

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA :
 : **CR-654-2010**
v. :
 :
SETH ERIC BUCHER, : **CRIMINAL DIVISION**
Defendant :

OPINION AND ORDER

On July 29, 2013, the Commonwealth filed a Motion for Disposition of Property. A hearing on the motion was held on August 19, 2014.

I. Background

On September 2, 2011, the Defendant pled guilty to Possession with Intent to Deliver Ecstasy.¹ As part of his plea agreement, the Defendant agreed to forfeit possession of a Tangfolio Witness P 45 ACP Semi-Auto Pistol (pistol). Before the Court accepted the plea, it reviewed the terms of the agreement with the Defendant. The following is the relevant portion of the colloquy.

COURT: Any additional facts Mr. Wade?

WADE (PROSECUTOR): Just that.

COURT: It was 18 pills, correct?

WADE: That's what I have. I note that there was a gun, because part of the agreement is that the gun would be forfeited.

COURT: Okay. Did you have a gun in the car or on your body or something?

DEFENDANT: It was in my car Your Honor.

COURT: Okay. And you're agreeing that as a part of the plea agreement that you will forfeit possession of that gun?

DEFENDANT: Yes, Your Honor.

COURT: Okay. I am not sure you would be allowed to possess it anyway.

DEFENDANT'S ATTORNEY: He can't.

The Court accepted the plea agreement and sentenced the Defendant that same day.

¹ 35 P.S. § 780-113(a)(30).

In its Motion for Disposition of Property, the Commonwealth asks for an order directing the arresting agency to either destroy or dispose of the pistol. The Defendant objected to the Commonwealth's motion.

II. Discussion

In Commonwealth v. Smith,² as part of a plea agreement, the defendant agreed to forfeit seized currency. 757 A.2d at 356. The prosecution presented the trial court with a consent asset forfeiture order. Id. The court refused to enforce the forfeiture order because it concluded that “the Commonwealth did not provide sufficient process to effectuate the forfeiture.” Id. at 356-58. The Supreme Court of Pennsylvania discussed what satisfies sufficient process to effectuate forfeiture:

‘Notice and opportunity to be heard are integral to forfeiture proceedings.’ In the absence of these safeguards, the court cannot assume that the defendant would have acquiesced to the forfeiture proceedings.

Id. at 359 (quoting Commonwealth v. Mosley, 702 A.2d 857, 860 (Pa. 1997)).

The Court went on to write that when determining whether a defendant forfeited property, “[t]he appropriate inquiry is whether [the defendant] was given notice and an opportunity to be heard.” Smith, 757 A.2d at 359. The Court held that the trial court abused its discretion in not effectuating the forfeiture since the defendant reviewed the consent forfeiture order, was present at the time the trial court reviewed the order, and had an opportunity to be heard at the sentencing hearing. Id. at 359-60.

Here, the Defendant was given notice that the Commonwealth sought forfeiture of the pistol. Forfeiture was part of the plea agreement that the Defendant negotiated, and the Defendant was present when the Court reviewed the terms of the agreement. In addition, the

² 757 A.2d 354 (Pa. 2000).

Defendant was given an opportunity to be heard. The Court asked the Defendant whether he agreed to forfeit possession of the pistol. The Defendant responded, “Yes, Your Honor.”

III. Conclusion

Because the Defendant was given notice and an opportunity to be heard, the pistol was forfeited.

ORDER

AND NOW, this _____ day of October, 2014, the Commonwealth’s Motion for Disposition of Property is hereby GRANTED. It is ORDERED and DIRECTED that the Pennsylvania State Police are authorized to dispose of or destroy the Tangfolio Witness P 45 ACP Semi-Auto Pistol. It is further ORDERED that the Pennsylvania State Police file in the Office of the Lycoming County Prothonotary a written statement describing the manner of compliance with this Order. The Pennsylvania State Police shall file such statement within 30 days of the date of destruction/disposition.

By the Court,

Nancy L. Butts, President Judge