

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA : 95-11,538

VS :

PRENTICE ALBERT CHEEKS :

OPINION IS SUPPORT OF ORDER
IN COMPLIANCE WITH RULE 1925(A)
OF THE RULES OF APPELLATE PROCEDURE

Defendant appeals this Court's Order dated February 19, 1999. Pursuant to that Order, the Defendant's Pro Se Motion for Return of Property was Denied, as the property in question had already been forfeited by Order of Honorable Clinton W. Smith dated July 24, 1996. In his statement of matters complained of on appeal, Defendant alleges that the Court erred in granting the Commonwealth's Motion for Forfeiture. This Opinion is written in support of this Court's Order dated February 19, 1999, and Judge Smith's Order dated July 24, 1996.

The facts relevant to the Defendant's appeal are as follows: On or about July 29, 1995, Trooper Michael R. Adams of the Pennsylvania State Police, along with Trooper William Brown made a routine traffic stop of a vehicle operated by the Defendant. The Defendant was issued citations for traffic violations as a result of the stop. The Defendant admitted at the time that he did not have a valid operator's license, and stated that the vehicle belonged to another individual. The Defendant gave three addresses as his place of residence, and appeared to be nervous and reluctant to furnish the information. Trooper Adams asked the Defendant for his consent to search

the vehicle. The Defendant verbally agreed. The search of the vehicle revealed a large clear sandwich baggie containing a total of 99 smaller ziplock baggies which were orange in color. The baggie was found under the driver's seat of the vehicle. The substance in the baggies tested positive for cocaine. The Defendant was also found to be in possession of \$1,600.91.

The Petition for Forfeiture and Condemnation was filed on November 28, 1995 by Senior Deputy Attorney General Letty A. Kress. The Defendant received personal service of the petition and notice to answer the petition at the Lycoming County Prison on December 18, 1995, which was evidenced by his signature on the Personal Service Certification. On December 26, 1995, Defense counsel filed a Motion for Stay of Proceedings pending the conclusion of the Defendant's criminal case. On January 25, 1996, by Order of Judge Kenneth D. Brown, the matter was stayed until the pending criminal case closed. In the stipulated Order, the Defendant was directed to file an answer to the Petition within 30 days of his conviction or acquittal, or suffer a default of the property.

The Defendant was found guilty by a jury on or about March 15, 1996. The Defendant was sentenced on or about June 4, 1996. On July 17, 1996, Chief Deputy Attorney General Letty Kress filed a Motion for Order of Forfeiture, alleging that the Defendant had not filed an answer to the petition, and she requested default judgment. The Petition was granted by Honorable Clinton W. Smith by Order dated July 24, 1996. The Order was served on the Defendant's counsel on August 14, 1996. On November 2, 1998, the Defendant filed a Motion for Return of Property. The Defendant's Motion

was denied by this Court on February 19, 1999, as it was brought to the Court's attention that an Order forfeiting the property had already been entered.

The Defendant first alleges that the property was forfeited without proper or prior notice of the proceedings. The Court finds this argument without merit. The Defendant was initially personally served with the Commonwealth's petition and notice to answer, as was evidenced by his signature on the Personal Service Certification. Thereafter, defense counsel requested that the matter be stayed pending the conclusion of the criminal matter. The Order staying the petition was stipulated by the parties, and signed by the attorney for the Commonwealth, and the Defendant's counsel. The Order provided that the Defendant had 30 days from the conclusion of the criminal matter to file an answer to the petition, or he would suffer default judgement. The Court finds that the Defendant had notice of the Forfeiture Petition.

The Defendant further argues that the confiscation violates the Double Jeopardy clause of the Pennsylvania and United States Constitution. The Court finds this argument without merit as well. See Commonwealth v. Wingait Farms, 547 Pa. 332, 690 A.2d 222, (Pa. 1997). In Wingait Farms, The defendant was arrested and pled guilty to several drug-related crimes, including possession with intent to distribute, conspiracy and corrupt organizations. In the forfeiture matter, the Commonwealth produced evidence that the defendant used his farm to facilitate his illegal drug enterprise. After a jury trial, the farm and horses were forfeited to the Commonwealth. The defendant argued on appeal that the forfeiture proceedings were violative of state and federal prohibitions against double jeopardy. The defendant asserted that once he was convicted and sentenced for selling drugs, the Commonwealth could not initiate a

new punitive proceeding to take his house and chattel for the same conduct which underlay his criminal conviction. The Pennsylvania Supreme Court held that the in rem civil forfeiture in that case was neither punitive nor criminal for purposes of the Double Jeopardy Clause and Art. I, § 10 of the Constitution of Pennsylvania. Relying on the analysis from the United States Supreme Court decision in United States v. Guy Jerome Ursery, --- U.S. ----, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996), the court first determined whether the forfeiture was civil or criminal, and then whether the forfeiture was so punitive that it may not be viewed as civil in nature.

As to the first consideration, we note that the forfeiture statute at issue in this case requires that:

The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this chapter, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant.
42 Pa.C.S. § 6802(a).

The statute provides that the proceedings are in rem, and in rem forfeitures have traditionally been viewed as civil. Ursery, --- U.S. at ----, 116 S.Ct. at 2142, 135 L.Ed.2d at 561-62, citing 89 Firearms, 465 U.S. at 363, 104 S.Ct. at 1105. Thus, we conclude that the General Assembly intended forfeitures brought pursuant to § 6801 to be civil in nature.

The court next considered whether the forfeiture was so punitive as to become criminal in effect or purpose. The Court noted:

The United States Supreme Court has considered such factors as (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as a punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment--retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may rationally be connected is assignable for it; and (7) whether it appears excessive in relation to the alternative purpose assigned. See 89 Firearms, 465 U.S. at 365 n. 7, 104 S.Ct. at 1106 n. 7, 79 L.Ed.2d at 370 n. 7, citing Kennedy v. Mendoza-Martinez, 372 U.S. 144, 168-69, 83 S.Ct. 554, 567-68, 9 L.Ed.2d 644 (1963). Considering each of these factors, we conclude that Reitz failed to show by the "clearest proof" required by 89 Firearms that the forfeiture proceedings were

either so punitive in effect or purpose as to negate the legislature's intent that the proceedings be civil.

The Court finds under Wingait Farms that the forfeiture action in the instant case is not violative of Double Jeopardy.

Dated: June 14, 1999

By The Court,

Nancy L. Butts, Judge

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