

IN THE SUPREME COURT OF THE STATE OF NEVADA

BERNARD G. DEVLIN,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 39428

FILED

OCT 6 1 2002

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Bernard G. Devlin's motion for the return of property.

On September 28, 2001, Devlin was convicted, pursuant to a guilty plea, of one count of gross misdemeanor attempted theft. The district court sentenced Devlin to serve a term of 6 months in the Clark County Detention Center; the sentence was suspended and Devlin was placed on probation with several conditions for an indeterminate period not to exceed 1 year.

On February 12, 2002, Devlin filed a motion for the return of property in the district court. The State opposed the motion. The district court conducted a hearing on the matter, and on March 7, 2002, denied Devlin's motion. This timely appeal followed.

Devlin contends that his right to due process and equal protection, pursuant to the federal and state constitutions, was violated by

the State.¹ Specifically, Devlin argues that the \$2,076.00 in money and chips seized from his person at the time of his arrest did not belong to the alleged victim, the Stardust Hotel and Casino, and therefore, should be returned to him. Without notice to Devlin, and without either a hearing in the district court or initiating a civil forfeiture proceeding, the State gave the money to the Stardust.²


Initially, we note that the arguments raised by Devlin on appeal were not presented in his motion below, or by counsel during the hearing on his motion in the district court; therefore, we decline to specifically address those claims.³ We also conclude that the district court did not err in denying Devlin's motion. Devlin cited solely to NRS 178.5696(2) for support, however, that statute contemplates the return of


¹See U.S. Const. amend. XIV, § 1; Nev. Const. art. 1, § 8; Nev. Const. art. 4, § 21.

²See generally Johnson v. Bradshaw, 772 F. Supp. 501 (D. Nev. 1991) (holding that due process requires notice to owners before release of an impounded vehicle to a third party), aff'd 5 F.3d 537 (9th Cir. 1993). We also note that the sentence imposed by the district court did not require the payment of restitution.

³See Davis v. State, 107 Nev. 600, 606, 817 P.2d 1169, 1173 (1991) (holding that this court need not consider arguments raised on appeal that were not presented to the district court in the initial petition); see also Ford v. Warden, 111 Nev. 872, 884, 901 P.2d 123, 130 (1995) (holding that appellant "cannot change her theory underlying an assignment of error on appeal").

personal property belonging to victims or witnesses, not convicted defendants. Therefore, Devlin is not entitled to relief.⁴ Accordingly, we ORDER the judgment of the district court AFFIRMED.


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Michael L. Douglas, District Judge
Clark County Public Defender
Attorney General/Carson City
Clark County District Attorney
Clark County Clerk

⁴We do note, however, that Devlin may be entitled to relief by bringing an action, pursuant to NRS 179.125 et seq., based on the State's failure to initiate a civil forfeiture proceeding before giving the money in question to the Stardust.