

[Cite as *State v. Jenkins*, 2024-Ohio-4563.]

STATE OF OHIO            )  
                                  )ss:  
COUNTY OF SUMMIT    )

IN THE COURT OF APPEALS  
NINTH JUDICIAL DISTRICT

STATE OF OHIO

C.A. No.     30379

Appellee

v.

BENJAMIN O. JENKINS

APPEAL FROM JUDGMENT  
ENTERED IN THE  
COURT OF COMMON PLEAS  
COUNTY OF SUMMIT, OHIO  
CASE No.    CR-2016-02-0455B

Appellant

DECISION AND JOURNAL ENTRY

Dated: September 18, 2024

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CARR, Judge.

{¶1} Defendant-Appellant Benjamin O. Jenkins appeals, pro se, the judgment of the Summit County Court of Common Pleas. This Court affirms.

I.

{¶2} In 2016, Jenkins was indicted on multiple drug-related charges. Two of the counts included forfeiture specifications concerning \$12,008.00 in cash which was seized by the Akron Police Department. Jenkins was found guilty of the counts, but the jury concluded that the money was not subject to forfeiture to the State of Ohio.

{¶3} Jenkins appealed, and this Court affirmed the judgment of the trial court. *State v. Jenkins*, 2018-Ohio-4814, ¶ 1 (9th Dist.).

{¶4} In September 2020, Jenkins, through counsel, filed a motion to release funds seeking an order releasing the \$12,008.00 in cash seized by the police, which the jury determined was not subject to forfeiture. Because the cash was not subject to forfeiture, Jenkins maintained

that the money should be returned to him or his designee, his wife. Jenkins cited no authority in support of his motion.

{¶5} The State responded to the motion arguing that Jenkins' motion should be denied as there was no proof that the funds belonged to Jenkins. The State pointed out that multiple people lived at the residence where the funds were discovered. The State maintained that, if the trial court determined that the funds belonged to Jenkins, the funds should first be used towards Jenkins' unpaid fines and court costs.

{¶6} A brief hearing was held on the motion at which no testimony was presented. After which, on June 21, 2022, the trial court issued an entry ordering the police to release the sum of \$10,167.00 from the \$12,008.00 to the Summit County Clerk's Office. The clerk's office was then ordered to apply the funds to Jenkins' outstanding fines and costs in full satisfaction of his financial obligation in the matter. The excess funds were ordered to be returned to Jenkins or his legal representative.

{¶7} Jenkins has appealed, pro se, from that order, raising eleven assignments of error for our review. Some assignments of error will be addressed together, and some will be addressed out of sequence to facilitate our review. The State has not appealed the trial court's decision.

## II.

### **ASSIGNMENT OF ERROR V**

TRIAL COUNSEL RENDERED INEFFECTIVE ASSISTANCE OF COUNSEL, DUE TO NOT FILING AN AFFIDAVIT OF INDIGENCY PRIOR TO SENTENCING, THUS SUBJECTING THE DEFENDANT TO A MANDATORY FINE.

### **ASSIGNMENT OF ERROR VII**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR WHEN IT IMPOSED A FINE UPON DEFENDANT WHILE ALSO

CONTEMPORANEOUSLY FINDING THAT THE DEFENDANT IS INDIGENT, IN CONTRAVENTION OF [R.C.] 2929.18(B)(1)[.]

**ASSIGNMENT OF ERROR VIII**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY NOT COMPLYING WITH [R.C.] 2929.19(B)(5) AT DEFENDANT[’S] SENTENCING HEARING, WHEN IMPOSING A FINANCIAL SANCTION AND/OR FINE AGAINST THE DEFENDANT.

{¶8} In Jenkins’ fifth assignment of error, he argues his trial counsel was ineffective in failing to file an affidavit demonstrating Jenkins was indigent. Jenkins argues in his seventh assignment of error that the trial court erred in including a fine as part of his sentence when he was indigent. Jenkins asserts in his eighth assignment of error that the trial court erred in imposing a fine in its current order when it failed to consider Jenkins’ ability to pay the fine.

{¶9} We begin by noting that Jenkins’ notice of appeal was only from the June 21, 2022 order ruling on Jenkins’ motion for a release of funds. “An appeal is initiated when the appellant files a notice of appeal.” *State v. Parsons*, 2022-Ohio-2852, ¶ 10 (9th Dist.), quoting *State v. Hamilton*, 2018-Ohio-2551, ¶ 7 (9th Dist.). “The notice of appeal . . . shall designate the judgment, order or part thereof ap[p]ealed from . . . .” App.R. 3(D). Accordingly, his appeal is limited to issues pertaining to that entry alone. *See Parsons* at ¶ 10. Moreover, an appeal from the 2017 judgment of conviction would be untimely and successive. *See App.R. 4(A); State v. Grace*, 2017-Ohio-7652, ¶ 9 (9th Dist.). Therefore, the issue he now raises in his fifth assignment of error related to alleged ineffective assistance of trial counsel is outside the scope of this appeal and not properly before this Court. *See Parsons* at ¶ 10.

{¶10} To the extent Jenkins challenges the imposition of a mandatory fine in the 2017 judgment of conviction in his seventh and eighth assignments of error, his argument is outside the

scope of this appeal for the same reasons discussed above, i.e. Jenkins' appeal is limited to the trial court's ruling on the motion to release funds. *See id.*

{¶11} To the extent Jenkins may be asserting that the trial court imposed a fine in its 2022 order ruling on Jenkins' motion for the release of funds, Jenkins' is mistaken. The trial court did not impose a fine in the 2022 order. Instead, the trial court ordered that a portion of the money seized be applied to the fine that was previously imposed.

{¶12} Jenkins' fifth assignment of error is outside the scope of the appeal. Jenkins' seventh and eighth assignments of error are either outside the scope of this appeal or are factually unsupported and overruled.

#### **ASSIGNMENT OF ERROR I**

THE TRIAL COURT ABUSED ITS DISCRETION IN FAILING TO HOLD A FORFEITURE HEARING, AND PERMITTING DEFENDANT TO BE PRESENT, AS REQUIRED PURSUANT TO [] CRIM.[R.] 43(A).

#### **ASSIGNMENT OF ERROR VI**

THE SENTENCING COURT COMMITTED REVERSIBLE ERROR, PURSUANT TO [R.C.] 2981.04(E)(2) AND (E)(3), WHEN [IT] FAILED TO CONDUCT A HEARING AS REQUIRED, DUE TO AN AFFIDAVIT AND POWER OF ATTORNEY FILED BY [JENKINS' WIFE] ON JANUARY 3, 2018[,] AND SEPTEMBER 10, 2020 – WHICH REQUIRED THE SENTENCING COURT TO COMPLETE SUCH.

{¶13} Jenkins argues in his first assignment of error that the trial court erred in failing to hold a forfeiture hearing and in failing to allow him to be present at the hearing. Jenkins asserts in his sixth assignment of error that the trial court erred in failing to hold a hearing.

{¶14} First, we note that the matter before the trial court was not one of forfeiture; instead, the matter involved Jenkins' motion seeking the return of property, i.e. the money previously seized by the police. Thus, Jenkins cannot succeed in his argument that the trial court erred in failing to hold a forfeiture hearing. Moreover, despite Jenkins' assertions to the contrary, a hearing

was held on his motion. Further, there is no indication in the record that Jenkins sought to appear at the hearing and was denied the right to do so.

{¶15} Accordingly, Jenkins' first and sixth assignments of error are overruled.

#### **ASSIGNMENT OF ERROR II**

THE SENTENCING COURT ERRED IN APPLYING DEFENDANT'S SEIZED FUNDS TO OUTSTANDING COURT COSTS AND FINES IN THE ABSENCE OF FORFEITURE PROCEEDINGS PROPERLY INITIATED UNDER [R.C.] 2981, OR OTHER AUTHORITY ALLOWING THE COURT TO DISPOSE OF THE FUNDS.

#### **ASSIGNMENT OF ERROR III**

THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN ISSUING A POST-CONVICTION ORDER DISBURSING DEFENDANT'S FUNDS WHICH WERE SEIZED IN HIS CRIMINAL CASE – TO THE STATE OF OHIO – WHEN THE JURY SPECIFICALLY ESTABLISHED THAT SUCH FUNDS WERE NOT SUBJECT TO FORFEITURE TO THE STATE OF OHIO, IN HIS CRIMINAL DISPOSITION AND THAT WHICH WAS DETERMINED IN HIS SENTENCING HEARING.

#### **ASSIGNMENT OF ERROR IV**

THE TRIAL COURT ABUSED [ITS] DISCRETION AND EXCEEDED [ITS] AUTHORITY WHEN [IT] REQUIRED JENKINS TO UTILIZE THE FUNDS THAT WERE SEIZED FROM HIM, TO PAY FOR FINE(S) AND COSTS IN HIS CASE, WHICH WAS CONTRARY TO LAW PURSUANT TO [R.C.] 2981.01 ET SEQ.

{¶16} Jenkins in his second, third, and fourth assignments of error argues that the trial court erred in disposing of the funds without proceeding with forfeiture proceedings or following various forfeiture related statutes.

{¶17} First, we clarify that the trial court did not order the funds forfeited to the State in contravention of the jury's verdict. The trial court ordered that the funds first be applied towards Jenkins' outstanding fines and court costs with the remainder being returned to him or his legal representative. Thus, implicitly, the trial court also determined that the funds were Jenkins' funds.

As the funds were not forfeited to the State, the trial court did not err in failing to hold forfeiture proceedings.

{¶18} Moreover, Jenkins did not raise any of the statutes he now cites in support of his motion for the release of his funds, nor did he point to any authority in support of his motion at the hearing. Even though the State argued in the trial court that, even if the funds were Jenkins' funds, the funds should be first applied to court costs and fines, Jenkins never pointed to any authority in the trial court to support that the funds could not be applied to court costs and fines. Instead, Jenkins' counsel summarily stated that, while he understood that Jenkins "owes a substantial amount in fines and costs, [he also felt] that [Jenkins] should make the decision when and where those funds should be paid from." Thus, in the trial court, Jenkins did not argue that, assuming the funds were Jenkins' funds, as the trial court found, the funds could not legally be applied towards his outstanding fines and court costs. Jenkins cannot now raise new arguments on appeal. *See State v. Sullivan*, 2023-Ohio-3520, ¶ 17 (9th Dist.).

{¶19} Jenkins' second, third, and fourth, assignments of error are overruled.

#### **ASSIGNMENT OF ERROR IX**

THE STATE OF OHIO IS BARRED TO RECOVER THE SEIZED FUNDS DUE TO RES JUDICATA.

{¶20} Jenkins asserts in his ninth assignment of error that res judicata barred the State from recovering the seized funds.

{¶21} Jenkins proceeds from a faulty premise. Here, the State did not keep the funds at issue. They were to be applied to Jenkins' outstanding fines and costs with the remaining balance returned to Jenkins or his legal representative.

{¶22} Jenkins' ninth assignment of error is overruled.

**ASSIGNMENT OF ERROR X**

THE TRIAL COURT DID NOT COMPLY, MISAPPLIED, AND/OR MISINTERPRETED STATUTE(S); THUS[,] THIS COURT MUST REVERSE.

{¶23} Jenkins argues in his tenth assignment of error that the record fails to evidence that the State sought to exercise jurisdiction over the funds via forfeiture proceedings.

{¶24} Here, as discussed above, criminal forfeiture specifications were contained in the indictment. However, the jury concluded that the funds were not subject to forfeiture. Accordingly, Jenkins' premise that the State never sought to exercise jurisdiction over the funds is incorrect. To the extent that Jenkins is attempting to argue that the present proceedings constituted forfeiture proceedings, he is again mistaken. The only issue before the trial court was Jenkins' motion for the release of funds.

{¶25} Jenkins' tenth assignment of error is overruled.

**ASSIGNMENT OF ERROR XI**

THE TRIAL COURT ABUSED ITS DISCRETION BY NOT ADDRESSING ALL OF THE ISSUES THAT THE DEFENDANT BENJAMIN JENKINS RAISED IN EITHER HIS "MOTION TO RELEASE FUNDS AS FILED [] SEPTEMBER 10, 2020, AND/OR IN THE NOVEMBER 18, 2020 HEARING, WHICH WERE MATERIAL TO THE RETURN OF HIS SEIZED FUNDS. IN SO DOING, THE TRIAL COURT DID NOT COMPLY, MISINTERPRETED, AND MISAPPLIED STATUTE(S).

{¶26} Jenkins argues in his eleventh assignment of error that the trial court failed to address aspects of his motion, including that he was entitled to statutory interest and that the funds should have been turned over to his wife.

{¶27} While it is true that the trial court did not specifically rule upon Jenkins' motion for interest on the seized funds, the fact that it did not do so leads this Court to presume the motion was denied. *See State v. Townsend*, 2019-Ohio-4336, ¶ 8 (9th Dist.). In addition, Jenkins did not

cite any authority below, or on appeal, in support of his contention that he was entitled to receive interest. Thus, Jenkins has not met his burden to demonstrate that the trial court erred.

{¶28} With respect to the trial court not ordering any funds returned to Jenkins' wife, we likewise cannot say that Jenkins has demonstrated that the trial court erred. In his motion, Jenkins first asked that the funds be returned to him or his designee. That request is repeated later in the motion. Then, in the motion, Jenkins names his wife as his designee and asks that the funds be given to her. Here, the trial court ordered that the remaining funds should be returned to Jenkins or his legal representative. Thus, the trial court appears to have complied with Jenkins' request. In addition, Jenkins has set forth no law indicating that the trial court erred in ordering the funds returned to him or his legal representative.

{¶29} Jenkins' eleventh assignment of error is overruled.

### III.

{¶30} Jenkins' assignments of error are overruled. The judgment of the Summit County Court of Common Pleas is affirmed.

Judgment affirmed.

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There were reasonable grounds for this appeal.

We order that a special mandate issue out of this Court, directing the Court of Common Pleas, County of Summit, State of Ohio, to carry this judgment into execution. A certified copy of this journal entry shall constitute the mandate, pursuant to App.R. 27.

Immediately upon the filing hereof, this document shall constitute the journal entry of judgment, and it shall be file stamped by the Clerk of the Court of Appeals at which time the period



for review shall begin to run. App.R. 22(C). The Clerk of the Court of Appeals is instructed to mail a notice of entry of this judgment to the parties and to make a notation of the mailing in the docket, pursuant to App.R. 30.

Costs taxed to Appellant.

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DONNA J. CARR  
FOR THE COURT

SUTTON, P. J.  
HENSAL, J.  
CONCUR.

APPEARANCES:

BENJAMIN O. JENKINS, pro se, Appellant.

ELLIOT KOLKOVICH, Prosecuting Attorney, and C. RICHLEY RALEY, JR., Assistant Prosecuting Attorney, for Appellee.