

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

June 18, 1996

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

NOTICE

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

No. 95-1613

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

IN RE THE RETURN OF PROPERTY:

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JIMMY SLOAN,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
JEFFREY A. KREMERS, Judge. *Affirmed.*

Before Wedemeyer, P.J., Sullivan and Fine, JJ.

PER CURIAM. Jimmy Sloan appeals from an order denying his replevin motion. See § 968.20(1), STATS.¹ On appeal, Sloan argues that he was

¹ Section 968.20(1), STATS., provides:

denied his constitutional right to due process when the circuit court issued an order denying his motion without a hearing. We affirm.

On June 14, 1989, Sloan was charged with possession of cocaine with intent to deliver and with possession of marijuana, after his arrest by the Milwaukee Police Department. During the arrest, numerous items found in Sloan's car were seized. Prior to his trial on this matter, Sloan was charged in federal court with conspiracy to possess and distribute cocaine. The federal charge included the prior state criminal offense. Therefore, all of his personal property seized as evidence by the Milwaukee Police Department was transferred to federal custody. After Sloan was convicted of the federal charge, the evidence was transferred back to the Milwaukee Police Department. On November 20, 1991, Sloan filed a replevin motion with both the federal court and the Milwaukee circuit court seeking the return of his personal property that was seized by the Milwaukee Police Department. He named the Milwaukee County Sheriff's Department as defendant. In an order dated March 25, 1992, U.S. District Judge J.P. Stadtmueller denied Sloan's motion, stating that the United States Government no longer had possession of his personal property that was seized. The circuit court, at that time, did not respond to Sloan's motion, presumably because he had not yet been tried in state court.

On July 15, 1992, Sloan was found guilty of the state charges. Thereafter, Sloan's motion for replevin was dormant for a number of years until
(..continued)

Any person claiming the right to possession of property seized pursuant to a search warrant or seized without a search warrant may apply for its return to the circuit court for the county in which the property was seized or where the search warrant was returned. The 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. If the right to possession is proved to the court's satisfaction, it shall order the property, other than contraband or property covered under sub. (1m) or (1r) or s. 951.165, returned if:

- (a) The property is not needed as evidence or, if needed, satisfactory arrangements can be made for its return for subsequent use as evidence; or
- (b) All proceedings in which it might be required have been completed.

the circuit court directed the district attorneys' office to respond to Sloan's motion. On January 25, 1995, the circuit court issued an order requiring the District Attorney and the Milwaukee City Attorney to indicate whether they objected to Sloan's request. Both offices objected, stating that the personal property was subject to federal civil forfeiture. The circuit court, therefore, denied Sloan's motion without a hearing.

Section 968.20(1), STATS., allows a party to petition the trial court for the return of their personal property that has been seized. A trial court, however, cannot render a judgment or issue an order against a party unless it has personal jurisdiction over that party. *See* § 801.04(2), STATS. Here, the trial court did not have personal jurisdiction over the City of Milwaukee because Sloan failed to name and serve it with his replevin motion. There is no dispute that the property was never in the possession of the Milwaukee County Sheriff's Department. Here, the Milwaukee Police Department had possession of his personal property seized during his arrest and, therefore, was the proper party to serve and name as defendant, not the Milwaukee County Sheriff's Department.

By the Court. – Order affirmed.

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