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IN THE
COURT OF APPEALS OF INDIANA

LOVELL J. JONES,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 42A01-0810-CV-513
	)	
STATE OF INDIANA,	)	
	)	
Appellee.	)	

APPEAL FROM THE KNOX SUPERIOR COURT
The Honorable W. Timothy Crowley, Judge
Cause No. 42D01-0312-FB-224
Cause No. 42D01-0401-PL-003

August 4, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Case Summary

Lovell Jones ("Jones") appeals the denial of his Motion for Release of Bond and Motion for Return of Property, which motions sought his recovery of a watch posted as security for a bail bond and subsequently forfeited in a separate civil forfeiture proceeding. We affirm.

Issue

Jones presents a single issue for review: whether the trial court properly denied recovery of the watch.

Facts and Procedural History

On December 15, 2003, Jones was charged with Robbery. On the following day, the Knox Superior Court set a bond of $25,000 "with 10% cash acceptable" and determined that "defendant's Rolex will stand as his bond in this matter." (App. 3.)

On January 15, 2004, the State filed a Complaint for Civil Forfeiture, seeking forfeiture of two handguns and the watch. Jones did not respond, and the State moved for a default judgment. On March 16, 2004, the motion for default judgment was granted.

On March 30, 2006, Jones pleaded guilty to Robbery and the trial court entered a judgment of conviction accordingly. That same day, the trial court ordered the Knox County Sheriff's Department to release the watch to a representative of the Vincennes Police Department. Additionally, the trial court's order provided:

> Further, the Court orders that when this watch is listed for sale, or sold at auction, that Mr. Parmenter shall provide written notice to Defendant's counsel, Jeff Neal, so that Mr. Neal may inform the members of Defendant's family of the date and time of the sale. On the date of the sale Mr. Neal,

> and/or the members of Defendant's family, may bid on, or attempt to purchase, the watch in question.

(App. 27.) Apparently, Jones unsuccessfully attempted to arrange installment payments before the property was auctioned. The sparse record indicates that the parties expected the watch to be offered for sale at an auction scheduled in June of 2006.[1]

On September 2, 2008, Jones filed a pro-se Motion for Release of Bond. On September 5, 2008, he filed a pro-se Motion for Return of Defendant's Property. The trial court denied the motions, stating in relevant part:

> That Defendant's motions are moot because Defendant's watch was seized and forfeited in a civil forfeiture proceeding over four (4) years ago in Cause No. 42D01-0401-PL-003.

(App. 32.) Jones appeals.

Discussion and Decision

Jones argues that he was entitled to recover the watch pursuant to Indiana Code Section 35-33-5-5, which governs the disposition of property held as evidence. This statute is inapposite, because the watch was not held as evidence. Rather, it was posted as a bond in lieu of cash and later became the subject of a civil forfeiture proceeding.

The State filed its Complaint for Civil Forfeiture on January 15, 2004. Pursuant to Indiana Code Section 34-24-1-3(c), Jones had twenty days after service of the complaint in which to file an answer. He was served with a copy of the complaint on January 22, 2004, and thus had until February 11, 2004 to timely respond. Jones did not respond.

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[1] The record contains no evidence as to an actual sale, or the proceeds therefrom.

Indiana Code Section 34-24-1-3(d) provides that "[i]f, at the end of the time allotted for an answer, there is no answer on file, the court, upon motion, shall enter judgment in favor of the state and the unit (if appropriate) for reimbursement of law enforcement costs and shall order the property disposed of in accordance with section 4 of this chapter." The State filed a Motion for Default Judgment on March 16, 2004, alleging that Jones failed to answer the civil forfeiture complaint. The trial court granted a judgment of default on March 16, 2004. Jones did not appeal.

Having failed to appeal the default judgment, Jones may not collaterally attack the forfeiture. "For some time, Indiana has adhered to the rule that the judgment of a court 'having jurisdiction of the subject matter of the suit and of the person, however irregular, is not void and impeachable collaterally, unless it may be for fraud.'" Mishler v. County of Elkhart, 544 N.E.2d 149, 151 (Ind. 1989) (quoting Horner v. Doe (1848), 1 Ind. 130, 133). The watch having been forfeited, Jones was no longer the rightful owner. The trial court did not err in determining that Jones was not entitled to recovery of the watch.

Affirmed.

VAIDIK, J., and BRADFORD, J., concur.