

**IN THE COURT OF APPEALS OF IOWA**

No. 8-141 / 05-0529  
Filed April 30, 2008

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**ERIC BENJAMIN WRIGHT,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Pottawattamie County, Jeffrey L. Larson, Judge.

Defendant appeals the district court order denying his motion for the return of seized property. **AFFIRMED.**

Eric Benjamin Wright, Leavenworth, Kansas, appellant pro se.

Thomas J. Miller, Attorney General, Kristin Guddall and Sharon K. Hall, Assistant Attorneys General, Matthew D. Wilber, County Attorney, and Jeffrey R. TeKippe and Christopher M. Wilson, Assistant County Attorneys, for appellee.

Considered by Vogel, P.J., and Vaitheswaran, J., and Beeghly, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

**BEEGHLY, S.J.****I. Background Facts & Proceedings**

In April 2002, Eric Wright was charged with several drug-related offenses in Pottawattamie County, Iowa, in criminal case FECR 28403.<sup>1</sup> That case was later dismissed, in July 2002, because Wright was indicted in federal court on related charges.

On April 12, 2002, Wright was personally served with notice of seizure for forfeiture of items seized at the time he was arrested including cash, a police scanner, a computer, and firearms, with a value of about \$2410. On May 17, 2002, the State filed notice of pending forfeiture of the items in a separate civil case, SPCV 82823. On October 29, 2003, a declaration of forfeiture was filed in the civil case, stating the listed property had been forfeited to the State of Iowa under Iowa Code section 809A.16(1) (2001). No further action was ever taken in SPCV 82823.

On May 17, 2004, Wright filed a pro se motion for return of properties in FECR 28403, and attached a copy of the declaration of forfeiture. He claimed the State had never given him notice of pending forfeiture. On January 31, 2005, the district court entered an order in the criminal case which states, "Hearing on defendant's Motion for Return of Seized Property. The defendant appeared by telephone. The motion is denied." Wright appealed the district court's ruling in FECR 28403.

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<sup>1</sup> Wright was charged with possession of methamphetamine with intent to deliver, possession of a precursor, possession of a firearm as a felon, unauthorized possession of offensive weapons, and manufacturing methamphetamine.

## II. Standard of Review

Forfeiture is a civil proceeding. *In re Prop. Seized from Aronson*, 440 N.W.2d 394, 397 (Iowa 1989). We review forfeiture proceedings for the correction of errors at law. *In re Prop. Seized from Chiodo*, 555 N.W.2d 412, 414 (Iowa 1996).

## III. Merits

We first question whether the district court had authority to rule on Wright's motion for return of properties. Forfeiture proceedings are civil proceedings, separate and distinct from any related criminal proceedings. *State v. Predka*, 555 N.W.2d 202, 212 (Iowa 1996). Wright filed the motion for return of properties in FECR 28403, which had been dismissed on July 12, 2002, and did not involve the forfeiture of his property. See *Woodbury County Attorney v. Iowa Dist. Court*, 448 N.W.2d 20, 22 (Iowa 1989) (finding court had no authority to order discovery for a civil action based on a petition filed in a related criminal case that had been dismissed); *In re Marriage of Helm*, 271 N.W.2d 725, 726-27 (Iowa 1978) (finding it would be error for district court to modify custody where mother, who had remarried and divorced father a second time, filed application in the wrong dissolution proceeding).

We note that generally, if a case has been filed under the wrong docket "one or both of the parties must move that it be transferred to the proper docket, or the court must transfer it; otherwise, the case may proceed to conclusion where it is." *In re Estate of Young*, 273 N.W.2d 388, 392 (Iowa 1978). The problem in this case, however, was not merely that the case was filed in a

criminal proceeding when it should have been filed in the civil proceeding, but it was filed in a proceeding that had been dismissed. See *State v. Braun*, 460 N.W.2d 454, 455 (Iowa 1990) (finding district court would be justified in dismissing an application for discovery filed in a criminal case that was closed); *Woodbury County Attorney*, 448 N.W.2d at 22 (noting district court could not authorize discovery against a non-party in an abated criminal action).

Furthermore, we conclude that even if Wright had filed his motion for return of properties in SPCV 82823, it would have been untimely. The declaration of forfeiture, filed on October 29, 2003, was pursuant to section 809A.16(1), which states, “[i]f notice of pending forfeiture is properly served in an action in rem or in personam . . . the prosecuting attorney shall prepare a written declaration of forfeiture of the subject property . . . .” Wright claims that notice of pending forfeiture was not properly served in this case, and the property should be returned to him.

Once a declaration of forfeiture has been filed, a party may seek relief under section 809A.16(2), which provides:

Within one hundred eighty days of the date of a declaration of forfeiture, an owner or interest holder in property declared forfeited pursuant to subsection 1 may petition the court to have the declaration of forfeiture set aside, after making a prima facie showing that the state failed to serve proper notice as provided by section 809A.13.

Wright’s motion for return of properties was filed on May 17, 2004, more than 180 days after the declaration of forfeiture. The motion for return of properties states that Wright became aware of the declaration of forfeiture when he received a letter dated February 18, 2004, from a police officer, which was well within the

180-day timeframe.<sup>2</sup> Wright waited until May 17, nearly three months, to file his motion for relief. Wright's claims of lack of notice of pending forfeiture were untimely under section 809A.16(2).<sup>3</sup> We conclude the district court did not err by denying Wright's motion for return of property, and conclude the declaration of forfeiture should not be set aside.

On appeal, Wright also raises claims regarding due process and prejudicial delay in the proceedings. These issues were not raised before the district court. We conclude these issues have not been preserved for our review. See *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002) (noting an appellate court does not consider issues raised for the first time on appeal).

We affirm the decision of the district court.

**AFFIRMED.**

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<sup>2</sup> By our calculations the 180-day period would have given Wright until April 27, 2004, to request relief under section 809A.16(2). That day is a Sunday, and he would actually have had until April 28, 2004.

<sup>3</sup> Section 809A.16(2) refers to proper notice under section 809A.13. Section 809A.13(2) provides that an action in rem may be brought by filing notice of pending forfeiture, and that service of this notice should be made as provided for in section 809A.8(2). Thus, Wright's claim he did not receive notice of pending forfeiture as required by section 809.8(2) comes within the language in section 809A.16(2) referring to the State's failure "to serve proper notice as provided by section 809A.13." We conclude Wright's claim of lack of notice of pending forfeiture would need to be made within 180 days of the date of the declaration of forfeiture. See Iowa Code § 809A.16(2).