in this Memorandum, the order requires the Commonwealth to transfer to Chrisko’s daughter 26 firearms obtained as a result of Chrisko’s convictions of two felony drug offenses. After careful review, we vacate the trial court’s order.¹

¹ As this is a civil case involving the Commonwealth, this matter is within the exclusive jurisdiction of the Commonwealth Court. 42 Pa.C.S.A. § 762(a); **Commonwealth v. Johnson**, 931 A.2d 781, 783 (Pa. Commw. 2007) (“It is well settled that a proceeding seeking the return of property is quasi-criminal in character, but it is civil in form.”). Because Chrisko did not file an objection to this Court’s jurisdiction, we have jurisdiction to decide the appeal. 42 Pa.C.S.A. § 704(a)(“The failure of an appellee to file an objection to the jurisdiction of an appellate court within such time as may be specified by general rule, shall, unless the appellate court otherwise orders,

The record reflects that on May 16, 2003, The Pennsylvania State Police conducted a search of Chrisko's residence pursuant to a warrant. Based on evidence seized in the search on October 13, 2003, the Commonwealth charged Chrisko with four counts of possession of a controlled substance, two counts of possession with intent to deliver a controlled substance, and one count each of possession of drug paraphernalia, causing or risking catastrophe, recklessly endangering another person, and prohibited weapons offenses.² On May 11, 2004, Chrisko pled guilty to two ungraded felony counts of possession with intent to deliver a controlled substance. The remaining charges were *nol prossed* pursuant to the plea agreement. On November 3, 2004, the trial court sentenced Chrisko to nine months of house arrest followed by six years and two months of probation. His plea prohibited him from possessing the 26 firearms he owned at the time of the search of his residence, and the Commonwealth obtained possession of them.³

operate to perfect the appellate jurisdiction of such appellate court, notwithstanding any provision of this title [...] vesting jurisdiction of such appeal in another appellate court.").

² 35 P.S. § 780-113(a)(16), (30), (32); 18 Pa.C.S.A. § 3302(b), 2706, 908(a).

³ There is no evidence in the certified record explaining how the Commonwealth came to possess Chrisko's 26 firearms. At oral argument and in its brief on appeal, the Commonwealth states that it seized the guns at the time of Chrisko's arrest on May 16, 2003. Commonwealth's Brief at 5. In his Motion for Return of Property and Reply to the Commonwealth's New

On November 10, 2011, Chrisko filed a Motion for Return of Property requesting that the Commonwealth transfer the firearms to his daughter, who lives in Ohio. The Commonwealth filed an Answer, acknowledging that it possessed the firearms and that they played no role in the charges filed against Chrisko, but denying that it must release the firearms to a person designated by Chrisko. The Commonwealth also raised New Matter, asserting that Chrisko's request was barred by the applicable two-year statute of limitations contained in 42 Pa.C.S.A. § 5524(6) and that he failed to request the transfer of the firearms within 60 days of his guilty plea as required by 18 Pa.C.S.A. § 6105(a).⁴ Commonwealth's Answer and New

Matter, respectively, Chrisko states that he "relinquish[ed] his 26 firearms to the Cambria County District Attorney's Office" as a result of his felony pleas, and that he "transferred the firearms to the possession of the Commonwealth[.]" Motion for Return of Property, 11/10/11, at ¶ 6; Answer to Commonwealth's New Matter, 1/9/12, at ¶ 17. Chrisko's statements are at odds with his filing a motion for return of property pursuant to Pa.R.Crim.P. 588, which permits "[a] person **aggrieved by a search and seizure** [... to] move for the return of the property on the ground that he or she is entitled to lawful possession thereof." Pa.R.Crim.P. 588(A) (emphasis added). We need not resolve this discrepancy since the manner in which the Commonwealth came to be in possession of the firearms is not relevant to the disposition of this appeal.

⁴ 18 Pa.C.S.A. § 6105(a) states, in relevant part:

- (1) A person who has been convicted of an offense enumerated in subsection (b), within or without this Commonwealth, regardless of the length of sentence or whose conduct meets the criteria in subsection (c) shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use,

Matter, 1/6/12, at ¶¶ 14-19. Chrisko filed a timely Response to the Commonwealth's New Matter denying the averments contained therein and asserting that he transferred the firearms to the Commonwealth in compliance with § 6105 and that the Commonwealth can act as his agent in transferring the firearms to his daughter. He further averred that this Court's decision in ***Commonwealth v. Neiman***, 5 A.3d 353 (Pa. Super. 2010) (*en banc*), *appeal granted in part*, 611 Pa. 419, 27 A.3d 984 (2011), declared the statute of limitations in § 5524 unconstitutional.⁵

control, sell, transfer or manufacture a firearm in this Commonwealth.

(2)(i) A person who is prohibited from possessing, using, controlling, selling, transferring or manufacturing a firearm under paragraph (1) or subsection (b) or (c) shall have a reasonable period of time, not to exceed 60 days from the date of the imposition of the disability under this subsection, in which to sell or transfer that person's firearms to another eligible person who is not a member of the prohibited person's household.

18 Pa.C.S.A. § 6105(a)(1), (2)(i). "Under section 6501 [*sic*], conviction of an enumerated offense [...] imposes upon a defendant the disability to possess, use, control, sell, transfer or manufacture a firearm[.]" ***Commonwealth v. Appleby***, 856 A.2d 191, 194 (Pa. Super. 2004) (emphasis omitted). Although there is some debate over whether "conviction" occurs at the time of a defendant's guilty plea or at the time of his sentencing, *see id.*, it is unnecessary for us to resolve that question in the case at bar because it has no bearing on the outcome of this case since under either scenario, Chrisko's attempt to transfer is outside of the 60-day window provided in the statute.

⁵ In ***Neiman***, this Court declared 42 Pa.C.S.A. § 5524 unconstitutional because the legislative enactment of the statute violated the single subject

Following argument, the parties submitted briefs addressing, *inter alia*, whether Chrisko had standing to bring the motion requesting the transfer of the firearms to his daughter. On April 10, 2012, the trial court granted Chrisko's motion, ordering counsel for Chrisko to produce to the Commonwealth "a background or appropriate record check" of Chrisko's daughter to certify that she is permitted to possess weapons in Pennsylvania or Ohio and to arrange with the Commonwealth a date, time, and location to transfer the weapons to Chrisko's daughter. Trial Court Order, 4/10/12.

On May 9, 2012, the Commonwealth filed both a notice of appeal and motion for reconsideration, the latter of which the trial court dismissed on May 23, 2012.

On appeal, the Commonwealth raises three arguments for our review:

1. Whether the trial court erred by granting relief to [Chrisko], a convicted felon, allowing him to transfer his firearms beyond the requisite 60-day limitations period in violation of the Uniform Firearms Act at Section 6105(a)(2) of Title 18 of the Code?

rule contained in the Pennsylvania Constitution. **Neiman**, 5 A.3d at 359; **see** PA. CONST. art. III, § 3 ("No bill shall be passed containing more than one subject, which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof."). On October 19, 2010, this Court stayed its decision in **Neiman** pending review by the Pennsylvania Supreme Court. **Commonwealth v. Neiman**, 2010 WL 4117667 (Pa. Super. Oct. 19, 2010). **Neiman** has yet to be decided by the Pennsylvania Supreme Court. Thus, the two-year statute of limitations provision contained in 42 Pa.C.S.A. § 5524(6) maintains its full force and effect. Our review of the Commonwealth's brief on appeal, however, reveals that it abandoned this argument, and we therefore do not consider whether the two-year statute of limitations was applicable to the case before us and, if so, whether it barred Chrisko's request.

2. Whether the trial court erred by granting relief to [Chrisko], a convicted felon, allowing him to possess and transfer his firearms in violation of the Uniform Firearms Act at Section 6105(a) of Title 18 of the Code?
3. Whether the trial court erred by granting relief to [Chrisko], a convicted felon, who lacks standing to request the procurement of firearms for a third person who is not a named party to this action?

The Commonwealth's Brief at 4.

We review the propriety of a trial court's ruling on a motion for the return of property for an abuse of discretion. *Commonwealth v. Durham*, 9 A.3d 641, 645 (Pa. Super. 2010). An abuse of discretion is more than a determination that the appellate court might have reached a different conclusion than the trial court. *Glaab v. Honeywell Int'l, Inc.*, 56 A.3d 693, 697 (Pa. Super. 2012). "An abuse of discretion is not merely an error of judgment, but if in reaching a conclusion the law is overridden or misapplied, or the judgment exercised is manifestly unreasonable, or the result of partiality, prejudice, bias or ill-will, as shown by the evidence or the record, discretion is abused." *Id.* (citation omitted).

The trial court found that because Chrisko was not in possession of the firearms during the 60 days following his convictions, when he could have lawfully transferred the firearms to his daughter, and because the Commonwealth failed to commence forfeiture proceedings pursuant to 42 Pa.C.S.A. § 6801(c) (relating to seizure of property subject to forfeiture

without process) and 6802 (relating to the procedure for instituting a forfeiture action), the denial of Chrisko's motion to transfer to his daughter the "noncontraband firearms that had been seized from [his] home would deprive [him] of his property without due process of law, even though [Chrisko], a convicted felon, was prohibited from distributing the firearms." Trial Court Opinion, 6/19/12, at 1-2; Trial Court Opinion, 4/10/12, at 2.⁶

We begin by addressing the trial court's (and Chrisko's⁷) reliance on the Commonwealth's failure to commence a forfeiture action pursuant to 42 Pa.C.S.A. §§ 6801(c) and 6802 in support of the order allowing transfer of the firearms to Chrisko's daughter. We note that neither the trial court nor Chrisko cites any authority to support the bald assertion that the Commonwealth was required to initiate forfeiture proceedings. The

⁶ The trial court also states that the first issue raised by the Commonwealth "may not be suitable for appeal" by the Commonwealth because it "raises a question of fact relative to which party possessed the weapons during the 60-day limitation period set forth in 18 Pa.C.S.[A]. § 6105(a)(2)," and "the Commonwealth may appeal from a contrary ruling in a criminal case only when the ruling is based upon a pure question of law and no issues of fact are involved." Trial Court Opinion, 6/19/12, at 1 (citing **Commonwealth v. Rawles**, 501 Pa. 514, 462 A.2d 619 (1982); Pa.R.A.P. 341(e)). We disagree with the trial court that the Commonwealth is raising a question as to who possessed the firearms during the 60 days following Chrisko's conviction; rather, the Commonwealth's argument both before the trial court and this Court is that Chrisko's request for transfer is untimely, as it was made more than 60 days after his conviction. Regardless of how the issue is framed, however, as stated *supra*, this is a civil appeal, not a criminal appeal by the Commonwealth, and thus the limitation regarding issues that may be raised on appeal by the Commonwealth stated in **Rawles** and Rule 341(e) has no applicability. **See Johnson**, 931 A.2d at 783; *supra* n.1.

⁷ **See** Chrisko's Brief at 4-6.

assertion is in error. To the contrary, the law indicates that not all firearms obtained by the Commonwealth during a criminal investigation are subject to forfeiture. According to § 6801, addressing controlled substance forfeitures, firearms subject to forfeiture include those that “are used or intended for use to facilitate a violation of The Controlled Substance, Drug, Device and Cosmetic Act.” 42 Pa.C.S.A. § 6801(a)(7).

It is uncontested that the firearms obtained by the Commonwealth were not used in the commission of the underlying violations of the Controlled Substance, Drug, Device and Cosmetic Act. **See** Motion for Return of Property, 11/10/11, at ¶ 8; Answer and New Matter, 1/6/12, at ¶ 8. Furthermore, neither party suggests, and the record does not reflect, that Chrisko intended to use the firearms in question to commit other violations of the Controlled Substance, Drug, Device and Cosmetic Act. **See** Motion for Return of Property, 11/10/11, at ¶ 8; Commonwealth’s Brief at 5. As the 26 firearms were not subject to forfeiture pursuant to § 6801(a)(7), we disagree with the trial court that the Commonwealth should have commenced forfeiture proceedings.

Moreover, we find it odd to focus on the lack of a forfeiture proceeding where it is clear beyond a question that Chrisko cannot possess the firearms as a result of his guilty pleas to disabling felonies. Even if the Commonwealth improperly obtained the firearms (which it did not), Chrisko

would still not be able to possess or control the weapons as a result of his felony convictions.

The record reflects that Chrisko initiated the proceedings by filing a motion for return of property pursuant to Pa.R.Crim.P. 588, which places on Chrisko "the initial burden of coming forth with evidence of lawful entitlement to possession of the property." *Commonwealth v. Janda*, 14 A.3d 147, 166 (Pa. Super. 2011). It is uncontested Chrisko was not permitted to possess, transfer, use sell, manufacture, obtain, or control any firearms because of his felony drug convictions. **See** Motion for Return of Property, 11/10/11, at ¶ 6; 18 Pa.C.S.A. § 6105(a)(1), (c)(2) (stating that a person convicted of a felony drug offense punishable by a term of imprisonment of over two years "shall not possess, use, control, sell, transfer or manufacture or obtain a license to possess, use, control, sell, transfer or manufacture a firearm in this Commonwealth."); 35 P.S. § 780-113(f)(2) (a violation of subsection (a)(30) is punishable by a term of imprisonment not to exceed five years). In an attempt to avoid that prohibition, Chrisko requested that the guns not be returned to him, but to his daughter, who lived in Ohio. The law, however, entitled Chrisko to transfer or sell his firearms to "another eligible person who is not a member of the prohibited person's household" within **60 days** of his conviction. 18 Pa.C.S.A. § 6105(a)(2)(i); *see supra* n.4.

We find compelling the factually similar case of *Commonwealth v. Morelli*, 55 A.3d 177 (Pa. Commw. 2012), that was recently decided by the Commonwealth Court.⁸ In that case, Morelli pled guilty to a felony drug charge in September of 2006 that subjected him to the firearms prohibitions contained in § 6105(a). In July of 2011, Morelli filed a motion pursuant to Rule 588 seeking the return of six firearms the Commonwealth seized at the time of the execution of the search warrant, requesting that they be transferred to his father. The trial court denied the request and he appealed. In affirming the decision of the trial court, the Commonwealth Court held, in relevant part, as follows:

Morelli's disability from possession and transfer of firearms was imposed by his guilty plea on September 7, 2006. Morelli's right to transfer any guns that belonged to him before his conviction therefore expired in November 2006, years before he moved for return and transfer of these guns. Because Morelli's right to transfer firearms was time-barred long before he filed his motion for return and transfer of the guns to his father in July 2011, the trial court was correct in holding that his conviction alone was a valid ground for denying the motion for return of property.

Id. at 181.

⁸ Although not bound by the decisions of the Commonwealth Court, the Superior Court may rely on them if we find them to be persuasive. *NASDAQ OMX PHLX, Inc. v. PennMont Sec.*, 52 A.3d 296, 308 (Pa. Super. 2012). We find the decision of the Commonwealth Court particularly compelling and persuasive in the matter before us because, as stated *supra*, this is a matter that the Commonwealth Court typically decides. *See supra* n.1.

In the case at bar, Chrisko was convicted in 2004. Chrisko admits that at the very least he acquiesced to and was aware of the Commonwealth's possession of the firearms at the time of his conviction. **See** Motion for Return of Property, 11/10/11, at ¶ 6; Answer to Commonwealth's New Matter, 1/9/12, at ¶ 17. It was not until seven years later that he requested the transfer of the firearms to his daughter. As stated in *Morelli*, this request is time-barred.⁹ *Morelli*, 55 A.3d at 181.

The trial court's observation that "Chrisko was not in possession of the guns during the 60 days following his conviction" does not have any bearing on this case. **See** Trial Court Opinion, 4/10/12, at 2. Indeed, he did not have possession of the guns at the time he filed the motion underlying this appeal seven years after his conviction. There was no impediment to Chrisko making this request during the 60-day grace period prescribed by § 6105. Moreover, the 60-day time-bar is a direct expression of our Legislature. There is nothing in that statute or anywhere else in Title 18 that suggests there are exceptions to the 60-day limitation. In fact, just the opposite is true – the statute specifically states that the period of time for a

⁹ Chrisko attempts to differentiate this case from *Morelli* based upon the fact that the Commonwealth in *Morelli* commenced forfeiture proceedings in response to Morelli filing a motion for the return of the firearms. Chrisko's Brief at 4-5. Unlike in this case, the firearms seized by the Commonwealth in *Morelli* were derivative contraband, **see** *Morelli*, 55 A.3d at 179, and thus the initiation of forfeiture proceedings in that case was proper. As stated hereinabove, however, such proceedings were not required in the case at bar, and this procedural difference therefore does not affect the applicability of the holding in *Morelli* to the instant case.

prohibited person to sell or transfer his or her firearms is “**not to exceed 60 days**[.]” 18 Pa.C.S.A. § 6501(a)(2)(ii) (emphasis added).

Chrisko nonetheless contends that transferring the firearms to his daughter was permissible, as his request does not require that he “physically possess the firearms.” Chrisko’s Brief at 9 (emphasis omitted). This argument in support of affirmance is unavailing, because, as stated above, the law does not simply prohibit his **possession** of firearms, but also unequivocally prohibits him from having **control** over firearms more than 60 days after his conviction. 18 Pa.C.S.A. § 6105(a)(1). “It is well settled that when interpreting a statute, the court must give plain meaning to the words of the statute. It is not a court’s place to imbue the statute with a meaning other than that dictated by the plain and unambiguous language of the statute.” *J.C.B. v. Pennsylvania State Police*, 35 A.3d 792, 796 (Pa. Super. 2012), *appeal denied*, ___ Pa. ___, 49 A.3d 444 (2012) (quotation and citations omitted); 1 Pa.C.S.A. § 1921(b). There is no question that Chrisko’s attempt to direct the transfer of the guns from the Commonwealth to his daughter is an attempt to exercise control over the firearms. **See** BLACK’S LAW DICTIONARY (9th ed. 2009) (defining the verb “control” in relevant part, as: “To exercise power or influence over” and “to regulate or govern”).

As Chrisko’s motion to transfer the firearms was filed more than 60 days after the date of his convictions, we agree with the Commonwealth that

42 Pa.S.C.A § 6105(a) bars relief. Therefore, the trial court abused its discretion by granting Chrisko's Motion for Return of Property.¹⁰

Order vacated. Jurisdiction relinquished.

¹⁰ Based upon our resolution of the first issue, we need not decide the remaining issues raised by the Commonwealth on appeal.