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Summary of Maiola v. State of Nevada, 120 Nev. Adv. Op. 76

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Maiola v. State of Nevada, 120 Nev. Adv. Op. 76 (October 26, 2004)[1]

CRIMINAL LAW – PETITION FOR REHEARING

Summary

Petition for rehearing in an appeal from a district court order denying a motion for return of property under NRS 179.085.

Disposition/Outcome

Petition granted and prior opinion affirmed. The district court that determines that property is illegally seized has equitable jurisdiction to determine whether the forfeited property should be returned to its owner.

Factual and Procedural History

On February 10, 2000, appellant James Maiola was arrested by the Las Vegas Metropolitan Police Department. During his arrest LVMPD seized $543 in cash and a gun that appellant had in his possession. On August 4, 2000, the district attorney filed a civil complaint seeking forfeiture of those two assets. The district attorney was unable to personally serve the civil complaint on appellant, so service was made by publication in the Nevada Legal News. While the notice of forfeiture was published appellant, his counsel, and a deputy district attorney were present in court for hearings related to criminal charges against appellant. On October 17, 2000 a default judgment was granted against appellant's assets of $543 and the gun.

On November 1, 2001 the district court granted a motion filed by appellant to suppress all evidence recovered as a result of an unlawful search. On February 2, 2002 the State stipulated to dismiss the criminal case against appellant. The district court ordered that the money be returned to appellant if a forfeiture action had not been commenced. On February 12, 2002 appellant filed a motion for return of the $543, in the court that heard the motion to suppress. The district court decided that it had no basis to consider appellant's motion for return of property because a forfeiture action had already been completed.

Discussion

Appellant's argument is that his due process rights were violated because the State did not exercise due diligence in notifying him of the forfeiture proceeding. In *Price v. Dunn*, the court noted that the Due Process Clause requires a party to exercise due diligence in notifying a defendant of a pending action.[2] Here, appellant was required to appear in court at a specific time and date, and he did appear at that time and date, along with a deputy district attorney. The section of the district attorney's office that filed the civil complaint for forfeiture cannot ignore information available in another section and consequently claim not to be able to locate a defendant. In appellant's case, the notice of

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2Price v. Dunn,106 Nev. 100, 103, 787 P.2d 785, 787 (1990).

the forfeiture was inadequate given the information available to the district attorney's office. A default forfeiture judgment that is not supported by proper service is void.

The state argued that the criminal court which dismissed the case against appellant has no jurisdiction to rule on issues relating to the civil forfeiture of property seized in the same illegal seizure. Ordinarily, one district court lacks jurisdiction to review the acts of another district court.[3] However, in the unique situation of forfeitures, when the same district attorney's office is proceeding on both the criminal case and the forfeiture proceeding, the court can exercise its authority over the officers of the court. The criminal court has the equitable jurisdiction to return the property to the owner through its inherent authority over the district attorneys.

Conclusion

The district court that determines that property is illegally seized has equitable jurisdiction to determine whether the property forfeited by motion should be returned to its owner.

3Rohlfing v. District Court, 106 Nev. 902, 906, 803 P.2d 659, 662 (1990).