

**Commonwealth of Kentucky**

**Court of Appeals**

NO. 2006-CA-001364-MR

BERT NOE

APPELLANT

v. APPEAL FROM HARLAN CIRCUIT COURT  
HONORABLE RON JOHNSON, JUDGE  
ACTION NO. 02-CR-00192

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AFFIRMING

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BEFORE: THOMPSON AND VANMETER, JUDGES; PAISLEY<sup>1</sup>, SENIOR JUDGE

PAISLEY, SENIOR JUDGE: This is an appeal from an order of the Harlan Circuit Court which denied appellant's motion for return of certain moneys which were seized from his residence during a search. Finding no error, we affirm.

On September 18, 2001, a Harlan District Judge issued a search warrant for appellant's residence in Smith, Kentucky. The warrant was executed by officers of the Harlan County Sheriff's Department and resulted in the seizure of illegal drugs, weapons,

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<sup>1</sup> Senior Judge Lewis G. Paisley sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

and \$4,868.00 in cash. Appellant was arrested and was subsequently indicted by the Harlan County Grand Jury on two counts of trafficking in a controlled substance and one count of trafficking in marijuana. The indictment was later dismissed, apparently due to problems with an essential witness.

On June 3, 2005, appellant filed a motion seeking the return of the cash seized from his residence. At the hearing on that motion, the trial court orally stated that the motion would be granted. No written order was ever entered and on September 8, 2005, appellant re-noticed his motion to be heard on September 9, 2005. The record before us contains no recording or transcript of that hearing, however the trial court did issue a written order on June 13, 2006 denying the motion. The trial court found that “the cash seized by the Harlan County Sheriff's Office at the time of the defendant's arrest was later confiscated by Federal authorities as part of their administrative judgment against him when a federal proceeding was instituted, and further finding that the defendant was duly notified of said Federal proceeding and that he did not resist said forfeiture . . .” There are no documents in the record relating to the Federal proceeding and, as we stated, there is no recording or transcript of the hearing that led to the issuance of said order.

As the Commonwealth has pointed out, it is the responsibility of the appellant to ensure that the record before us is adequate to allow meaningful review. Further, “[i]t has long been held that, when the complete record is not before the appellate court, that court must assume that the omitted record supports the decision of the trial court.” *Commonwealth v. Thompson*, 697 S.W.2d 143, 145 (Ky. 1985). *See*

*also Willis v. Davis*, 323 S.W.2d 847 (Ky. 1959); *Miller v. Commonwealth, Dept. of Highways*, 487 S.W.2d 931 (Ky. 1972).

Considering the record before us, there is no basis to disturb the trial court's finding that the funds in question were confiscated by the Federal authorities. The judgment of the Harlan Circuit Court is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

John Crockett Carter  
Harlan, Kentucky

BRIEF FOR APPELLEE:

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