

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

KEVIN T. BOYER, : C.A. No. 05M-12-016
Petitioner, :
v. :
STATE OF DELAWARE, :
Respondent. :

ORDER UPON REVIEW OF PETITION AND UPON
MOTION TO PROCEED *IN FORMA PAUPERIS*

Petitioner Kevin T. Boyer (“petitioner”) has filed a petition seeking the return of \$543.00 in United States currency which was seized from him when he was arrested on drug-related charges. In the petition, he states that the property was that of Lisa Boyer; he was holding it for safe keeping because he was the only dependable person to handle the “Bill” money.

Petitioner also has filed a motion to proceed *in forma pauperis*. Petitioner is indigent and the motion should be granted. That, however, does not automatically mean that the matter proceeds. Instead, the Court must review the petition to see if it is legally or factually frivolous. 10 Del. C. § 8803(b).

A primary element of a petitioner’s case in seeking the return of seized property is proving that he or she has a “lawful possessory interest in the seized property”.16 Del. C. §

4784(j)(1). In his petition, petitioner alleges that the money belonged to Lisa Boyer. Since petitioner cannot establish the essential element of ownership, he will not be able to meet his burden. The petition is legally meritless. Thus, the Court dismisses the petition.

IT IS SO ORDERED.

JUDGE

cc: Prothonotary's Office
Kevin T. Boyer
Martin B. O'Connor, Esquire