

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
WARREN COUNTY

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| STATE OF OHIO, | : | |
| Plaintiff-Appellee, | : | CASE NO. CA2017-07-106 |
| - vs - | : | <u>OPINION</u> |
| | : | 1/22/2018 |
| LINDSEY M. WILLIAMS, | : | |
| Defendant-Appellant. | : | |

CRIMINAL APPEAL FROM WARREN COUNTY COURT OF COMMON PLEAS
Case No. 07 CR 23884

David P. Fornshell, Warren County Prosecuting Attorney, Kirsten Brandt, 520 Justice Drive, Lebanon, Ohio 45036, for plaintiff-appellee

Lindsey M. Williams, #A566197, London Correctional Institution, P.O. Box 69, London, Ohio 43140, defendant-appellant, pro se

PIPER, J.

{¶ 1} Defendant-appellant, Lindsey Williams, appeals a decision of the Warren County Court of Common Pleas denying his motion for return of personal property.

{¶ 2} Williams was involved in a stand-off with police in 2006, during which time he utilized multiple guns and ammunition he owned. After Williams was arrested, the police seized Williams' guns and ammunition as evidence. Williams eventually pled guilty to

multiple charges and was sentenced to 22 years in prison. Williams attempted no less than four times to withdraw his guilty plea, but each motion was denied.

{¶ 3} In 2017, Williams filed a motion for the return of his personal property, including the guns seized in 2006. While the trial court ordered the state to return several items of personal property to Williams, it denied the motion as to the guns and ammunition. Williams now appeals the trial court's decision, raising the following assignment of error.

{¶ 4} THE TRIAL COURT ERRED WHEN IT DENIED THE APPELLANT'S MOTION TO RETURN HIS PROPERTY.

{¶ 5} Williams argues in his assignment of error that the trial court erred in not ordering the return of his guns and ammunition.

{¶ 6} Williams does not challenge the initial seizure of the weapons and ammunition, and instead, recognizes that the state had authority to seize the weapons and ammunition as evidence related to the charges. However, Williams argues that the state no longer has authority to keep the weapons and ammunition now that he has been convicted, his motions to withdraw his guilty plea have been denied, and he is in the process of serving his sentence.

{¶ 7} Conversely, the state argues that Williams' argument is barred by res judicata because he did not raise the issue of forfeiture in any of his attempts to withdraw his guilty plea. The doctrine of res judicata provides that a final judgment of conviction bars a convicted defendant who was represented by counsel from raising and litigating in any proceeding except an appeal from that judgment, any defense or any claimed lack of due process that was raised or could have been raised by the defendant at the trial, which resulted in that judgment of conviction, or an appeal from the judgment. *State v. Lawwill*, 12th Dist. Warren No. CA2017-03-027, 2017-Ohio-8432.

{¶ 8} However, there are several procedural issues that make the doctrine of res

judicata inapplicable to the case sub judice. The Supreme Court of Ohio has indicated that "the forfeiture of items contemplates judicial action and additional considerations that extend beyond a defendant's criminal case," including the need for certain findings by the trier of fact. *State v. Harris*, 132 Ohio St.3d 318, 2012-Ohio-1908, ¶ 33.

{¶ 9} R.C. Chapter 2981 permits law enforcement officers to seize property based on probable cause that the property is subject to forfeiture.¹ Such property includes "contraband," "proceeds" from the commission of an offense, and "instrumentalities" involved in the commission of felonies and certain other offenses. R.C. 2981.01(B)(13). A state or political subdivision acquires *provisional* title to property subject to forfeiture, upon commission of an offense giving rise to forfeiture. R.C. 2981.03(A)(1). However, this provisional title is subject to claims of third parties and a final forfeiture adjudication. *Id.*

{¶ 10} A prosecuting attorney may pursue forfeiture of seized property in a criminal case according to R.C. 2981.04, in a civil proceeding pursuant to R.C. 2981.05, or both. R.C. 2981.03(F). The state initiates criminal forfeiture by including a forfeiture specification in the charging instrument consistent with R.C. 2941.1417, or by providing the defendant with "prompt notice," in conformity with Crim.R. 7(E), that the property is subject to forfeiture. R.C. 2981.04(A)(1) and (A)(2). Civil forfeiture is initiated by filing "a complaint requesting an order that forfeits the property to the state or a political subdivision." R.C. 2981.05(A).

{¶ 11} A review of the record indicates that the state had not pursued forfeiture of the

1. In 2006, when Williams was arrested and charged, the forfeiture procedures and disposition of property seized by a law enforcement agency were set forth in R.C. 2933.41 et seq. The Ohio Legislature, effective July 1, 2007, repealed R.C. 2933.41 et seq. and replaced those statutes with R.C. Chapter 2981. R.C. 1.48 provides that "[a] statute is presumed to be prospective in its operation unless expressly made retrospective." In enacting R.C. Chapter 2981, the Ohio Legislature indicated, "[i]f a criminal or civil forfeiture action * * * was * * * commenced before July 1, 2007, and is still pending on that date, the court in which the case is pending shall, to the extent practical, apply the provisions of Chapter 2981 of the Revised Code in the case." 2006 Am.Sub.H.B. No. 241, Section 4. Because the General Assembly made plain its intention that R.C. Chapter 2981 be applied to criminal cases pending on July 1, 2007, those statutes govern the ultimate disposition of the property seized from Williams incident to his arrest. *State v. North*, 1st Dist. Hamilton No. C-120248, 2012-Ohio-5200. While Williams committed his crimes in late 2006, his criminal case was still pending as of July 1, 2007.

property seized from Williams' residence either through a criminal or civil proceeding. The indictment does not contain a forfeiture specification, nor was a civil complaint filed.

{¶ 12} Forfeiture may be ordered only after the prosecuting attorney has identified and notified parties with an interest in the property, proper proceedings have occurred, and the trier of fact has found that the property is subject to forfeiture. See R.C. 2981.04(A) and (B), 2981.05(B) and (D), and 2981.03(A)(1). Before the final forfeiture adjudication, the state or a political subdivision holds "provisional" title to property subject to forfeiture, permitting the state or political subdivision to seize, hold, and protect the property. "Title to the property vests with the state or political subdivision when the trier of fact renders a final forfeiture verdict or order." R.C. 2981.03(A)(1); see also R.C. 2981.04(G) and 2981.05(E).

{¶ 13} A person with an interest in seized property may seek its return by means of a motion filed in the criminal case before the prosecuting attorney has either filed a charging instrument containing a forfeiture specification, R.C. 2981.03(A)(4), or by means of a petition filed in a civil-forfeiture proceeding. R.C. 2981.05(C).

{¶ 14} In the case at bar, the state retained the property seized from Williams without complying with R.C. Chapter 2981. The prosecuting attorney did not provide Williams with notice that the property was subject to forfeiture by amending his indictment to add a forfeiture specification. The matter of forfeiture was not mentioned in Williams' plea form or his judgment entry of conviction. The trial court did not conduct a hearing and find that the property was subject to forfeiture or place on the record an order of forfeiture. Nor did the state pursue civil forfeiture of the property. Therefore, the state's interest in Williams' guns and ammunition remains "provisional."

{¶ 15} Additionally, the forfeiture statutes contemplate a post-conviction adjudication by providing for, among other things, an extension of the time for filing a civil-forfeiture complaint by agreement of the parties or upon a showing of good cause. *State v. Harris*, 132

Ohio St.3d 318, 2012-Ohio-1908, ¶ 33; R.C. 2981.03(F). Therefore, the trial court, upon Williams' motion for return of his property, should have provided him with the procedural protections afforded by the civil-forfeiture statute. *State v. North*, 1st Dist. Hamilton No. C-120248, 2012-Ohio-5200, ¶12. Where the statutory requirements for forfeiture have not been met, we have no choice but to reverse the decision of the trial court and remand for further proceedings.

{¶ 16} Judgment reversed and the matter is remanded for further proceedings.

S. POWELL, P.J., and RINGLAND, J., concur.