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ALABAMA COURT OF CIVIL APPEALS

OCTOBER TERM, 2018-2019

2180092

Douglas Ryan Roberts

v.

State of Alabama

Appeal from Mobile Circuit Court
(CC-16-6189, CC-16-6190, CC-16-6191, CC-16-6192, CC-16-6193,
CC-16-6194, CC-16-6195, CC-16-6196, CC-16-6197, and CC-16-
6198)

HANSON, Judge.

This appeal, transferred to this court by the Alabama Court of Criminal Appeals on the authority of Jones v. State, 937 So. 2d 59 (Ala. 2006), concerns the duty of the State of

2180092

Alabama to return to a criminal defendant particular items previously seized in connection with a criminal prosecution despite that defendant's stipulation in a plea agreement to disclaim possession of those items. On the facts presented, we agree with the State and with the Mobile Circuit Court that Douglas Ryan Roberts ("the defendant") validly waived any right he may have had to reclaim those items specified in his accepted plea agreement, and we therefore affirm the trial court's judgment.

The abbreviated record in this appeal, which even as supplemented consists of only 213 pages (many of which are copies of case-action-summary sheets from 40 separate criminal proceedings brought against the defendant),¹ reveals the

¹The defendant and the State appear to refer in their briefs to various documents that are not contained in the record on appeal in this appeal but that might instead be contained in the record as to the defendant's appeal from his convictions (i.e., case no. CR-17-0763, which the Court of Criminal Appeals specifically referenced in its order transferring this appeal to this court). We remind counsel for both parties that "[t]his court is bound by the record" and that "we cannot consider ... extraneous material." Wilger v. State Dep't of Pensions & Sec., 390 So. 2d 656, 657 (Ala. Civ. App. 1980). Further, "[i]t is beyond this court's authority to take judicial notice of another court's records," Saad's Healthcare Servs., Inc. v. Meinhardt, 19 So. 3d 847, 857 (Ala. Civ. App. 2007), aff'd, 19 So. 3d 862 (Ala. 2008), such as those of the Court of Criminal Appeals.

2180092

following facts. The defendant was arrested on July 13, 2016, on 20 felony charges of impersonating a peace officer (see generally Ala. Code 1975, § 13A-10-11) and 20 felony charges of second-degree possession of a forged instrument (see generally Ala. Code 1975, § 13A-9-6), at which time a number of items were seized by Mobile County sheriff's personnel as a result of searches conducted of the defendant's home and motor vehicle; the record does not contain any copies of the warrants issued in connection with those searches and seizures. The defendant pleaded not guilty as to each of the 40 charges against him. On March 15, 2018, four days before a scheduled trial as to those charges, the defendant filed what he termed a "request for production" containing a lengthy list of items purportedly seized by sheriff's personnel; the defendant averred that there had been no attempt to institute civil-forfeiture proceedings as to those items and that any items not specifically marked as trial exhibits should be returned to him. For all that appears in the record, the trial court did not immediately act upon that "request for production."

2180092

On March 19, 2018, the defendant withdrew his pleas of not guilty in the 40 criminal actions and instead entered pleas of guilty as to 5 impersonation charges and 5 forged-instrument charges pursuant to a plea agreement; the remaining 30 charges were dismissed as a result of the State's entries of nolle prosequi.² The pertinent plea agreement, i.e., the defendant's "Notice of Intent to Plead Guilty," does not itself appear in the record; however, the trial court's judgment indicates that that document, which was signed by the defendant, by his counsel, and by counsel for the State, provided that the defendant "agreed to 'forfeit any weapons, ammunition, badges & uniforms' along with other potential property items." The judgment further notes that the trial court had "conducted a plea colloquy" with the defendant "to make sure [his] pleas were being made voluntarily and knowingly" and that, upon being satisfied as to those matters, the trial court had accepted those guilty pleas, ultimately

²The caption of this appeal thus reflects only the 10 cases in which the defendant pleaded guilty and was subsequently convicted and sentenced; an appeal will not lie from "'a case that ha[s] been nol-prossed.'" C.R.M. v. State, 646 So. 2d 1390, 1391 (Ala. Crim. App. 1994) (quoting State v. Tatum, 642 So. 2d 523, 524 (Ala. Crim. App. 1994)).

2180092

rendering a plea order stating that the defendant had "'agree[d] to forfeit his weapons, ammunition, police uniform, police vests, and any items which are used or associated with law enforcement.'"

On April 23, 2018, in advance of a sentencing hearing in the 10 remaining criminal cases, the defendant filed a "supplemental request for production" seeking the return of items allegedly seized by Mobile County sheriff's personnel on July 13, 2016, at the conclusion of the sentencing hearing or, in the alternative, an award of "a sum certain" as to any lost items. In an order entered on July 2, 2018, the trial court noted that it had held a hearing on the matter of whether items of property seized by Mobile County sheriff's personnel should be returned to the defendant, and the court directed the parties to file briefs, setting a subsequent hearing on August 13, 2018.

Although the record in this appeal does not contain any briefs filed by the parties in response to that order, the hearing itself was transcribed, and the transcript of that hearing was included in the record on the motion of the defendant. According to the remarks of the defendant's

2180092

counsel at that hearing, there was no dispute between the parties as to the State's duty to return the majority of the items specified by the defendant in his "requests for production" -- the parties disagreed only as to "the items that are ... mentioned in the Notice of Intent to Plead Guilty," including "guns," "ammunition," "[b]adges," and "uniforms." The defendant contended that (a) under Ala. Code 1975, §§ 15-5-2 and 15-5-14, the Mobile County sheriff's personnel had acquired only custodial possession of the items seized and that the State could acquire title to the items only through a civil-forfeiture proceeding; (b) the waiver provision gave rise to a sentence that was not authorized or was, in a constitutional sense, "unusual"; and (c) the waiver should not be construed as operating against possible third-party claims. After the parties had presented their arguments, the trial court took the matter under submission.

On August 27, 2018, the trial court entered a judgment granting the defendant's "requests for production" except to the extent that they had sought the return to him of the "guns," "ammunition," "[b]adges," and "uniforms" specified in the plea agreement and ordering the State to take possession

2180092

of property within those categories. The trial court reasoned as follows:

"There is no specific civil forfeiture statute governing the type of crime or property involved in this case. Presumably, that is why the State has not filed such an action. However, a [d]efendant in a criminal case can voluntarily stipulate to a forfeiture of his personal property. Cf. State v. Richardson, 703 So. 2d 421, 423 (Ala Crim. App. 1997). In Richardson, a criminal defendant argued that the State's pursuit of both criminal sanctions and a civil forfeiture placed the defendant in double jeopardy. The court did not have to directly address that issue due to a dispositive procedural deficiency, but the court did take the opportunity to address the defendant's voluntary forfeiture of property as part of a plea agreement:

"'[T]he forfeiture in this case resulted from a stipulation between [the defendant] and the State. Under the terms of that stipulation, the State returned certain items of seized property, [the defendant] forfeited certain items of seized property, and both parties sought dismissal of the civil forfeiture action.... Forfeiture resulted not as a sanction by the court, but because [the defendant] voluntarily forfeited certain items of his property as part of an agreement with the State.... [The defendant] will not now be heard to complain of an agreement into which he freely entered.'

"Richardson, 703 So. 2d at 423.

"Although there was an applicable civil forfeiture statute (Ala. Code [1975,] § 20-2-93) in Richardson and the quoted language was dicta, the concept discussed in that case can be soundly

applied to the instant case. To gain the dismissal of thirty felony cases, [the defendant] agreed to voluntarily forfeit certain items of personal property to the State. The items voluntarily forfeited (items used or associated with law enforcement) related to the charges against [the defendant] -- impersonating a police officer. [He] cannot be heard now to complain about the agreement plea into which he freely entered.

"... There was no civil forfeiture action filed because none was applicable to this type of action or property. Ultimately, the question here is whether a defendant can stipulate or agree to voluntarily give up personal property to the State as part of a plea agreement even when there is no applicable civil forfeiture statute. [This court] answers that question in the affirmative."

On appeal from the trial court's judgment denying the return of the specified seized property, the defendant first asserts that the trial court erred because, he says, the seizure of property by the Mobile County sheriff's personnel on July 13, 2016, did not vest title to that property in the State or its agencies or subdivisions. He cites Ala. Code 1975, § 15-5-2, which sets forth three particular grounds upon which a search warrant may be issued and property seized incident thereto: (1) the property was "stolen or embezzled"; (2) the property "was used as the means of committing a felony"; and (3) the property is "in the possession of any person with the intent to use it as a means of committing a

2180092

public offense or in the possession of another to whom he may have delivered it for the purpose of concealing it or preventing its discovery." He further cites Ala. Code 1975, § 15-5-14, which governs disposition of seized property:

"When the property is taken under a search warrant, it shall be delivered to the court issuing the warrant. If the property was stolen or embezzled, the court shall cause it to be delivered to the owner, on satisfactory proof of his title and the payment by him of all fees. If the warrant was issued on the grounds specified in subdivisions (2) and (3) of Section 15-5-2, the officer effecting the warrant must retain the property in his possession, subject to the order of the court to which he is required to return the proceedings or of the court in which the offense is triable in respect to which the property was taken."

Reading the two statutes together, we perceive that, because there is no issue in this appeal regarding the defendant's having stolen or embezzled any of the items of property at issue, the property seized from the defendant on July 13, 2016, although to be "delivered to the court issuing the warrant," was required under § 15-5-14 to be "retain[ed] ... in [the] possession" of Mobile County sheriff's personnel "subject to the order of ... the court in which the offense is triable in respect to which the property was taken," i.e., orders issued by the Mobile Circuit Court. As this court

2180092

noted in Little v. Gaston, 232 So. 3d 231 (Ala. Civ. App. 2017), the operation of those two statutes imposes upon the seizing law-enforcement officer "an imperative duty to retain possession of the [seized property] until ordered otherwise by the trial court." 232 So. 3d at 235 (emphasis added). There is, however, no showing in the record that the Mobile County sheriff's personnel charged with maintaining possession of all the items seized from the defendant on July 13, 2016, did not actually maintain possession of those items, or that the trial court has done anything other than exercising its power under § 15-5-14, as to the categories of items listed in the plea agreement, to (in the words of Little) "order[] otherwise" -- i.e., to block the return to the defendant of the "guns," "ammunition," "[b]adges," and "uniforms" seized on that date at the conclusion of the criminal cases against the defendant. We perceive no violation of the statutes cited by the defendant, which speak to possession of seized items and operate irrespective of the question of title (an issue that we need not reach in this appeal).

The defendant next cites Ala. Code 1975, § 15-5-63, as authority for the proposition that the State may not lawfully

2180092

acquire title to property except through forfeiture proceedings in which it is demonstrated that the property to be forfeited was used in, intended to be used in, or was derived from the commission of a felony. Although we agree that § 15-5-63 does set forth requirements that apply for the State to acquire title to property in a civil-forfeiture proceeding, the judgment under review is not properly deemed as being of that character. Rather, the defendant has sought possession, i.e., the return of property from the trial court in which his criminal charges were pending despite having agreed that he was guilty of 10 felony offenses and, in connection with his pleas of guilty to those offenses, despite having voluntarily waived (in consideration for the State's dismissal of 30 additional felony charges) any rights of possession he might otherwise have had as to the "guns," "ammunition," "[b]adges," and "uniforms" seized by Mobile County sheriff's personnel on July 13, 2016. Had the defendant desired to preserve his right to contest whether the items specified in the plea agreement were, in fact, used in, intended to be used in, or derived from the commission of one or more felony offenses, he should have rejected the proposed

2180092

plea agreement before it was ratified by the trial-court judge. Cf. Lay v. State, 82 So. 3d 9, 12 (Ala. Crim. App. 2011) (holding that criminal defendant's express waiver in a plea agreement of entitlement to statutory credit for preconviction incarceration warranted denial of postconviction petition raising that issue). Further, the abbreviated record in this appeal does not support the defendant's allied contention that the trial court did not adequately explain to the defendant the effect of his waiver upon any right he may otherwise have had to seek to reclaim the property specified in the plea agreement at the close of the criminal proceedings.

The defendant next contends that his waiver is "meaningless" and that the rights of third parties as to the items specified in the plea agreement have not been adjudicated. We would emphasize that the sole issue that has been decided by the trial court is whether the defendant was entitled to the return to him of "guns," "ammunition," "[b]adges," and "uniforms" seized by Mobile County sheriff's personnel on July 13, 2016; the trial court answered in the negative because of the defendant's express waiver in his plea

2180092

agreement of his possessory rights. Because of the general rule that "[p]lea agreements are governed by ordinary contract principles," Largin v. State, 233 So. 3d 374, 392 (Ala. Crim. App. 2015) (quoting United States v. Barnes, 83 F.3d 934, 938 (7th Cir. 1996)), the trial court was correct to have given effect to ""the clear and plain meaning of the terms"" of the parties' agreement and to have ""presumed [that the parties had] intended what the terms clearly state."" Title Max of Birmingham, Inc. v. Edwards, 973 So. 2d 1050, 1054 (Ala. 2007) (quoting H & S Homes, L.L.C. v. Shaner, 940 So. 2d 981, 988 (Ala. 2006), quoting, in turn, earlier cases). Further, we agree with the State that the defendant is not in a position in this appeal to assert any potential superior claims of title or possessory rights that may be held by third parties as to those items. See Dobyne v. State, 4 So. 3d 506, 510 (Ala. Civ. App. 2008) (dismissing appeal from forfeiture judgment taken by felon who had, in his testimony, disclaimed any interest in certain items of personal and real property made the subject of forfeiture action; forfeiture thereof did not cause felon an injury in fact to a legally protected right).

2180092

Based upon the foregoing facts and authorities, we conclude that the trial court correctly declined to grant the defendant's motions seeking the return to the defendant's possession of the "guns," "ammunition," "[b]adges," and "uniforms" that were seized by Mobile County sheriff's personnel on July 13, 2016, and that were expressly addressed in the defendant's plea agreement with the State.³ The judgment is therefore affirmed.

AFFIRMED.

Thompson, P.J., and Donaldson and Edwards, JJ., concur.

Moore, J., concurs in the result, without writing.

³We express no opinion regarding the precedential value of the portion of State v. Richardson, 703 So. 2d 421 (Ala. Crim. App. 1997), discussed by the trial court in its judgment.