

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

No. 40946

FILED

SEP 03 2004

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 Bernard G. Devlin's motion for the return of seized property. Eighth Judicial District Court, Clark County; Michael L. Douglas, Judge.

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, and on March 7, 2002, denied Devlin's motion. Devlin appealed from the district court's order.

On appeal, Devlin argued for the first time that his right to due process and equal protection was violated by the State.¹ Devlin

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

claimed 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 (Stardust), and therefore, should be returned to him. Without notice to Devlin, the State gave the money and chips to the Stardust.² This court affirmed the district court's order.³

On October 9, 2002, Devlin filed another motion for the return of the same property in the district court. On October 22, 2002, the district court allowed Devlin to withdraw his guilty plea and subsequently dismissed the criminal case due to his successful completion of probation, as contemplated in the guilty plea agreement. Due to the dismissal of Devlin's criminal case, the district court requested that Devlin then file an addendum to his motion for the return of property specifically addressing the question of whether the district court retained jurisdiction over the matter. The State opposed Devlin's motion and filed a counter-motion requesting that the district court enter an order stating that the property "shall be, and has been, returned to the Stardust Resort & Casino (Stardust), the victim in this case."

The district court conducted a hearing and heard the arguments of counsel. The district court stated that Devlin's motion "was

²See NRS 178.5696(2)(b) ("A court or law enforcement agency which has custody of any stolen or other personal property belonging to such a victim or witness shall: . . . [r]eturn the property to him expeditiously when it is no longer needed as evidence.").

³Devlin v. State, Docket No. 39428 (Order of Affirmance, October 1, 2002).

not done in a timely fashion when this court was exercising jurisdiction,” and concluded:

So the best matter [sic] in which to proceed, so a full adjudication of this could be had, would be in civil court, not in criminal court, asking for return of property, since the matter before the court, for all intents and purposes, has been closed.

In its order denying Devlin’s motion, the district court conceded “that there is a factual dispute as to the ownership of the property in question,” but concluded that any relief could only be found by bringing “a new and separate civil action.” The district court also denied the State’s counter-motion. Devlin now appeals from the district court’s order.

Devlin raises three arguments on appeal: (1) the district court erred in determining that it did not have jurisdiction over his appeal because of the ultimate dismissal of his criminal case; (2) his right to due process was violated when he did not receive notice and a hearing prior to the release of his property to the Stardust; and (3) his right to equal protection entitles him, after the dismissal of his criminal case, to enjoy the same procedures witnesses and victims enjoy pursuant to statutes governing the return of personal property. We conclude that the district court did not err in denying Devlin’s motion.

Devlin has not cited to any relevant Nevada criminal statute supporting his contention that he is entitled to the return of his property – \$2,076.00 in money and chips already given to the Stardust. Therefore, Devlin has not demonstrated that he was entitled to relief in the criminal proceeding instituted below. On the other hand, the State has not demonstrated that it was entitled to retain and then dispense with

Devlin's property without process. Accordingly, we agree with the district court's conclusion that Devlin's remedy, if any, is by way of a civil action.

Having considered Devlin's contentions and concluded that he is not entitled to relief, we

ORDER the judgment of the district court AFFIRMED.

Becker, J.

Becker

Gibbons, J.

Gibbons

I dissent. I would permit the appellant to raise this issue in the district court in the context of the criminal proceedings.

Agosti, J.
Agosti

cc: Hon. Kathy A. Hardcastle, Chief District Judge
Eighth Judicial District Court, Dept. 11, District Judge
Clark County Public Defender Philip J. Kohn
Attorney General Brian Sandoval/Las Vegas
Clark County District Attorney David J. Roger
Clark County Clerk