

IN THE SUPREME COURT OF THE STATE OF NEVADA

JOSEPH KRIVAC,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40027

FILED

APR 21 2003

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

JOSEPH KRIVAC,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40279

ORDER OF REVERSAL AND REMAND

These are proper person appeals from district court orders denying appellant Joseph Krivac's motions for the return of seized property. We elect to consolidate these appeals for disposition.¹

On May 17, 1999, Krivac was convicted, pursuant to a guilty plea, of level-three trafficking in a controlled substance. The district court found that Krivac had provided law enforcement with substantial assistance and sentenced him to serve a prison term of 72 to 180 months. Krivac appealed, and this court affirmed his conviction.²

¹See NRAP 3(b).

²Krivac v. State, Docket No. 37998 (Order of Affirmance, August 24, 2001).

On May 21, 2002, Krivac filed a proper person motion for the return of property. In the motion, Krivac argued that he had a due process and a statutory right to the return of \$4,410.00 seized by the Sparks Police Department as well as several items of personal property, including a computer scanner and printer. On June 4, 2002, the State opposed the motion, arguing that Krivac failed to demonstrate that he was an aggrieved person as required by NRS 179.085 and, therefore, was not entitled to relief. Without conducting an evidentiary hearing or appointing counsel, the district court denied Krivac's motion, finding that he failed to prove he was an aggrieved person entitled to relief pursuant to NRS 179.085. Krivac filed an appeal, which was docketed in this court as Docket No. 40027.

On July 19, 2002, Krivac filed a second proper person motion for an order to return property. In the motion, Krivac again sought the return of the property set forth above, arguing that he was deprived of the property without due process of law. On August 22, 2002, the district court summarily denied Krivac's motion, finding that he failed to show that he was entitled to the property because it was not seized pursuant to an illegal search. Krivac filed an appeal, which was docketed in this court as Docket No. 40279.

Preliminarily, we note that Krivac's motions cited NRS 179.085, which is irrelevant to his claim for return of the property. That statute provides for the suppression and return of illegally seized property and is inapplicable to Krivac's case because: (1) as the district court

determined, Krivac consented to the search and, therefore; the property was legally seized; and (2) Krivac filed the motion after his conviction was entered pursuant to a guilty plea.³ Accordingly, the district court did not err in rejecting Krivac's claim that he was entitled to return of the property pursuant to NRS 179.085.

Nonetheless, we cannot ascertain from the existing record whether the State properly observed the statutory provisions involving Krivac's seized property and afforded Krivac due process of law. In the motions, Krivac claimed that the property at issue was retained in violation of his right to procedural due process. It appears that in the proceedings below neither the State nor the district court addressed that claim.

NRS 179.1164(1)(a) provides that "[a]ny proceeds attributable to the commission or attempted commission of any felony" are subject to seizure and forfeiture in a proceeding for forfeiture. Further, NRS 179.1165(2)(d) permits property to be seized "without process if . . . [t]he law enforcement agency has probable cause to believe that the property is subject to forfeiture." Property that is seized without process, however, "is subject to an action to claim its delivery . . . if the [State] does not file the

³By entering a guilty plea, Krivac waived his right to challenge the district court order denying his motion to suppress. See Warden v. Lyons, 100 Nev. 430, 432, 683 P.2d 504, 505 (1984); Webb v. State, 91 Nev. 469, 538 P.2d 164 (1975).

complaint for forfeiture within 60 days after the property is seized."⁴ "If the complaint for forfeiture is filed following the commencement of an action claiming delivery, the complaint must be treated as a counterclaim."⁵

In this case, there is no indication in the record that Krivac's property was retained by the State pursuant to a forfeiture proceeding as required by law. If the State failed to initiate a forfeiture proceeding, Krivac may have a legitimate statutory and due process claim in a civil action to the return of the seized property. Accordingly, we remand this matter to the district court with instructions to address the issue of whether the State properly observed the statutory provisions involving Krivac's seized property and afforded Krivac due process of law. The district court shall enter appropriate findings of fact and conclusions of law on this issue.

Having reviewed the record on appeal and for the reasons set forth above, we conclude that oral argument and further briefing are unwarranted in this matter.⁶ This order constitutes our final disposition of this appeal. Any subsequent appeal shall be docketed as a new matter. Accordingly, we


⁴NRS 179.1171(2).


⁵Id.

⁶See Lockett v. Warden, 91 Nev. 681, 682, 541 P.2d 910, 911 (1975).

ORDER the judgment of the district court REVERSED AND REMAND this matter to the district court for proceedings consistent with this order.⁷


_____, J.
Shearing


_____, J.
Leavitt


_____, J.
Becker

cc: Hon. Connie J. Steinheimer, District Judge
Joseph Krivac
Attorney General Brian Sandoval/Carson City
Washoe County District Attorney Richard A. Gammick
Washoe District Court Clerk

⁷We have considered all proper person documents filed or received in this matter and conclude that Krivac is only entitled to the relief described herein.