

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

State of Ohio

Court of Appeals No. L-10-1016

Appellee

Trial Court No. CR0200802737

v.

Renzie Lamar Williams

DECISION AND JUDGMENT

Appellant

Decided: October 15, 2010

* * * * *

Julia R. Bates, Lucas County Prosecuting Attorney, and
John A. Borell, Assistant Prosecuting Attorney, for appellee.

Renzie Lamar Williams, pro se.

* * * * *

SINGER, J.

{¶ 1} Appellant, Renzie Williams, appeals the judgment of the Lucas County Court of Common Pleas ordering that currency seized from him be dispersed to pay the balance of outstanding court costs owed by appellant for previous cases. For the reasons that follow, we reverse.

{¶ 2} Appellant sets forth the following assignments of error:

{¶ 3} [I.] "The trial court erred by distributing appellant's funds to county and municipal courts where money was not subject to forfeiture under R.C. §2981.01 et seq."

{¶ 4} [II.] "The trial court violated appellant's constitutional due process rights by ordering an extralegal de facto forfeiture of money without any compliance with Ohio statutes."

{¶ 5} On June 11, 2008, officers of the Toledo Police Department Vice/Narcotics unit executed a search warrant at appellant's residence in Toledo, Ohio. This search resulted in the confiscation of marijuana, cocaine and \$2,927 in U.S. currency.¹ These items were taken into the custody of the Toledo Police Department.

{¶ 6} On August 1, 2008, appellant was indicted by a grand jury for possession of cocaine pursuant to R.C. 2925.11(A) and (C)(4)(a).

{¶ 7} On February 23, 2009, however, a nolle prosequi was entered on the record at the request of the state and appellant was ordered discharged.

{¶ 8} On September 23, 2009, appellant filed a motion seeking the return of the currency taken from his residence, which was still in the custody of the Toledo Police Department.

{¶ 9} On December 15, 2009, the Lucas County Court of Common Pleas issued a judgment denying appellant's motion. The court found that the state had not filed a

¹Original amount stated by the court was \$2,932; however, this amount was corrected to \$2,927 in an amended judgment.

timely action seeking forfeiture under R.C. 2981.03(F), and thus waived all rights to the funds under forfeiture, but ordered that, given the outstanding court costs owed by appellant from five previous criminal cases, the money should be used to pay the debts with the remainder to be returned to appellant. It is from that judgment that appellant now appeals.

{¶ 10} In his first assignment of error, appellant contends that the seized currency was distributed under a de facto forfeiture proceeding contrary to law.

{¶ 11} Appellant was assessed court costs in five previous criminal cases and did not file a motion to waive payment of costs at the sentencing hearing for any of them.² At no point did appellant argue that the search warrant or the search itself pursuant to which his money was seized was somehow unlawful.

{¶ 12} The trial court did not give any indication of what statutory authority it relied upon in its decision, stating only that "given the outstanding court costs owed by the defendant to this court, the court finds any monies returned to defendant should only be after the outstanding obligations are satisfied."

{¶ 13} The state argues that the court executed on the seized money under Civ.R. 69, which states in part, "Process to enforce a judgment for the payment of money shall be a writ of execution, unless the court directs otherwise." The state would have this

²In his reply to appellee's merit brief, appellant asks the court to note that no evidence exists on the record to indicate these debts were unpaid. However, appellant never raised the argument that these debts had already been paid at trial, and offered no evidence to indicate such. Thus it would be improper for the court to consider that these debts might have already been paid.

court take the phrase "unless the court directs otherwise" as giving the court unilateral power to enforce judgment by any means it might choose.

{¶ 14} Had the state actually filed for civil forfeiture in this case, the court would have had to conduct a civil forfeiture proceeding to determine the disposition of the seized currency. Under R.C. 2981.05, in order for a court to issue a civil forfeiture order it must determine that the prosecutor has proved by a preponderance of the evidence that the property is subject to forfeiture under R.C. 2981.02; that is, that the property is contraband, an instrumentality to be used in the commission or facilitation of an offense, or that it is proceeds derived from the commission of an offense. In this case, there was never any finding by the court, or showing by the prosecution, that the seized currency had any nexus with criminal activity.

{¶ 15} Further, several districts have found that property subject to a civil forfeiture order cannot be used to pay a defendant's court costs or fines in related proceedings. *State v. Cruise*, 185 Ohio App.3d 230, 2009-Ohio-6795; *In re 1984 Saab Auto.* (Feb. 28, 1990), 1st Dist. No. C-880786; *State v. Jamison*, 2d Dist. No. 23211, 2010-Ohio-965. The fact that these debts arise from other cases should make no exception to this rule. In our view, the trial court here attempted to indirectly forfeit the money by applying it to the outstanding debts, rather than return it to appellant.

{¶ 16} The trial court itself did not indicate any statutory authority on which it may have relied to authorize its actions, and the state's argument is found unconvincing.

{¶ 17} While we agree with the state that appellant has a civil obligation to pay the court costs assessed in his prior criminal cases, this is not the appropriate way to proceed.

{¶ 18} For the foregoing reasons, we find appellant's first assignment of error well-taken. Because we have found appellant's first assignment of error well-taken, we need not reach his second assignment of error, which is found moot.

{¶ 19} Accordingly, the decision of the Lucas County Court of Common Pleas is reversed. It is ordered that appellee pay court costs pursuant to App.R. 24.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Arlene Singer, J.

JUDGE

Keila D. Cosme, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
<http://www.sconet.state.oh.us/rod/newpdf/?source=6>.