

APPENDIX

A

1-10-14

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 21-14366-E

CALVIN KELSICK WILSON,

Plaintiff-Appellant,

versus

CITY OF TAMPA POLICE DEPARTMENT,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, JORDAN, and BRASHER, Circuit Judges.

BY THE COURT:

Calvin Wilson, a Florida prisoner, seeks leave to proceed on appeal *in forma pauperis*, as construed from his consent form, to appeal the district court's 42 U.S.C. § 1983 civil rights complaint. The district court denied leave to proceed *in forma pauperis* on appeal. However, the district court did not assess the \$505 appellate filing fee, as is required under the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915.

Wilson has consented to paying the filing fee. Therefore, the only remaining issue is whether the appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

APPENDIX A

C

APPENDIX

B

C

C

12-28-21

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CALVIN K. WILSON,

Plaintiff,

v.

Case No. 8:20-cv-2751-CEH-CPT

CITY OF TAMPA POLICE
DEPARTMENT,

Defendant.

_____ /

ORDER

This cause is before the Court upon review of Plaintiff's amended civil rights complaint. (Doc. 8).

I. Legal Background

a. Section 1915A

Pursuant to 28 U.S.C. § 1915A(a), federal courts are obligated to conduct an initial screening of certain civil suits brought by prisoners to determine whether they should proceed. The district courts are afforded broad discretion in the management of *in forma pauperis* cases and in the denial of motions to proceed *in forma pauperis* when the complaint is frivolous. *Clark v. Ga. Pardons and Paroles Bd.*, 915 F.2d 636, 639 (11th Cir. 1990); *Phillips v. Mashburn*, 746 F.2d 782, 785 (11th Cir. 1984).

Upon review, a court is required to dismiss a complaint (or any portion thereof) in the following circumstances:

Appendix B

(b) Grounds for Dismissal. — On review, the court shall identify cognizable claims or dismiss the complaint, or any portion of the complaint, if the complaint—

- (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted; or
- (2) seeks monetary relief from a defendant who is immune from such relief.

28 U.S.C. § 1915A(b). A complaint is frivolous if it is without arguable merit either in law or in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989). Additionally, the Court must read a plaintiff's *pro se* allegations in a liberal fashion. *Haines v. Kerner*, 404 U.S. 519 (1972).

b. Section 1983

Plaintiff's claims arise under Title 42 United States Code Section 1983. (Doc. 1). “[S]ection 1983 provides a method for vindicating federal rights conferred by the Constitution and federal statutes.” *Bannum, Inc. v. City of Fort Lauderdale*, 901 F.2d 989, 997 (11th Cir. 1990). To successfully plead a Section 1983 claim, a plaintiff must allege two elements: “(1) that the act or omission deprived plaintiff of a right, privilege or immunity secured by the Constitution or laws of the United States, and (2) that the act or omission was done by a person acting under color of law.” *Id.* Thus, a plaintiff must show that the defendant acted under the color of law or otherwise showed some type of state action that led to the violation of the plaintiff's rights. *Id.*

II. Analysis

Plaintiff sues the City of Tampa Police Department in connection with the confiscation of over \$100,000 from Plaintiff at the time of his arrest on May 25, 2003.

First, to state a viable section 1983 claim, a complaint must allege that the defendant being sued is subject to being sued. *Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992). “Sheriff’s departments and police departments are not usually considered legal entities subject to suit, . . . [and the] capacity to sue or be sued shall be determined by the law of the state in which the district court is held.” *Id.* (quoting Fed. R. Civ. P. 17(b)). Under Florida law, municipalities have the capacity to be sued, but police departments do not. *See Fla. City Police Dep’t v. Corcoran*, 661 So. 2d 409, 410 (Fla. 3d DCA 1995). Because the City of Tampa Police Department is not a legal entity amenable to suit, Plaintiff’s claim against the City of Tampa Police Department is dismissed.

Further, even if Plaintiff had sued an actionable entity, the amended complaint is subject to dismissal because it is clear from the face of the pleading that Plaintiff’s claims are time-barred. *See* 28 U.S.C. § 1915A; *Clark v. Ga. Pardons and Parole Bd.*, 915 F.2d 636, 640 n. 2 (11th Cir. 1990) (A federal court may *sua sponte* consider a statute of limitations defense in a § 1983 action if that defense is apparent from the face of the complaint). Section 1983 does not contain a statute of limitations; therefore, claims are “governed by the forum state’s residual personal injury statute of limitations, which in Florida is four years.” *City of Hialeah v. Rojas*, 311 F.3d 1096, 1103 n. 2 (11th Cir. 1990); *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003).

The events described by Plaintiff (his arrest and the confiscation of money in his possession) occurred in May 2003. (Doc. 8 at 4–13). The initial complaint in this case

was not filed until 2020 (Doc. 1-1 at 2), which is substantially more than four years after the events described in the amended complaint. Therefore, Plaintiff's claims are barred by the statute of limitations.

Accordingly, it is **ORDERED** that this case is **DISMISSED**, with prejudice, as the amended complaint fails to state a claim upon which relief may be granted and the amended complaint is time-barred. The Clerk of Court is directed to terminate any pending motions and **CLOSE** this case.

DONE and **ORDERED** in Tampa, Florida on December 2, 2021.

}

Charlene Edwards Honeywell
Charlene Edwards Honeywell
United States District Judge

Copies furnished to:
All parties of record including unrepresented parties, if any

APPENDIX

C

4-0-24

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 21-14366-E

CALVIN KELSICK WILSON,

Plaintiff-Appellant,

versus

CITY OF TAMPA POLICE DEPARTMENT,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida

Before: WILSON, JORDAN, and BRASHER, Circuit Judges.

BY THE COURT:

Calvin Wilson filed a motion for reconsideration, pursuant to 11th Cir. R. 27-2, of this Court's order dated July 22, 2022, denying leave to proceed and dismissing as frivolous his appeal from the district court's dismissal of his *pro se* 42 U.S.C. § 1983 civil rights suit. Because Wilson has not alleged any points of law or fact that this Court overlooked or misapprehended in denying his prior motion, his motion for reconsideration is DENIED.

Appendix C

APPENDIX D

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

CASE NO.: 03-CF-008814

v.

DIVISION: B

CALVIN KELSICK WILSON

ORDER DISMISSING MOTION FOR RETURN OF PROPERTY

THIS MATTER is before the Court pursuant to Mandate issued by the Second District Court of Appeal on June 8, 2007. The Court finds as follows.

Defendant is serving multiple sentences on multiple felony drug counts imposed by the Court on April 4, 2005, subsequently amended.¹ (See Case Progress, attached.) He filed a Petition for Belated Appeal in July 2005, and motions seeking return of property in August and September of 2005. The Second District Court of Appeal granted his Petition for a Belated Appeal on September 26, 2005 (2D05-3604), and affirmed (2D05-4795). An Emergency Petition for Writ of Mandamus is pending in the Florida Supreme Court (SC07-851).

Thereafter, this Court denied his motions for return of property. He appealed. The Second District Court of Appeal affirmed the denial of the August 2005 motion and reversed denial of the September 2005 motion ("the instant Motion"). See Wilson v. State, 924 So.2d 969 (Fla. 2d DCA 2006)(2D05-5776).²

¹The Amended Sentences are not related to the issues raised in the instant Motion and are therefore not included as attachments to this Order.

²He also filed a *pro se* Motion for Relief from Judgment, Decrees and Orders (September 11, 2006) and a *pro se* Motion to Compel (October 23, 2006). The Court addresses these Motions in a separate Order.

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Appendix D

The Court thereafter ordered the State to respond to the instant Motion and denied the Motion based on the State's response. He appealed. The Second District Court of Appeal reversed the denial of the instant Motion in Case 2D06-3319. (See Mandate and Opinion, attached.)

Defendant claims that when he was arrested on May 25, 2003, the Hillsborough County Sheriff's Office took \$108,375 into evidence, that none of this money was "buy money" or combined with other "buy money," and that none of the money was admitted into evidence against him at trial. He seeks return of the \$108,375 to him. (See instant Motion, attached.)

By the time Defendant filed the instant Motion on September 15, 2005, the Tampa Police Department had already commenced civil forfeiture proceedings for \$111,119 in Circuit Civil Case 03-6433 under sections 932.701 to 932.707, Florida Statutes. Thus, Defendant did not have, and does not now have, the option of proceeding under section 705.105, Florida Statutes.

The Court now addresses the sufficiency of the instant Motion in accordance with the Mandate and Opinion. If the Court concludes the Motion is facially insufficient, the Court must grant Defendant leave to amend within a reasonable time. (See Opinion, page 3, attached.) The opinion cites Justice v. State, 944 So.2d 538, 539 (Fla. 2d DCA 2006)("A facially sufficient motion for return of property must specifically identify the property and allege that it is the movant's personal property, that the property is not the fruit of criminal activity, and that the property is not being held as evidence"), and Scott v. State, 922 So.2d 1024 (Fla. 5th DCA 2006). (See Opinion, page 2, attached.)

In order for his Motion to be facially sufficient, Defendant's motion must (1) specifically identify the property, (2) allege that the identified property belongs to him, (3) allege that the

identified property is not the fruit of criminal activity, and (4) allege that the identified property is not being held as evidence. (See Opinion, page 2, attached.)

Defendant refers to Exhibit A which identifies Exhibit #1 as "Twenty-two (22) packages wrapped in black electrical tape and black duct tape that contained approx. \$108,375"; in addition, he states he seeks return of \$108,375 (paragraph 1). He alleges the property was not used as evidence against him (paragraph 6). (See instant Motion, attached.)

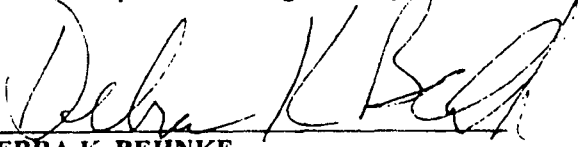
He does not expressly allege that the \$108,375 belonged to him at the time it was seized. Also, he does not allege that the \$108,375 was not the fruit of criminal activity. (See instant Motion, attached.)

Accordingly, the instant Motion does not meet the facial requirements for a motion to return property. The Court dismisses the instant Motion without prejudice for Defendant to file a new Motion within forty-five (45) days of the date of this Order to meet the requirements for a facially sufficient motion. A facially sufficient motion for return of property filed after that date is subject to dismissal with prejudice as untimely.

It is therefore **ORDERED** that Defendant's Motion for Return of Property filed on September 15, 2005 is **DISMISSED** without prejudice for him to file a new motion within forty-five (45) days of the date of this Order.

Defendant has thirty (30) days in which to appeal the Order dismissing his Motion for Return of Property without prejudice.

DONE AND ORDERED in Chambers, at Tampa, Hillsborough County, Florida, this 2nd day of June, 2007.


DEBRA K. BEHNKE
Circuit Judge

APPENDIX E

APPENDIX E

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE DIVISION

STATE OF FLORIDA

CASE NO.: 03-CF-008814

v.

DIVISION: B

CALVIN KELSICK WILSON

ORDER TO RESPOND
(MOTION FOR RETURN OF PROPERTY - FILED AUGUST 10, 2007)

THIS MATTER is before the Court pursuant to Defendant's *pro se* Motion for Return of Property filed on August 10, 2007. The Court finds as follows.

Defendant is serving multiple sentences on multiple felony drug counts imposed by the Court on April 4, 2005, as amended. The Second District Court of Appeal affirmed his direct appeal. Wilson v. State, 959 So.2d 736 (Fla. 2d DCA 2007)(Table Decision). Other procedural history is set forth in a prior Order of this Court. (See Order Dismissing Motion for Return of Property, attached.)

In the instant Motion, Defendant claims (1) on May 25, 2003, law enforcement unlawfully seized \$108,375 at 1601 East Columbus Drive, Tampa ("property"), (2) the property was his personal property, (3) the property is not the fruit of criminal activity, and (4) the property is not being held as evidence. (See instant Motion, attached.)

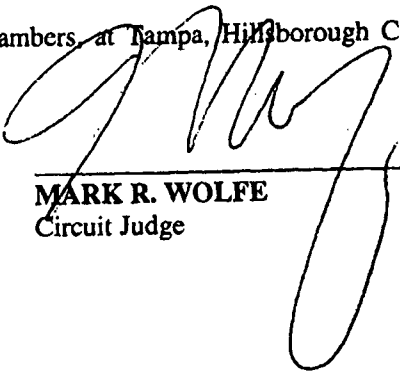
He meets the facial pleading requirements set forth in Wilson and Justice v. State, 944 So.2d 538 (Fla. 2d DCA 2006).

Appendix E

It is therefore **ORDERED** that the Office of the State Attorney **RESPOND** to Defendant's Motion for Return of Property within forty-five (45) days of the date of this Order.

Defendant does not have a right of appeal until a final Order has been entered by the Court.

30th **DONE AND ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this day of August, 2007.



MARK R. WOLFE
Circuit Judge

Attachments:

Order Dismissing Motion for Return of Property
(without attachments)
Motion for Return of Property (August 2007)

Copies furnished to:

Calvin Kelsick Wilson
DC# 524576
Hamilton Correctional Institution
10650 S.W. 46th Street
Jasper, Florida 32052-1360

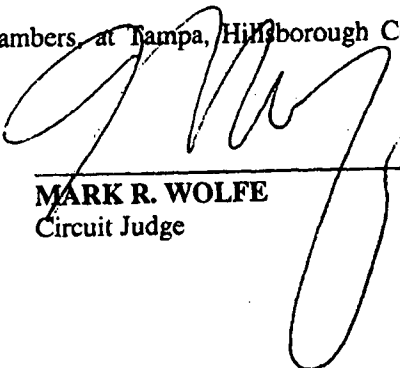
Office of the Public Defender, Division B

Office of the State Attorney, Division B

It is therefore **ORDERED** that the Office of the State Attorney **RESPOND** to Defendant's Motion for Return of Property within forty-five (45) days of the date of this Order.

Defendant does not have a right of appeal until a final Order has been entered by the Court.

30th **DONE AND ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this day of August, 2007.



MARK R. WOLFE
Circuit Judge

Attachments:

Order Dismissing Motion for Return of Property
(without attachments)
Motion for Return of Property (August 2007)

Copies furnished to:

Calvin Kelsick Wilson
DC# 524576
Hamilton Correctional Institution
10650 S.W. 46th Street
Jasper, Florida 32052-1360

Office of the Public Defender, Division B

Office of the State Attorney, Division B

APPENDIX

F

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE AND TRIAL DIVISION

STATE OF FLORIDA

CASE NO.: 03-CF-008814

v.

DIVISION: B

CALVIN KELSICK WILSON

FILED
CLERK CIRCUIT COURT
2008 FEB 14 PM 3:11
HILLSBOROUGH CO. FL
CIRCUIT CRIMINAL

ORDER DENYING MOTION FOR RETURN OF PROPERTY

THIS MATTER is before the Court on Defendant's *pro se* Motion for Return of Property filed on August 10, 2007. The Court finds as follows.

Defendant seeks a return of \$108,375 seized on May 23, 2003, by the Tampa Police Department when he and others were arrested in the instant case. He previously filed motions denied by this Court which the Second District Court of Appeal reversed. Wilson v. State, 924 So. 2d 969 (Fla. 2d DCA 2006), and Wilson v. State, 967 So. 2d 1264 (Fla. 2d DCA 2007).

The Court ordered the State to respond to the motion filed by Defendant on August 10, 2007. (See Order to Respond, attached.) The State filed two (2) responses. (See Response to Defendant's Motion for Return of Property Filed August 10, 2007, and State's Second Response to Defendant's Motion for Return of Property Filed August 10, 2007, attached.)

The State's Second Response includes copies of court documents pertaining to Thirteenth Judicial Circuit Civil Case 03-6433 ("civil forfeiture proceedings"). Exhibit A contains a certified copy of the Order Entering Final Default Pursuant to Rule 1.500(b) and Granting Final Order of Forfeiture As to Jeremy Perez-Martinez, Eduardo Joensia and Marco Caraballo in the civil forfeiture proceedings in an amount of \$111,119. The Order forfeited that amount to the Tampa Police Department. The State claims that Defendant now must seek relief from that final judgment in a civil proceeding.

The Court finds that \$111,119 seized by the Tampa Police Department on May 25, 2003, occurring during events which led to the prosecution of Defendant in the instant criminal case, was forfeited to the Tampa Police Department by civil proceedings in Thirteenth Judicial Circuit Civil Case 03-6433. If Defendant wishes, he must now seek relief via a claim for relief pursuant to Florida Rule of Civil Procedure 1.540. See Reed v. City of Clearwater, 899 So. 2d 343 (Fla. 2d DCA 2005). The Court therefore denies the instant Motion without prejudice to Defendant's right to seek civil relief pursuant to Florida Rule of Civil Procedure 1.540.

Document Filed February 4, 2008

Defendant filed a document in the instant case on February 4, 2008, possibly entitled "Motion for Review/Compel." (See docket excerpt, attached.) This document is not in the court file and cannot be located at the present time. The document be a copy of the filing made by the Defendant in the Second District Court of Appeal on February 4, 2008. (See online docket excerpt, attached.)

Because the Court cannot determine whether the document is a motion directed to this Court, no ruling is made.

It is therefore **ORDERED** that Defendant's Motion for Return of Property is **DENIED** without prejudice to his right to seek relief pursuant to Florida Rule of Civil Procedure 1.540.

Defendant has thirty (30) days in which to appeal this Order.

14^{7/2} **DONE AND ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this
day of February, 2008.



MARK R. WOLFE
Circuit Judge

APPENDIX

G

IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, FLORIDA
CRIMINAL JUSTICE AND TRIAL DIVISION

STATE OF FLORIDA

CASE NO.: 03-8814
03-CF-00814

v.

DIVISION: B

CALVIN KELSICK WILSON

ORDER DENYING MOTION FOR REHEARING FOR RETURN OF PROPERTY

THIS MATTER is before the Court on Defendant's *pro se* Motion for Rehearing for Return of Property filed on March 3, 2008 ("instant Motion"). The Court finds as follows.

Defendant filed a facially sufficient *pro se* Motion for Return of Property on August 10, 2007 ("prior Motion") seeking return of \$108,375 seized by law enforcement when he and codefendants were arrested ("subject property") in the instant case.

The Court ordered the State to respond.¹ On October 9, 2007, the State filed a response. ("Response"). Defendant was represented by the Office of the Public Defender on that date. The Court denied the prior Motion. (See October 9, 2007 Case Progress, attached.) The Court subsequently discovered that the Response did not have a copy of a final judgment of civil forfeiture of the subject property ("such judgment") attached.

Because Defendant would have to seek relief from the court which had entered such judgment, *if one had been entered*, the Court set a status hearing for January 25, 2008.

On January 25, 2008, no counsel appeared on Defendant's behalf ("NOP"). The Court reset the status hearing for February 8, 2008. (See Judge's Memo, and January 25, 2008 Case Progress, attached.)

¹The Court mailed copies of all prior Orders (and all attachments) and the State's responses in the instant case to Defendant.

APPENDIX G

On February 8, 2008, counsel appeared for Defendant. The Court directed the State to provide a certified copy of any final judgment of civil forfeiture of the subject property and set the case for February 13, 2008. (See February 8, 2008 Case Progress, attached.)

The State filed a second response on February 8, 2008, with a certified copy of the final judgment of civil forfeiture of the subject property as an attachment.

On February 13, 2008, no counsel appeared on Defendant's behalf. The Court announced that the Court reserved ruling on the prior Motion.

The Court thereafter entered an order denying the prior Motion without prejudice for Defendant to seek civil relief from the court which entered the final judgment of civil forfeiture.

INSTANT MOTION

In claim 1, Defendant claims the Court violated his procedural and substantive due process rights: (1) he was never served with a copy of the Response, and the Response was not stamped "filed" by the Clerk of Court; (2) he was never served with a copy of the Order denying his motion for default judgment entered on November 15, 2007; and (3) he was never served with notices regarding court dates for January 25, 2008, February 8, 2008, and February 13, 2008. (See instant Motion, pages 1 - 2, paragraph 1, attached.)²

Defendant was represented by counsel on October 9, 2007, and thereafter as to the prior Motion. The Court did not conduct evidentiary proceedings or make any ruling adverse to him on the prior Motion at any the status dates. The Court therefore concludes that these events did not violate Defendant's procedural and substantive due process rights.

Claims 2 - 13

He claims the Court overlooked the following:

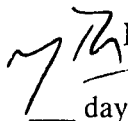
²Subsequent page and paragraph references are to the attached instant Motion.

2. an illegal search and seizure cannot be used to forfeit property (page 2, paragraph 2),
3. the money seized was from legal car transactions Defendant conducted and was improperly used at trial and he never received notice of civil forfeiture proceedings (page 2, paragraph 3),
4. the Court has jurisdiction to return the funds and his pleadings prove his entitlement to the money (page 3, paragraph 4),
5. the prosecutor committed fraud in obtaining a conviction against Defendant (page 3, paragraph 5),
6. he was deprived of mandatory adversarial hearings and the subject property was illegally seized from his lawful business (pages 3 - 4, paragraph 6),
7. the State's argument that he must seek relief in a civil court is wrong and this Court has jurisdiction (page 4, paragraph 7),
8. the State brought criminal proceedings by illegal use of the subject property and illegally convicting the Defendant (page 4, paragraph 8),
9. the State falsely claims that the subject property had been forfeited in a civil action and \$100 of "buy money" was found at the time of the seizure (pages 4 -5, paragraph 9),
10. the Court has authority to order the return of the subject property because it was illegally seized (page 5, paragraph 10),
11. the State used illegal and unfair tactics and actions in contravention of the Florida Forfeiture Act (page 5, paragraph 11),
12. the case law cited in the August 2007 motion is controlling (page 5, paragraph 12),
- and 13. *pro se* motions are to be liberally construed (page 5, paragraph 12).

The Court has not overlooked Defendant's arguments. The Court found that a final judgment of civil forfeiture of the subject property vesting ownership in the City Tampa was entered in Circuit Civil Case 03-6433 in 2003. If he wishes to do so, Defendant may seek relief from the judgment in that case pursuant to Florida Rule of Civil Procedure 1.540. See Reed v. City of Clearwater, 899 So. 2d 343, 344 (Fla. 2d DCA 2005)("[...] the final judgment of forfeiture was entered [...], [defendant's] only potential avenue for relief in the forfeiture proceedings was to seek relief from the judgment.)

It is therefore **ORDERED** that Defendant's Motion for Rehearing for Return of Property is **DENIED**.

Defendant has thirty (30) days in which to appeal this Order and the Order Denying .

 **DONE AND ORDERED** in Chambers, at Tampa, Hillsborough County, Florida, this
__ day of March, 2008.



MARK R. WOLFE
Circuit Judge

Attachments

Case Progress (4)
Judge's Memo

Copies furnished to:

Calvin Kelsick Wilson, DC# 524576
Hamilton Correctional Institution
10650 S.W. 46th Street
Jasper, Florida 32052-1360

Office of the Public Defender, Division B

Office of the State Attorney, Division B

APPENDIX

H

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 03-CF-008814

v.

CALVIN WILSON,
Defendant.

DIVISION: B

FILED
JAN 09 2017
PAT FRANK
CLERK OF CIRCUIT COURT

ORDER DENYING DEFENDANT'S PETITION FOR WRIT OF MANDAMUS

THIS MATTER is before the Court on Defendant's "Petition for Writ of Mandamus," filed on December 19, 2016, through an order transferring the petition from the Second District Court of Appeal. See December 16, 2016 Order, attached. After reviewing the petition, the court file, and the record, the Court finds as follows:

In his petition, Defendant details the procedural history of his case and reiterates arguments previously raised regarding the "illegal search" that was performed and how his due process rights have been violated through the seizure of his property. See Petition for Writ of Mandamus (without attachments), attached. Defendant ultimately requests that "base[d] on the foregoing facts, arguments, authorities, and constitutional violations all implicating a fundamental constitutional miscarriage of justice [sic]," this Court should exercise jurisdiction in order to ensure "expedient and prompt return of [his] personal property that was illegally seized on May 25, 2003 under an invalid warrant[,] specifically \$108,375.00[,] and further order...all other relief [the Court] deem[s] just and proper and constitutional." *Id.*

After reviewing the petition, the court file, and the record, the Court finds that it has already ruled on Defendant's request to have his property returned. Specifically, the Court finds that on February 14, 2008, it denied Defendant's "Motion for Return of Property" in which he requested the return of \$108,375. See February 14, 2008 Order, attached. Further, on March 10, 2008, this

Court denied Defendant's "Motion for Rehearing for Return of Property" in which Defendant alleged the same or substantially the same allegations that he raises in the instant petition. *See* March 10, 2008 Order, attached. On December 5, 2008, the Second District Court of Appeal affirmed this Court's ruling. *See Wilson v. State*, 2 So. 3d 270 (Fla. 2d DCA 2008). **As such, Defendant is not entitled to the relief he seeks.**

It is therefore **ORDERED AND ADJUDGED** that Defendant's "Petition for Writ of Mandamus" is hereby **DENIED**.

Defendant has thirty days from the date of this order within which to appeal.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida, this 6th day of January, 2017.



CHRISTOPHER C. SABELLA, Circuit Judge

Attachments:

December 16, 2016 Order
Petition for Writ of Mandamus (without attachments)
February 14, 2008 Order
March 10, 2008 Order

Copies to:

Calvin Wilson, DC#: 524576
Hardee Correctional Institution
6901 State Road 62
Bowling Green, Florida 33834-9505

Assistant State Attorney, Division B

APPENDIX

I

IN THE THIRTEENTH JUDICIAL CIRCUIT COURT
FOR HILLSBOROUGH COUNTY, FLORIDA
Criminal Justice and Trial Division

STATE OF FLORIDA

CASE NO: 03-CF-008814

v.

FILED

CALVIN WILSON,
Defendant.

OCT 03 2018

DIVISION: B

CLERK OF CIRCUIT COURT

ORDER GRANTING, IN PART, DEFENDANT'S MOTION TO HEAR AND RULE
And
ORDER DENYING AS MOOT DEFENDANT'S MOTION FOR DEFAULT
JUDGMENT/RELIEF FROM JUDGMENT, DECREES AND ORDERS

THIS MATTER is before the Court on Defendant's "Motion to Hear and Rule" and "Appendix Motion to Hear and Rule," filed on July 5, 2018. After reviewing the petition, the court file, and the record, the Court finds as follows:

In his motion, Defendant details the procedural history of his case and alleges that he "filed a timely Motion for Default Judgment/Relief from Judgment Decrees and Orders . . . for relief from illegal search and seizure, seeking relief and return of property specifically \$108,375 in U.S. currency with this Honorable Court on October 29, 2007." See Defendant's motion (without appendix), attached. However, Defendant alleges that no judicial action has been taken, as of date, concerning the above motion. *Id.* Defendant ultimately requests the Court "take some form of judicial action" as to his October 29, 2007 motion. *Id.*

In his October 29, 2007 motion, Defendant reiterates his arguments contained within his numerous filings concerning return of his property. See Defendant's October 29, 2007 motion, attached. In that motion, Defendant ultimately requests the immediate return of his "personal property, \$108,375.00 including interest and any all other relief this Honorable Court deems just

and proper” due to the State’s alleged failure to timely respond to his motion for return of property.

Id.

After reviewing the petition, the court file, and the record, the Court finds that it has already ruled on Defendant’s request to have his property returned, and thus Defendant’s request in his October 29, 2007 motion is moot. Specifically, the Court finds that on February 14, 2008, it denied Defendant’s “Motion for Return of Property” in which he requested the return of \$108,375. *See* February 14, 2008 Order, attached (without attachments). Further, on March 10, 2008, this Court denied Defendant’s “Motion for Rehearing for Return of Property” in which Defendant alleged the same or substantially the same allegations that he raises in his October 29, 2007 motion. *See* March 10, 2008 Order, attached (without attachments). On December 5, 2008, the Second District Court of Appeal affirmed this Court’s ruling. *See Wilson v. State*, 2 So. 3d 270 (Fla. 2d DCA 2008). Furthermore, the Court address substantially the same allegations in its January 9, 2017 Order, denying Defendant’s petition for Writ of Mandamus. *See* January 9, 2017 Order, attached (without attachments).

However, the Court notes that, while it has addressed the claims contained within Defendant’s October 29, 2007 motion in its numerous rulings regarding the return of Defendant’s property, it has not addressed that motion individually. As such, The Court will grant Defendant’s motion to hear and rule, in part, insofar as the Court will address Defendant’s October 29, 2007 motion. In that regard, Defendant’s October 29, 2007 motion is moot and he is not entitled to the relief he seeks.

It is therefore **ORDERED AND ADJUDGED** that Defendant’s “Motion to Hear and Rule” is hereby **GRANTED, IN PART**, in accordance with the above Order.

It is further **ORDERED AND ADJUDGED** that Defendant's October 29, 2007 "Motion for Default Judgment/Relief from Judgment, Decrees and Orders" is hereby **DENIED AS MOOT**.

Defendant has thirty days from the date of this order within which to appeal.

DONE AND ORDERED in Chambers, in Hillsborough County, Florida, this 3rd day of October, 2018.



MARK R. WOLFE, Circuit Judge

Attachments:

Defendant's Motion to Hear and Rule (without Appendix)
Defendant's October 29, 2007 Motion
February 14, 2008 Order (without attachments)
March 10, 2008 Order (without attachments)
January 9, 2017 Order (without attachments)

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