

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF LORAIN    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

Appellee

v.

LARRY R. HENSLEY

Appellant

C.A. No.     03CA008356

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF LORAIN, OHIO  
CASE No.    00CR0055933

DECISION AND JOURNAL ENTRY

Dated: May 26, 2004

This cause was heard upon the record in the trial court. Each error assigned has been reviewed and the following disposition is made:

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BAIRD, Judge.

{¶1} Appellant, Larry R. Hensley, appeals pro se the decision of the Lorain County Court of Common Pleas which denied his motion for return of

seized property and his motion to expedite that original motion for return of seized property. We affirm.

I.

{¶2} On November 2, 1999, the Amherst Police executed a search warrant upon Appellant's home, seizing various items of property related to an alleged financial scam Appellant was operating. The police also executed a second search warrant on Appellant's home in June 2000 and seized more property relating to the same alleged scam.

{¶3} That same month, the Lorain County Grand Jury indicted Appellant with one count of engaging in a pattern of corrupt activity, in violation of R.C. 2923.32, and one count of possession of criminal tools, in violation of R.C. 2923.24. A month later, the grand jury filed a supplemental indictment against Appellant for an additional one count of engaging in a pattern of corrupt activity and one count of possession of criminal tools.

{¶4} Appellant entered a no contest plea on December 5, 2000. A signed plea sheet entered on the record indicated that "[a]ll property, money and/or evidence held by the State of Ohio or any police department [was thereby] forfeited to the State as a condition of [Appellant's] plea." The trial court sentenced Appellant to five years in prison, and \$3,200.00 in fines. Appellant initially appealed his sentence and conviction on ten different grounds. His original appeal made no mention of the validity of his plea or the property

forfeited to the State under that plea. This Court affirmed his convictions and sentence on September 12, 2001.

{¶5} On December 20, 2002, Appellant filed a motion for return of seized property. After disposing of a separate untimely petition for post-conviction relief, filed by Appellant prior to his motion for return of seized property, the court denied Appellant's motion on August 16, 2003. Appellant timely appealed, raising one assignment of error.

## II.

### Assignment of Error

**“THE TRIAL COURT ERRED, AND TO THE PREJUDICE OF APPELLANT, BY DENYING HIS MOTION FOR RETURN OF HIS SEIZED PROPERTY, WHEN THE COURT DID NOT ORDER THE FORFEITURE OF ANY PROPERTY BY APPELLANT AT HIS SENTENCING IN VIOLATION OF ARTICLE I, SECTION 10 AND 16 OF THE OHIO CONSTITUTION, AND THE SIXTH AND FOURTEENTH AMENDMENTS OF THE UNITED STATES CONSITUTION.”**

{¶6} In his only assignment of error, Appellant argues that the trial court erred when it denied his motion for return of seized property. Specifically, Appellant contends that the trial court erred in five particular ways by: (1) failing to order any forfeiture of property at his sentencing hearing, (2) failing to follow statutory procedures in place regarding forfeiture, (3) ignoring that a plea agreement was never made, (4) ignoring that the State never requested forfeiture of property in this case, and (5) failing to explain to Appellant that his property would be forfeited as a result of his plea.

{¶7} Where a defendant enters into a plea agreement, and clearly has notice of and agreed to forfeiture of his property, the procedural requirements under R.C. 2933.43 need not be followed in order to comport with due process. *State v. Harper* (1996), 9th Dist. No. 17570, at 2, citing *State v. Gladden* (1993), 86 Ohio App.3d 287, 289. Because relinquishment of the ownership of property in such a case is effectuated by a plea agreement, and not under statutory provisions governing forfeiture, adherence to statutory forfeiture procedure is unnecessary. See *Harper*, supra, at 2, citing *Gladden*, 86 Ohio App.3d at 289.

{¶8} In the case at bar, Appellant had notice of the forfeiture of his property, and agreed to that forfeiture in his plea. The plea sheet specifically stated that “[a]ll property, money and/or evidence held by the State of Ohio or any police department is hereby forfeited to the State as a condition of [Appellant’s] plea.” Appellant wrote “yes” on a blank line next to this statement, and signed the plea sheet a few lines below it. Appellant, therefore, had clear notice that he was forfeiting his property and waived application of the statutory provisions governing forfeiture procedure. See *Harper*, supra, at 2. Accordingly, we overrule Appellant’s assignment of error as it relates to the failure to follow statutory procedure regarding forfeiture.

{¶9} Appellant also, apparently, argues that his plea was not entered into knowingly, voluntarily or intelligently because he did not understand that his seized property and money was subject to forfeiture.

“[A] convicted defendant is precluded under the doctrine of *res judicata* from raising and litigating in any proceeding, except an appeal from that judgment, any defense or any claimed lack of due process that \*\*\* could have been raised by the defendant \*\*\* on appeal from that judgment.” *State v. Szefcyk*, 77 Ohio St.3d 93, 96, 1996-Ohio-337.

{¶10} Appellant could have raised the validity of his plea on direct appeal and failed to do so. This issue, therefore, is barred by the doctrine of *res judicata*. See *id.* We overrule the remainder of Appellant’s assignment of error.

### III.

{¶11} We overrule Appellant’s assignment of error and affirm the decision of the Lorain County Court of Common Pleas.

Judgment affirmed.

WILLIAM R. BAIRD  
FOR THE COURT

BATCHELDER, J.  
CONCURS

CARR, P. J.  
CONCURS IN JUDGMENT ONLY

#### APPEARANCES:

LARRY R. HENSLEY, Inmate # 399-268, Mansfield Correctional Institution,  
P. O. Box 57-K-9, Marion, Ohio 43301-0057, Appellant.

GARY C. BENNETT, Prosecuting Attorney and MARY R. EVARD, Assistant  
Prosecuting Attorney, 225 Court Street, Elyria, Ohio 44035, for Appellee.