

IN THE SUPREME COURT OF THE STATE OF NEVADA

BRIAN LEONHARDT A/K/A BRIAN
LEONHART,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 45471

FILED

SEP 23 2005

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

ORDER OF AFFIRMANCE

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

On November 19, 2004, the district court convicted appellant, pursuant to a guilty plea, of one count of forgery of a credit or debit card. The district court sentenced appellant to serve a term of nineteen to forty-eight months in the Nevada State Prison. Appellant did not file a direct appeal.


On May 3, 2005, appellant filed a proper person motion for the return of seized property in the district court. In the motion, appellant argued that he had a statutory right to the return of \$9,682.00 seized by the police as well as any interest accrued thereon. The State opposed the motion and argued that the money was properly seized during a search incident to arrest and the money was evidence of criminal activity. Appellant filed a reply. On May 31, 2005, the district court denied appellant's motion. This appeal followed.


Appellant cited NRS 179.035 and 179.085, and argued that this property was illegally seized without a warrant and should be returned to him. The district court concluded that the property was

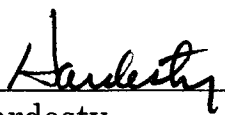
properly seized pursuant to a search incident to arrest.¹ We conclude that the district court did not err in rejecting appellant's claim that he was entitled to return of the property pursuant to NRS 179.085.²

Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief in this matter and that briefing and oral argument are unwarranted.³ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Maupin


_____, J.
Gibbons


_____, J.
Hardesty

cc: Hon. Valorie Vega, District Judge
Brian Leonhardt
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

¹See NRS 179.1165.

²We 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).

³See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).