

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0569

September Term, 2015

KITRELL WILSON

v.

STATE OF MARYLAND

Krauser, C.J.,
Woodward,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: August 11, 2016

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Kitrell Wilson was convicted by a jury in the Circuit Court for Montgomery County, Maryland of possession with intent to distribute phencyclidine (“PCP”). This Court affirmed the judgment in an unreported opinion. *See Wilson v. State*, Number 2230, Sept. Term, 2012 (filed October 10, 2014, mandate issued November 10, 2014) (Nazarian, J.). He then filed a motion for return of money and property, which was dismissed, without prejudice, by the circuit court on January 20, 2015. Approximately 55 days later, on March 16, 2015, Wilson filed a motion to alter or amend judgment, challenging the circuit court’s dismissal of his motion for return of property. That motion was denied on March 19, 2015. Twenty six (26) days after that denial, on April 14, 2015, Wilson filed an application for leave to appeal in the circuit court, which we shall treat as a notice of appeal. *See generally, State v. Chaney*, 375 Md. 168, 171 (2003) (treating an improperly captioned application for leave to appeal as the equivalent of a notice of appeal under the circumstances). In his appeal, Wilson, *pro-se*, claims that the lower court erred when it denied the motion to alter or amend judgment.

For the following reasons, we shall affirm.¹

¹ The questions presented that are set forth in Wilson’s brief are:

I. Did the lower court err when it denied the appellant’s motion for return of his property?

II. Does the doctrine of laches apply to actions in rem or quasi in rem?

(continued...)

BACKGROUND

On April 12, 2012, appellant was indicted in the Circuit Court for Montgomery County, Maryland, for possession with intent to distribute PCP and two counts of driving while impaired. After the driving offenses were *nol prossed* by the State, the appellant was tried by a jury on the narcotics offense on October 1-2, 2012. The State proved that, on March 14, 2012, appellant was stopped by Montgomery County police officers while speeding in a maroon 2004 Hyundai Elantra. When officers spoke to appellant, they detected the strong odor of an alcoholic beverage on his breath, as well as the smell of PCP emanating from his vehicle. A search of both appellant's person and his vehicle, incident to appellant's arrest for driving under the influence, resulted in the seizure of \$808.00 in currency, a box of 143 empty glass vials, a vial containing 27.8 grams of liquid PCP, an eyedropper, and an electronic scale.

A jury convicted appellant of possession with intent to distribute PCP. On December 10, 2012, appellant was sentenced to twenty-five (25) years, without possibility of parole. He timely appealed to this Court on December 18, 2012, and as already mentioned, we

(...continued)

III. Is the State barred from any claim that the appellant's car, work tools and money were drug proceeds?

affirmed the judgment on October 10, 2014. Appellant did not file a petition for writ of certiorari to the Court of Appeals.

On December 23, 2014, 43 days after issuance of our mandate, appellant filed a motion for return of money and property in the Circuit Court for Montgomery County, referencing both the subject case, Case Number 120416-C, and another case, Case Number 120635.² That motion read, in pertinent part, as follows:

Now comes Kitrell Wilson, *pro se*, and pursuant to Crim. Proc. §§ 12-302 et. seq., § 4-401 of the Courts Article, and Ann. Code, 1957, Art. 27, § 297, formally requesting the return of his money and property, and in support of relief states;

1. The State’s Attorney failed to apply for forfeiture of property and money in either of the above cases, within mandatory time parameters;
2. The State failed to “serve” Petitioner with any pleadings, to afford him any opportunity to rebut any claim [that] the money, property and belongings – were not “drug proceeds”, as required;
3. The applicable property sought by Mr. Wilson is: (i) a bag of tools; (ii) a bag of clothes; (iii) cell phones; (iv) 4 CD’s; (v) \$446.00; and (vi) One vehicle, approx. \$2,000.00 in value

The circuit court dismissed appellant’s motion for return of money and property, without prejudice in a one-page order. That order was docketed on January 20, 2015.

² Appellant entered a guilty plea to possession with intent to distribute PCP in Case Number 120635. He was sentenced, at the same disposition hearing for the underlying offense in this case (120416-C) to a concurrent term of twenty years incarceration.

Almost two months later, on March 16, 2015, appellant filed a motion to alter or amend judgment. He asked that the court provide reasons for its dismissal without prejudice of his motion. Appellant also amended the list of items sought to be returned as follows:

4. The money that should be returned is \$446.00. The 1999 Volkswagen Passat is worth \$2,000. Other property included a bag of tools, (consisting of: 1 Craftsman 2-ton Jack, 4 CDs, \$250 Jordan tennis, 4-\$10 T-shirts, 4-\$25 pair sweat pants, 2 Iviso Jeans (\$755.), 1 Lebron tennis (\$325.00), I [sic] flashlight = \$13; 1 paint gun set \$450; 1 cell phone, I-phone = \$500; 1 Boost Mobile phone \$50. Wilson is and has been initiating efforts to secure the return of property and money which was seized from him by police, and asserts again that the State declined to ever exercise the option of seeking forfeiture; [. . .]

On March 19, 2015, in another one-page order, the circuit court denied appellant's motion to alter or amend. That order was filed by the clerk on March 26, 2015.

Thereafter, on April 14, 2015, appellant filed an application for leave to appeal denial of return of property in which he challenged the court's original order denying his motion for return of money and property filed on January 20, 2015.

DISCUSSION

Appellant contends, under a variety of theories including laches, denial of due process, and failure to comply with the procedural requirements for civil forfeiture of his money and property, that the circuit court erred in dismissing his motion for return of money and property. The State argues that this issue is not properly before us because the appeal

was untimely filed. We agree with the State that we have no jurisdiction to decide whether the court erred in denying the motion for return of money and property.

Maryland Rule 8-202 (a) requires that an appeal “shall be filed within 30 days after entry of the judgment or order from which the appeal is taken.” Treating appellant’s application as the functional equivalent of a notice of appeal, appellant appealed on April 14, 2015.

The circuit court dismissed appellant’s motion for return of money and property, without prejudice, on January 20, 2015. As the instant appeal was filed more than 30 days after entry of that order, the challenge to the court’s ruling on appellant’s motion for return of money and property was filed too late. We therefore shall not discuss the merits of that motion.

Appellant filed his motion to alter or amend judgment on March 16, 2015, which was denied three days later. He filed a notice of appeal concerning that order within 30 days. As to this last mentioned appeal, we do have jurisdiction to decide whether the circuit court erred in denying his motion to alter or amend. Because this motion is civil in nature, we look first to Maryland Rule 2-534, which reads:

In an action decided by the court, on motion of any party filed within ten days after entry of judgment, the court may open the judgment to receive additional evidence, may amend its findings or its statement of reasons for the decision, may set forth additional findings or reasons, may enter new findings or new reasons, may amend the judgment, or may enter a new judgment. A motion to alter or amend a judgment may be joined with a motion for new

trial. A motion to alter or amend a judgment filed after the announcement or signing by the trial court of a judgment but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

The “judgment” that appellant asked the circuit court to reconsider was the court’s ruling dismissing, without prejudice, the appellant’s motion for return of money and property. But, as already noted, the motion to alter or amend judgment was filed on March 16, 2015, which was 55 days after the court dismissed his motion for return of money and property. Appellant’s motion to alter or amend was untimely under Maryland Rule 2-534. Thus, the court could legitimately deny that motion because, no matter what the merits may have been under Rule 2-534, it was filed too late.

Appellant also cited Maryland Rule 2-535, in support of his motion to alter or amend.

That rule provides, in pertinent part:

(a) Generally. On motion of any party filed within 30 days after entry of judgment, the court may exercise revisory power and control over the judgment and, if the action was tried before the court, may take any action that it could have taken under Rule 2-534. A motion filed after the announcement or signing by the trial court of a judgment or the return of a verdict but before entry of the judgment on the docket shall be treated as filed on the same day as, but after, the entry on the docket.

(b) Fraud, mistake, irregularity. On motion of any party filed at any time, the court may exercise revisory power and control over the judgment in case of fraud, mistake, or irregularity.

Maryland Rule 2-535 allows 30 days for the filing of a motion asking the court to exercise its revisory power and control over a judgment. Appellant’s motion to alter or amend the court’s order dismissing his motion for return of money and property was filed 55 days later. Thus, appellant’s motion was untimely under Maryland Rule 2-535(a).

That leaves Maryland Rule 2-535(b), which does not specify a time limitation, but only permits further review in cases of “fraud, mistake, or irregularity.” Appellant’s motion to alter and amend judgment did not allege fraud, mistake or irregularity and therefore Md. Rule 2-535(b) is inapplicable.

Under these circumstances, the circuit court did not err or abuse its discretion in denying the motion to alter or amend judgment.

**JUDGMENT AFFIRMED; COSTS TO BE
ASSESSED TO APPELLANT.**