

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH	: No. CR-403-2013
	:
vs.	:
	:
	:
JASON WELSHANS,	:
Defendant	:

OPINION AND ORDER

This matter came before the court on Defendant’s petition for return of property. The relevant facts follow.

Defendant was charged with two counts of burglary, two counts of criminal trespass, two counts of theft by unlawful taking, two counts of receiving stolen property, two counts of theft by deception and one count of person not to possess firearms. The property allegedly taken during these crimes included a computer, a television, handguns, and jewelry, some of which Defendant allegedly sold to Cillo’s Antiques and United Check Cashing. When Defendant was arrested, the police seized clothing, a cell phone, shoes, a wallet and jewelry.

On June 17, 2014, Defendant pled guilty to a consolidated count of burglary, and the court sentenced Defendant to 27 months to 5 years of incarceration in a state correctional institution. In a separate order, the court directed the police to return the clothing, cell phone, shoes and wallet to Defendant’s cousin after 30 days had expired.

On August 21, 2014, Defendant filed his motion for return of property in which he sought return of a Ziploc bag of jewelry he claimed he had acquired through a private purchase. He also alleged that he “requested the property be returned to him at the

completion of his criminal case and that was denied.” Unfortunately, the motion was not forwarded to the court, and the court did not become aware that Defendant had filed a motion until Defendant wrote to the court and inquired when the court would schedule a hearing or issue a decision on his motion.

The court held two conferences with the Commonwealth and Defendant. At the first conference, the court attempted to determine exactly what items of jewelry Defendant sought to be returned to him. Defendant indicated he was seeking a Ziploc bag of mixed gold jewelry and \$180 listed on the property record as TP-4 and TP 7-1.

The court held a second conference because there was an issue regarding whether Defendant’s petition was timely filed. The Commonwealth argued that the petition was untimely because it was not filed while the criminal proceedings were pending or within thirty days thereafter; therefore, the court lacked jurisdiction to grant Defendant’s motion. Defendant argued he had six years following completion of his criminal case to file his motion. In the alternative, Defendant argued that he requested return at the time of his guilty plea and sentencing.

A transcript of Defendant’s guilty plea and sentencing hearing was prepared.

The only reference to return of property was the following exchange:

MS. LONGO: Judge, I know that generally [a] motion for release of property, or return of property is something that would be filed, but Mr. Welshans is requesting that I bring it to your attention. His charge is not a drug charge. I believe with the burglary cases the police seized his pants, his wallet, personal items, and it’s my understanding that they’re not releasing them, his phone, his shoes.

THE COURT: You know anything about that, Mrs. Kalaus? I assume not.

MRS. KALAUS: I do not, I’m sorry. Mr. Ciuca’s handling this.

After this exchange and in Defendant’s presence, the court dictated the order directing that

certain personal items, including but not limited to clothing, a cell phone, shoes, and wallet be released to Defendant's cousin. Neither Defendant nor his attorney ever mentioned any jewelry. Defendant also did not seek reconsideration of the return of property order or file an appeal.

Under the facts and circumstances of this case, the court finds that Defendant has waived his claim to return of the jewelry and the court lacks jurisdiction to grant him relief.

Defendant argued that there was a six year statute of limitations for filing a motion for return of property pursuant to 42 Pa.C.S. §5527(b). Although the Commonwealth Court rendered a decision in *Commonwealth v. Allen*, 59 A.3d 677 (Pa. Cmwlth. 2012)(en banc) which provided for a six year statute of limitations pursuant to that statute, the Pennsylvania Supreme Court reversed the Commonwealth Court's decision. 107 A.3d 709 (Pa. 2014).

Defendant also argued that Rule 588 did not contain any time limit for filing a motion for return of property. The Pennsylvania Supreme Court also rejected this argument in *Allen*. Although Rule 588 does not directly address the issue of timing, the Pennsylvania Supreme Court held that "a return motion is timely when it is filed by an accused in the trial court while that court retains jurisdiction, which is up to thirty days after disposition." 107 A.3d at 717. Since Allen did not file his motion within thirty days following the dismissal of the charges against him, the Pennsylvania Supreme Court found that he "waived any entitlement to the return of the property under *Rule 588*." *Id.* (italics original).

Here, as in *Allen*, Defendant did not file his motion for return of property

within thirty days after the completion of his criminal proceedings. Defendant's criminal proceedings were completed when he was sentenced on June 17, 2014. The court retained jurisdiction for thirty days thereafter, or until July 17, 2014, pursuant to 42 Pa.C.S. §5505. To be considered timely, Defendant needed to file his motion on or before July 17, 2014. He did not file it until August 21, 2014. Therefore, his motion is untimely and, just as in *Allen*, Defendant waived any entitlement to the property under Rule 588.

In the alternative, Defendant contends he made a timely request for return of his property during the sentencing hearing in this case and the "not limited to" language in the order would include the jewelry in question. The difficulty with this argument is that at no time during the sentencing proceeding did Defendant or his counsel mention any jewelry. As evidenced by the order entered by the court on June 17, 2014, the court had no problem summarily ordering the return of Defendant's clothing, wallet, cell phone, shoes or similar personal items. The court, however, does not view the jewelry in question as similar to Defendant's clothing and shoes. Defendant was charged with burglarizing homes and stealing electronics and jewelry. In light of that fact, the court would not have summarily ordered the return of any jewelry without holding a hearing to determine whether the items of jewelry belonged to Defendant or were the fruits of his crimes.

Furthermore, even Defendant did not believe the "not limited to" language of the order included the jewelry because he specifically stated in paragraph 4 of his motion that "Defendant requested the property be returned to him at the completion of his criminal case, and that was denied." If Defendant believed that his request was denied as he alleged in paragraph 4, his remedy would be to file a motion for reconsideration or an appeal from the

court's denial, not to file another request in a formal motion. By failing to file a timely motion for reconsideration or an appeal, Defendant waived his right to challenge the court's ruling on his oral motion for return of property.

ORDER

AND NOW, this ___ day of December 2015, for the reasons set forth in the foregoing opinion, the court finds that Defendant's motion for return of property is untimely and, as a result, Defendant has waived any entitlement to the property under Rule 588. In the alternative, Defendant's claim is waived due to his failure to seek reconsideration of or file an appeal to the court's June 17, 2014 order that directed the return of Defendant's clothing, shoes, cell phone and wallet.

By The Court,

Marc F. Lovecchio, Judge

cc: Kenneth Osokow, Esquire (ADA)
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Gary Weber, Esquire, Lycoming Reporter
Work file