

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-413

JUNE TERM, 2008

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Caledonia Circuit
	}	
Robert J. Somers	}	DOCKET NO. 491-8-04 Cacr

Trial Judge: M. Kathleen Manley

In the above-entitled cause, the Clerk will enter:

Defendant appeals the district court's decision declining to order restitution for the State's destruction of firearms seized at the time of his arrest. We affirm.

In August 2004, defendant was charged with burglary and possession of stolen property. The possession-of-stolen-property charge was eventually dismissed, but defendant was convicted of the burglary charge in November 2005 and sentenced in February 2006 to serve a prison term of five-to-ten years. In November 2005, while the criminal charges were pending, defendant filed a pro se motion with the district court for return of property. The following month, after the court issued an order stating that all motions from a represented defendant must come from counsel, defendant's attorney filed a motion for return of property. The motion was considered at hearing dates in July 2006 and May 2007. By the time of the final hearing, the only property still in dispute were items held by the police in Tennessee and five firearms that had been lawfully seized here pursuant to a Vermont search warrant in July 2004. It was undisputed that law enforcement officials had destroyed the Vermont firearms on February 18, 2005 pursuant to state statute. See 20 V.S.A. § 2305 (providing for disposition of unlawful firearms). In June 2007, following the hearing on the motion, defendant filed a memorandum in which he moved for the court to order the State: (1) "to make reasonable restitution to him for the firearms in the amount of \$1,500.00"; and (2) to communicate with Tennessee law enforcement officials to effect the release of items they held.

In its July 23, 2007 decision, the district court ruled that the State properly disposed of the firearms under the statutory scheme, see 20 V.S.A. §§ 2301-2306, and that, in any event, it had no authority to award defendant the monetary damages he sought. Regarding the Tennessee items, the court ordered the State to communicate with Tennessee officials to effect the release of

those items. On appeal, defendant does not challenge the court's order regarding the Tennessee items and further concedes that the district court had no authority to order the State to pay him for destruction of the firearms. See State v. Crannell, 171 Vt. 623, 624 (2000) (mem.) (stating that district court's ancillary jurisdiction to order return of property is based on equity and does not extend to actions for damages). He challenges, however, the court's determination that the State seized unlawful firearms from him and was justified in destroying them. Defendant contends that the firearms were not unlawful because he did not possess or use them in violation of state law. See 20 V.S.A. § 2302(a) (defining "unlawful firearms" as firearms possessed or used in violation of federal or state law or used in the commission of any federal or state felony). Defendant concedes that he was on probation at the time the firearms were seized, and that one of his probation conditions prohibited him from possessing firearms, but he contends that the violation of a probation condition is not a violation of state law. The State responds that (1) the district court lacked jurisdiction over the firearms because the only remedy defendant could obtain and the only remedy he sought was restitution for their destruction; and (2) because probation conditions are a creature of state law, and because state law explicitly authorizes courts to impose probation conditions prohibiting the purchase or possession of firearms, 28 V.S.A. § 252(b)(8), defendant's possession of the firearms was a violation of state law, making the firearms "unlawful" under § 2302(a).

We need not address defendant's claim that the district court erred by concluding that the State acted in conformity with statutory law when it destroyed the firearms. Because the firearms had been destroyed months before defendant filed his motion for their return, the only remedy he sought was money damages. As defendant acknowledges, "any motion seeking a remedy at law for seized property no longer in the State's possession properly belongs in superior court." Crannell, 171 Vt. at 624. Thus, the district court correctly held that it did not have the authority to entertain defendant's request for reimbursement for destruction of the firearms. Any further analysis regarding destruction of the firearms was dicta. Given its lack of authority to provide the only remedy sought by defendant, the district court did not need to consider whether the State had destroyed the firearms in compliance with state law or whether defendant had failed to avail himself of the statutory remedy provided in 20 V.S.A. § 2306 (setting forth rights of bona fide owners of firearms).

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Brian L. Burgess, Associate Justice