

STATEMENT OF THE CASE

Kelvin L. Lampkins appeals from the trial court's order denying his motion for relief from default judgment entered in a forfeiture action under Indiana Code Section 34-24-1-1. We address a single dispositive issue on appeal, namely, whether the State properly served Lampkins with its forfeiture complaint.

We remand.

FACTS AND PROCEDURAL HISTORY

On November 7, 2005, Lampkins was arrested for possession of a controlled substance. At the time of his arrest, Lampkins was in possession of \$2,898 in cash, and officers seized that cash. On August 25, 2006, the State filed its Complaint for Forfeiture and Reimbursement of Law Enforcement Costs. The State attempted to obtain service on Lampkins at his last known address, but the summons was returned as undeliverable. On February 15, 2007, the State attempted service via an alias summons addressed to "Kelvin Lampkins, c/o Delaware County Jail[.]" Appellant's App. at 9. A February 16 entry in the Chronological Case Summary ("CCS") states, "R/S P/S as to Kelvin Lampkins c/o Del Co. Jail LEFT SERVICE WITH SHERIFF'S DEPT." Id. at 2 (emphasis in original).

On April 19, 2007, the State filed its verified motion for default judgment together with a non-military affidavit, an affidavit of counsel, and an affidavit of law enforcement. On the same date, the trial court granted the motion for default judgment. And in a separate criminal proceeding, Lampkins was convicted of dealing in cocaine on October

4, 2007. The conviction court sentenced him to forty years in the Department of Correction.¹

On August 14, 2008, Lampkins filed a motion for relief from default judgment under Indiana Trial Rule 60(B)(2) and (3), alleging that the seized cash was “fraudulently distributed before [he] was convicted of the offenses charged in his criminal action.” Id. at 18. On August 20, the State filed its response, arguing that Lampkins’ motion was not timely filed and that a criminal conviction on an underlying charge was not a prerequisite for forfeiture. After a hearing, the trial court denied Lampkins’ motion. Lampkins now appeals.

DISCUSSION AND DECISION

On appeal, Lampkins contends that he is entitled to relief from default judgment on the forfeiture complaint because the State did not serve the complaint on him in compliance with Indiana Trial Rule 4.3. Indiana Trial Rule 4.3 provides, in relevant part:

Service of summons upon a person who is imprisoned . . . shall be made by delivery or mailing a copy of the summons and complaint to the official in charge of the institution. It shall be the duty of said official to immediately deliver the summons and complaint to the person being served and allow him to make provisions for adequate representation by counsel. The official shall indicate upon the return whether the person has received the summons and been allowed an opportunity to retain counsel.

The State concedes that “the record does not reflect whether the complaint and summons that was delivered to the jail for service on Lampkins was actually given to him at the time.” Appellee’s Brief at 4. In its brief on appeal, the State explained that “R/S P/S” in the CCS means that Lampkins “received service, personal service[.]” Appellee’s

¹ The State averred in its response to Lampkins’ petition for relief from judgment that he had been sentenced to forty years, but in its Appellee’s Brief the State indicates that Lampkins was sentenced to thirty-nine years.

Brief at 2 n.1. But the record shows only that the summons and complaint were “left” with the Sheriff’s Department. Appellant’s App. at 2. That notation, without more, does not constitute a return of service that satisfies Rule 4.3.

Because we cannot discern from the record on appeal whether Lampkins was served in compliance with Trial Rule 4.3, we agree with the State that this case should be remanded “to determine whether Lampkins was properly served with the State’s forfeiture complaint in 2006.” Appellee’s Brief at 3. On remand, we instruct the trial court to hold a hearing to determine whether service of the complaint complied with Rule 4.3. If, following that hearing, the trial court determines the State did not comply with Rule 4.3, then the court shall grant Lampkins’ motion for relief from the default judgment.

Remanded with instructions.

KIRSCH, J., and BARNES, J., concur.