

Commonwealth of Kentucky

Court of Appeals

NO. 2017-CA-001269-MR

TOMMY DALE MARTIN

APPELLANT

v. APPEAL FROM CLARK CIRCUIT COURT
HONORABLE WILLIAM G. CLOUSE, JR., JUDGE
ACTION NOS. 16-CR-00054 AND 16-CR-00055

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION AND ORDER
DISMISSING

** ** * * * * *

BEFORE: JOHNSON,¹ D. LAMBERT, AND J. LAMBERT, JUDGES.

LAMBERT, D., JUDGE: Tommy Dale Martin appeals from an order entered May 11, 2017, by the Clark Circuit Court requiring the forfeiture of Martin's truck, an enclosed utility trailer, and the tools contained inside that trailer pursuant to KRS² 218A.410. For the reasons stated herein, we dismiss this appeal.

¹ Judge Robert G. Johnson concurred in this opinion and order prior to the expiration of his term of office. Release of the opinion was delayed by administrative handling.

² Kentucky Revised Statutes.

On April 4, 2017, Martin pled guilty in two cases to four counts of first-degree trafficking in a controlled substance, first offense (methamphetamine); being a convicted felon in possession of a firearm; possession of a controlled substance, first offense (methamphetamine); and receiving stolen property under \$10,000. He was sentenced to a total of four years' imprisonment.

The Commonwealth moved for forfeiture of the following property: a truck, a white trailer, and the tools found in the trailer. The court informed Martin that if he did not consent to the forfeiture, he could have a hearing at which witnesses could testify. A hearing was held, and the trial court ordered all of the personal property at issue to be forfeited.

On appeal, Martin claims that the trial court erred in ordering that all of Martin's tools found in the trailer be forfeited because some of them were inherited by Martin from family members. The Commonwealth first argues that the appeal should be dismissed because Martin absconded from parole supervision. Second, the Commonwealth argues that all of the tools were correctly forfeited because they were traceable to drug transactions pursuant to KRS 218A.410(j).

We do not reach the merits of Martin's appeal because we agree with the Commonwealth's first argument that the appeal should be dismissed. In its brief, the Commonwealth cites to *Lemaster v. Commonwealth*, 399 S.W.3d 34 (Ky. App. 2013), for the proposition that a defendant who absconds from supervision

gives up his constitutional right to appeal. This Court based its decision in *Lemaster* on the United States Supreme Court's holding in *Molinaro v. New Jersey*, 396 U.S. 365, 90 S. Ct. 498, 24 L. Ed. 2d 586 (1970). In that case, the Supreme Court stated:

No persuasive reason exists why this Court should proceed to adjudicate the merits of a criminal case after the convicted defendant who has sought review escapes from the restraints placed upon him pursuant to the conviction. While such an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resource of the Court for determination of his claims.

Id. at 366. An actual escape from custody and failure to report for supervision are treated the same under this rule. *See Lemaster*, 399 S.W.3d at 34; *Harris v. Commonwealth*, 311 Ky. 429, 224 S.W.2d 427, 427-28 (1949). Because Martin has absconded from supervision, and we have no reason to believe that his status has changed, he will not be afforded the benefit of review. *See Crum v. Commonwealth*, 232 Ky. 331, 23 S.W.2d 550, 550 (1930) (citation omitted).

For the foregoing reasons, we dismiss this appeal.

ALL CONCUR.

ENTERED: November 30, 2018

/s/ Debra Lambert
JUDGE, COURT OF APPEALS

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