[Cite as *Cline v. Urbana Police Div.*, 2010-Ohio-5384.]

IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
CHAMPAIGN COUNTY

JAMES M. CLINE	:	
	:	Appellate Case No. 09-CA-45
Plaintiff-Appellant	:	
	:	Trial Court Case No. 09-CV-298
v.	:	
	:	
URBANA POLICE DIVISION	:	(Civil Appeal from
	:	Common Pleas Court)
Defendant-Appellee	:	
	:	

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O P I N I O N

Rendered on the 5th day of November, 2010.

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Plaintiff-Appellant, *pro se*

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BROGAN, J.

{¶ 1} James M. Cline appeals pro se from the trial court's entry of summary judgment in favor of appellee Urbana Police Division on his replevin action for the return of a computer that was seized as part of a criminal case against him.

{¶ 2} Although Cline's brief lacks a proper assignment of error, he argues that the trial court erred in entering summary judgment against him because the government has no legal right to keep the computer. He insists that it is not contraband subject to forfeiture. He also maintains that the government's act of keeping the computer impermissibly subjects him to being punished twice for the same offense, once by being sentenced to prison and a second time by having his computer forfeited.

{¶ 3} Upon review, we find Cline's appeal to be without merit. The record reflects that the computer at issue was seized pursuant to a search warrant issued in connection with a criminal investigation involving Cline. In November 2006, a jury convicted him of numerous crimes, some of which involved his use of the computer.[1] That same month, the trial court orally sentenced him to an aggregate term of fifty-eight and one-half years in prison. During the sentencing hearing, the prosecutor requested forfeiture of the computer. The trial court ordered the computer forfeited at that time. However, its December 21, 2006 sentencing entry failed to mention the forfeiture.

{¶ 4} In August 2008, the State filed a Crim.R. 36 motion in Cline's criminal case, seeking to correct a clerical mistake and have the judgment entry reflect the forfeiture order. Thereafter, in December 2008, Cline filed a motion in his criminal case, seeking the return of his computer. The trial court sustained the State's Crim.R. 36 motion in September 2008 and amended its judgment entry to reflect that Cline's

[1]The underlying facts and procedural history of this case are detailed in *State v.Cline*, Champaign App. No. 08CA21, 2009-Ohio-7041, and *State v. Cline*, Champaign

seized property, including the computer, was forfeited. In January 2009, the trial court overruled Cline's motion for the return of his computer.

{¶ 5} Cline then commenced the present R.C. Chapter 2737 replevin action in August 2009, again seeking the return of his computer. After briefing by the parties, the trial court entered summary judgment in favor of the Urbana Police Division, finding, among other things, that Cline's replevin action was barred by res judicata.

{¶ 6} On appeal, Cline disputes whether his computer was properly ordered forfeited. He contends his criminal indictment did not mention forfeiture. He further claims he did not receive a forfeiture hearing, that his computer is not contraband, and that allowing the Urbana Police Division to keep the computer violates double jeopardy principles. Although the State responds to these arguments, it also relies on the trial court's res judicata finding to argue that Cline's appeal lacks merit.

{¶ 7} Upon review, we conclude that the trial court properly entered summary judgment against Cline on the basis of res judicata. In *Phillips v. Haines* (Oct. 26, 1994), Montgomery App. No. 14127, a convicted defendant filed a replevin action seeking the return of an automobile that had been seized and ordered forfeited in his criminal case. The defendant argued that the forfeiture was invalid for various reasons. On appeal, this court found that res judicata precluded the defendant from recovering the automobile through a replevin action. We reasoned:

{¶ 8} "* * * [W]e are unable to reach the merits of these assignments of error. It is well-established that under the doctrine of res judicata, a defendant is barred

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App. No. 07CA02, 2008-Ohio-1866.

from raising, in a subsequent proceeding, any claim of lack of due process that could have been raised on appeal from conviction. See *State v. Nichols* (1984), 11 Ohio St.3d 40; *State v. Perry* (1967), 10 Ohio St.2d 175. Although cases addressing this issue are generally confronted with a petition for post-conviction relief, not a writ of replevin, we find that the doctrine of res judicata is equally applicable to the facts of this case as Phillips is essentially attempting to challenge his plea bargain agreement through his replevin action.

{¶ 9} "Clearly, the proper vehicle for challenging the plea bargain agreement and any alleged problems concerning the forfeiture would be a direct appeal. In fact, Phillips did challenge the validity of his plea bargain agreement on a direct appeal to this court wherein we upheld the plea bargain agreement. See *State v. Phillips* (Dec. 11, 1990), Montgomery App. No. 11148, unreported. Yet, he chose not to challenge the forfeiture provision of his plea bargain agreement in his appeal. There is no reason that Phillips could not have raised any alleged problems with the forfeiture at that time."

{¶ 10} Similarly, in *State v. Goins*, Butler App. No. CA2004-02-054, 2005-Ohio-828, the Twelfth District Court of Appeals held that a defendant's replevin action, which sought to recover money seized during a criminal case, was barred by res judicata where the defendant previously had filed a motion for the return of his property, the trial court had denied the motion and ordered the money applied to the defendant's costs and fines, and the defendant had not appealed the order. See, also, *Wagner v. City of Euclid* (Oct. 26, 1978), Cuyahoga App. No. 37817 ("[T]he court below correctly stated that the appellant should have directly appealed the trial

court's confiscation order, and may not collaterally attack that order in a replevin action.").

{¶ 11} Here Cline had at least two prior opportunities to challenge the forfeiture of his computer in his criminal case. First, he could have appealed from the trial court's September 2008 ruling in which it amended its judgment entry to reflect that his computer was ordered forfeited. Second, he could have appealed from the trial court's January 2009 ruling denying his motion for the return of his computer. As in *Phillips*, res judicata applies because Cline had opportunities to challenge the trial court's forfeiture order in his criminal case.

{¶ 12} The judgment of the Champaign County Common Pleas Court is affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

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