

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 14, 2010

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2009AP974

Cir. Ct. No. 1998CF4294

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE RETURN OF PROPERTY IN STATE V. JOHNNY LACY

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHNNY LACY,

DEFENDANT-APPELLANT.

APPEAL from orders of the circuit court for Milwaukee County:
PATRICIA D. McMAHON, Judge. *Affirmed.*

Before Curley, P.J., Kessler and Brennan, JJ.

¶1 PER CURIAM. Johnny Lacy, *pro se*, appeals from an order “denying an application petition for the return of seized property” and from an

order denying his motion for reconsideration. He claims the circuit court did not hold a hearing and he is entitled to the property. We reject Lacy's claims and affirm the orders.

¶2 In 1998, Lacy was convicted of nine felonies and a misdemeanor, including burglary, armed robbery, and theft. He was sentenced to 360 years' imprisonment. During the course of their investigation, police seized multiple items—including a coat, knives, cameras, watches and many pieces of jewelry—from Lacy's home after a consent search. In February 2009, Lacy petitioned the court for the property's return. *See* WIS. STAT. § 968.20 (2007-08).¹ The court denied the petition and Lacy appeals.

¶3 Lacy's first argument is that he was denied a hearing on his petition, even though WIS. STAT. § 968.20(1) states that the circuit court "shall" hold a hearing. In fact, the circuit court *did* hold a hearing on Lacy's petition—the court even ordered the county to pay for a copy of the hearing transcript so that Lacy could have a meaningful appeal. Lacy has no basis for relief by claiming lack of a hearing.²

¶4 Lacy also asserts the court erred in refusing to return the property to him. The three elements of WIS. STAT. § 968.20 for the return of seized property

¹ All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

² WISCONSIN STAT. § 968.20(1) states that when a person petitions for the return of property, the circuit court "shall order such notice as it deems adequate to be given the district attorney and all persons who have or may have an interest in the property and shall hold a hearing to hear all claims to its true ownership." To the extent Lacy is complaining that the hearing addressed only his claims of ownership and not the claims of any others, we discern no error. Lacy's claims were adjudicated and he has no standing to claim error on behalf of anyone else.

are: (1) the petitioner has a right to possession of the property; (2) the property is not contraband; and (3) the property is not needed as evidence. *See State v. Benhoff*, 185 Wis. 2d 600, 603, 518 N.W.2d 307 (Ct. App. 1994). Although the State has the burden of showing an item is contraband, a petitioner first has the burden of establishing the right to possession. *See Jones v. State*, 226 Wis. 2d 565, 594-95, 594 N.W.2d 738 (1999).

¶5 Lacy asserts he established ownership and a right to possession of the property because although the State asserted that the items were stolen property, no one else came forward to make a claim. However, the circuit court expressly found that Lacy's explanation of how he came to possess the claimed items was "not very convincing," particularly in light of the nature of his convictions.³ It is irrelevant that no one else established a claim of ownership; the circuit court simply found that Lacy had not sufficiently established ownership either. We defer to the circuit court's credibility assessment.⁴ *See id.* at 596.

By the Court.—Orders affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

³ At the hearing, Lacy claimed the jewelry was "mostly my daughter's[.]" Even if true, thereby negating the State's claim that all of the inventoried items were stolen property, this assertion does not establish Lacy's claim to the property.

⁴ Certain items, like the coat, had been destroyed. To the extent Lacy claimed he was therefore entitled to a monetary award, we note that even had he established ownership, WIS. STAT. § 968.20 does not authorize an award of money damages. *See City of Milwaukee v. Glass*, 2001 WI 61, ¶20, 243 Wis. 2d 636, 628 N.W.2d 343.

