

IN THE SUPREME COURT OF THE STATE OF NEVADA

CHRISTOPHER JOSEPH RAIMONDA,
Appellant,
vs.
THE STATE OF NEVADA,
Respondent.

No. 40306

FILED

MAY 07 2003

ORDER OF AFFIRMANCE

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

This is an appeal from an order of the district court denying appellant Christopher Joseph Raimonda's motion for the return of personal property.

On May 22, 2002, Raimonda was convicted, pursuant to a guilty plea, of one count of sexual assault of a minor under 16 years of age and two counts of statutory sexual seduction. The district court sentenced Raimonda to serve a prison term of 60-240 months for the sexual assault with a special sentence of lifetime supervision upon release from parole, probation, or imprisonment, and two concurrent prison terms of 12-32 months for the two counts of statutory sexual seduction. Raimonda was given credit for 283 days time served.

On August 15, 2002, Raimonda filed a motion for the return of personal property in the district court, specifically "his computer, some CD's and floppys, some VHS tapes and some miscellaneous paperwork" seized during the execution of a search warrant. The State did not file an opposition to the motion. At a hearing on the motion on August 26, 2002, the State did not present any evidence in opposition to Raimonda's motion. After hearing the brief argument of defense counsel, the district court denied Raimonda's motion, stating that the computer "was an instrument.

At that time he could have been communicating with the people. . . . I believe that's what it was used for." This timely appeal followed.

Raimonda contends that the district court erred in denying his motion for the return of personal property. Citing only to the Takings Clause of the Fifth Amendment to the United States Constitution for support,¹ Raimonda claims that his due process rights were violated because the State never demonstrated that the seized computer was linked to the crimes for which he was convicted. Raimonda does concede, however, that the computer was used in the exchange of emails with a co-worker where he "eluded [sic] to the possibility that he was having sex with underage males." Raimonda, also, does not challenge the validity of the search warrant or the legality of the search and seizure of his personal belongings.

We conclude that the district court did not err in denying Raimonda's motion, albeit for the wrong reason. The district court's finding that Raimonda's computer was an instrumentality of the crimes for which he was convicted is not supported by the record. Additionally, the State has not demonstrated that it is entitled to permanently retain Raimonda's seized property without process or without initiating a forfeiture proceeding.² On the other hand, Raimonda has not cited to any


¹See U.S. Const. amend. XIV, § 1 (making the Fifth Amendment applicable to the various states through incorporation).

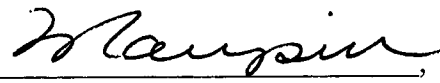
²See NRS 179.1171(2) (stating that property seized without process "is subject to an action to claim its delivery . . . if the [State] does not file the complaint for forfeiture within 60 days after the property is seized").


relevant Nevada criminal statute supporting his contention that he is entitled to the return of his property. Therefore, we conclude that Raimonda has not demonstrated that he was entitled to relief in the criminal proceeding he instituted below.³

Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Rose


_____, J.
Maupin


_____, J.
Gibbons

cc: Hon. Lee A. Gates, District Judge
Clark County Public Defender
Attorney General Brian Sandoval/Carson City
Clark County District Attorney David J. Roger
Clark County Clerk

³We note that Raimonda's remedy, if any, is by way of a civil action in the district court based on the State's failure to initiate a civil forfeiture proceeding before refusing to return his property.