

IN THE SUPREME COURT OF THE STATE OF NEVADA

RUSSELL DAVID COHEN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45092

FILED

DEC 23 2005

JANETTE M BLOOM
CLERK OF SUPREME COURT
BY *J. Bloom*
CHIEF DEPUTY CLERK

ORDER AFFIRMING IN PART, REVERSING IN PART AND
REMANDING

This is a proper person appeal from an order of the district court denying appellant's motion for the return of seized property. Eighth Judicial District Court, Clark County; Nancy M. Saitta, Judge.

On July 20, 2000, the district court convicted appellant, pursuant to a guilty plea, of one count each of sexual assault of a minor under fourteen years of age, sexual assault of a minor under sixteen years of age, and use of a minor in producing pornography. The district court sentenced appellant to serve three consecutive terms of life in the Nevada State Prison with the possibility of parole. This court affirmed the judgment of conviction and sentence on direct appeal.¹ The remittitur issued on October 25, 2001.

On December 10, 2004, appellant filed a motion for the return of seized property. Citing to NRS 179.085(1), appellant requested the return of 34 specific items. The State filed an opposition and argued that the property was properly seized and evidence of criminal activity. The State, however, agreed to the return of the following four items to

¹Cohen v. State, Docket No. 36562 (Order of Affirmance, June 27, 2001).

appellant: (1) Item #10 Gray plastic file cabinet (State would keep any papers contained therein); (2) Item #29 Video Cables; (3) Item #30 Sony Tape Case; and (4) Item #34 VCR's (quantity unknown). Appellant filed a reply to the opposition. On May 2, 2005, the district court denied appellant's motion. This appeal followed.

Because the district court order summarily denied appellant's motion without granting the return of the above items, on November 1, 2005, this court ordered the State to show cause why this appeal should not be remanded to the district court for the entry of an order granting the return of those items. In response, the State informed this court that it does not oppose the remand of this appeal for this limited purpose.

Our review of the record on appeal reveals that appellant failed to demonstrate that he was aggrieved by an unlawful search and seizure.² Accordingly, we conclude that the district court did not err in rejecting appellant's claim that he was entitled to the return of the property pursuant to NRS 179.085.³ Nevertheless, because the State did not oppose the return of some items, we conclude the district court erred by denying appellant's motion without granting the return of those items. Accordingly, we affirm the district court's decision to the extent that it denied the return of the items not listed below, we reverse the district court's decision to the extent that it denied the return of the items listed below, and remand this appeal for the entry of an order granting the return of (1) Item #10 Gray plastic file cabinet (State would keep any

²See NRS 179.085.

³We note, however, that appellant may be entitled to relief by bringing a civil action based on the State's failure to initiate a civil forfeiture proceeding. See NRS 179.1171(2).

