

**IN THE COMMONWEALTH COURT OF PENNSYLVANIA**

Commonwealth of Pennsylvania	:	
	:	
v.	:	Nos. 831 and 832 C.D. 2011
	:	SUBMITTED: August 5, 2011
Raymond R. Hillibush,	:	
Appellant	:	

**BEFORE:** HONORABLE BONNIE BRIGANCE LEADBETTER, President Judge  
HONORABLE ROBERT SIMPSON, Judge  
HONORABLE JAMES R. KELLEY, Senior Judge

**OPINION NOT REPORTED**

**MEMORANDUM OPINION BY  
PRESIDENT JUDGE LEADBETTER**

**FILED: September 2, 2011**

Appellant, Raymond R. Hillibush, proceeding *pro se*, appeals from the decision of the Court of Common Pleas of Schuylkill County (common pleas), which denied his petition for return of property and ordered the subject property to be condemned and forfeited to the use of the Commonwealth.<sup>1</sup> We affirm.

Appellant filed a petition pursuant to Pennsylvania Rule of Criminal Procedure 588<sup>2</sup> seeking the return of cash that was confiscated by the Mahanoy

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<sup>1</sup> Appellant originally filed two appeals from the same order in the Superior Court. By order dated May 6, 2011, the appeals were transferred to this Court. The appeals docketed at Nos. 831 C.D. and 832 C.D. 2011 were consolidated on May 17, 2011 by order of this Court.

<sup>2</sup> Pa.R.Crim.P. 588(A) provides:

A person aggrieved by a search and seizure, whether or not executed pursuant to a warrant, may move for the return of the property on the ground that he or she is entitled to lawful possession

**(Footnote continued on next page...)**

City Police on February 14, 2009. Following a visit to the house of a known drug dealer, Appellant was stopped by Corporal Michael Dissinger on suspicion of operating a motor vehicle without a license. Corporal Dissinger also possessed the knowledge that an active arrest warrant had been issued for Appellant. During the vehicle stop, Corporal Dissinger conducted a complete body search of Appellant and discovered a syringe, a spoon containing residue, 21 bags of heroin, and \$203 in cash. Subsequently, Appellant pleaded guilty to possession with intent to deliver a controlled substance, possession of a controlled substance, and possession of drug paraphernalia.

On November 3, 2010, Appellant filed a motion for return of property seeking the return of \$320, which he alleged was in his possession at the time of his arrest. Appellant alleged that the cash was the net proceeds from his income tax refund of \$1058.32 after paying his rent and power bill. Common pleas held a hearing on November 23, 2010. Corporal Dissinger testified on behalf of the Commonwealth and Appellant testified on his own behalf. Common pleas denied Appellant's petition to return property and further ordered that the money should be condemned and forfeited to the use of the Commonwealth pursuant to Section 6801 of the Judicial Code, *as amended*, 42 Pa. C.S. § 6801, commonly known as the Drug Forfeiture Act. Common pleas determined that the money was derivative contraband. In addition, common pleas found that the Commonwealth had established by a preponderance of the evidence that a nexus existed between the money found on Hillibush and his illegal drug activity and, thus, the money was

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**(continued...)**

thereof. Such motion shall be filed in the court of common pleas for the judicial district in which the property was seized.

presumptively forfeited. Common pleas did not find Appellant's explanation of the use and intended use of the money to be creditable and determined that Appellant had not rebutted the presumption of forfeiture. This appeal followed.

Appellant argues that common pleas erred in denying his petition because the Commonwealth failed to show any connection between the seized money and the illegal activity. The Commonwealth asserts that it established the requisite nexus and that Appellant failed to rebut the presumption of forfeiture because common pleas did not find Appellant's testimony regarding the intended use of the money credible.

After carefully reviewing the record, the briefs of the parties and the relevant law, this Court finds that the issue raised by Appellant is accurately and sufficiently addressed in the opinion of the Honorable Jacqueline L. Russell of the Court of Common Pleas of Schuylkill County filed December 14, 2010, in *Commonwealth v. Hillibush*, No. 696-09. Accordingly, this Court affirms common pleas' order on the basis of that opinion.

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**BONNIE BRIGANCE LEADBETTER,**  
President Judge

