

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D20-529

BILLY RAY SHIRAH,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

On appeal from the Circuit Court for Bay County.
Christopher N. Patterson, Judge.

March 11, 2021

KELSEY, J.

Appellant is trying to get back his 75-inch flat-screen TV and his PlayStation 4, or their value, which he estimated at \$3,000. He filed a petition alleging that Bay County Sheriff's officers took these items from his private bedroom in his father's house, while executing a drug search warrant on his father. His father died while charges were pending, and the State dismissed the charges. The Sheriff's Office initially denied having taken these items, but ultimately admitted that it had. By the time of the hearing below, the Sheriff no longer had the items and did not know where they were. The Sheriff denied that Appellant was entitled to compensation, because title had passed to the Sheriff's Office by operation of law before Appellant filed his petition. The Sheriff also argued that Appellant had failed to prove ownership of these

items. The trial court denied Appellant’s petition. We reverse for further proceedings because the Sheriff’s Office did not establish its ownership, which in turn determines whether Appellant’s claim was timely.

The Sheriff obtains title to seized property 60 days after conclusion of a legal proceeding, but only if the property was “lawfully seized pursuant to a lawful investigation.” § 705.105(1), Fla. Stat. (2018) (providing that title to “lawfully seized” property “shall vest permanently in the law enforcement agency 60 days after the conclusion of the proceeding”). The 60-day vesting does not apply, however, if the property was seized for non-investigative or non-evidentiary purposes. Rather, in such cases, a 4-year statute of limitations applies. § 95.11(3)(i), Fla. Stat. (establishing 4-year statute of limitations to actions for return of property held by the State); *see Adams v. State*, 273 So. 3d 195, 197–98 (Fla. 5th DCA 2019) (reversing denial of motion for return of property and remanding for evidentiary hearing where trial court failed to consider whether 4-year limitations period was applicable).

If a court finds that a claimant has made a prima facie case for return of property the State holds, and the State is “unable to connect the items to specific criminal activity, and no one else can be identified who can demonstrate a superior possessory interest in the property, [the property] should be returned to [the claimant] or to such person(s) as he may designate.” *Stone v. State*, 630 So. 2d 660, 661 (Fla. 2d DCA 1994).

At the hearing below, the Sheriff did not address, and therefore did not prove, whether Appellant’s TV and PlayStation were lawfully seized from his bedroom during a search related to his late father’s drug charges. The trial court erred in failing to require the Sheriff’s Office to first meet its own burden, which would establish the governing due date for Appellant’s petition, before requiring Appellant to prove ownership or another basis of entitlement to these items. We therefore reverse and remand for a new evidentiary hearing.

REVERSED and REMANDED.

LEWIS and BILBREY, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Billy Ray Shirah, pro se, Appellant.

Ashley Moody, Attorney General, and Heather Flanagan Ross, Assistant Attorney General, Tallahassee, for Appellee.