

IN THE SUPREME COURT OF THE STATE OF NEVADA

JAMES P. KAIGLER,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 50351

FILED

MAY 01 2008

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

ORDER OF AFFIRMANCE

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

On May 16, 2006, the district court convicted appellant, pursuant to a guilty plea, of one count of attempt to stop required on signal of a police officer. The district court sentenced appellant to serve in the Nevada State Prison a term of 12 to 34 months, to run concurrently with appellant's sentence in district court case number C215370. The district court suspended appellant's sentence and placed appellant on probation for a period not to exceed 2 years. On April 24, 2007, the district court filed an amended judgment of conviction revoking appellant's probation and imposing appellant's original sentence. Appellant did not file a direct appeal.

On July 18, 2007, appellant filed a proper person motion for the return of seized property, pursuant to NRS 179.335, in the district court. In the motion, appellant argued that he had a statutory right to the return of \$388.00 seized by the State. Appellant claimed that the Las

Vegas Metropolitan Police Department improperly seized the \$388.00 on October 16, 2005, the date he was arrested in the instant case. Appellant further argued that this property was illegally seized against his will without a warrant and should be returned to him. Appellant contended that the State seized the property because the “officers claimed its drug money.” Appellant asserted the property was not the fruit of any illicit drug activity and that the instant case did not involve any drug related charges. The State opposed the motion and argued that appellant’s motion was untimely pursuant to NRS 179.085(3). On September 17, 2007, the district court summarily denied appellant’s motion. This appeal followed.

Our review of the record on appeal reveals that appellant’s claim lacked merit. Appellant failed to provide any explanation for his delay in filing the instant motion as required pursuant to NRS 179.085(3).¹ Furthermore, appellant failed to provide any facts demonstrating that the property was illegally seized.² Therefore, the district court did not err in denying appellant’s motion.³

¹See One 1970 Chevrolet v. County of Nye, 90 Nev. 31, 34-35, 518 P.2d 38, 40 (1974) (holding that the district court did not abuse its discretion when it refused to entertain a motion for the return of seized property and to suppress evidence filed after the commencement of trial because the defendant failed to show that there was no opportunity to file the motion prior to trial or that he or she was unaware of grounds for the motion).

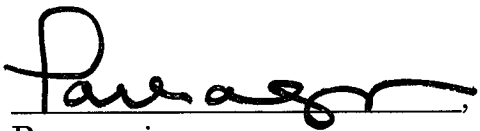
²See Hargrove v. State, 100 Nev. 498, 502, 686 P.2d 222, 225 (1984) (holding that a petitioner is not entitled to an evidentiary hearing on “bare” and “naked” claims for relief that are unsupported by specific factual allegations); see also One 1970 Chevrolet, 90 Nev. at 34-35, 518 P.2d at 40 (holding that a defendant who files a motion for the return of

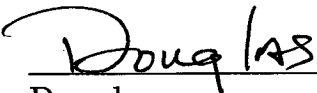
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Having reviewed the record on appeal, and for the reasons set forth above, we conclude that appellant is not entitled to relief in this matter and that briefing and oral argument are unwarranted.⁴ Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Hardesty


_____, J.
Parraguirre


_____, J.
Douglas

cc: Hon. Jennifer Togliatti, District Judge
James P. Kaigler
Attorney General Catherine Cortez Masto/Carson City
Clark County District Attorney David J. Roger
Eighth District Court Clerk

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seized property and to suppress evidence bears the burden of proving the illegality of the search and seizure).

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). We further note that it is unclear from the record whether the State ever initiated such proceedings.

⁴See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).