

IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-220340
	:	TRIAL NO. C-22CRB-2333
Plaintiff-Appellee,	:	
vs.	:	
	:	<i>JUDGMENT ENTRY.</i>
JASON KENTON,	:	
	:	
Defendant-Appellant.	:	

The court sua sponte removes this case from the regular calendar and places it on the court’s accelerated calendar, 1st Dist. Loc.R. 11.1.1(C), and this judgment entry is not an opinion of the court. *See* Rep.Op.R. 3.1; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.

On February 1, 2022, defendant-appellant Jason Kenton was charged with one count of using weapons while intoxicated—a first-degree misdemeanor under R.C. 2923.15. After Mr. Kenton’s no-contest plea, the trial court imposed a suspended jail term of 180 days along with court costs, one year of probation, which included a prohibition from having weapons, gun safety and corrective thinking classes, and at the state’s request, an order that the firearm be forfeited. On appeal, Mr. Kenton’s sole assignment of error alleges that the handgun was not subject to forfeiture under R.C. 2981.02(A)(1)(C)(ii), and even if it was, the proper statutory procedures were not followed to lawfully effectuate the forfeiture. The state agrees.

Under R.C. 2981.02, “[a]n instrumentality that is used in or intended to be used in the commission or facilitation of any of the following offenses when the use or intended

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use * * * is sufficient to warrant forfeiture under this chapter: * * * [a] misdemeanor, *when forfeiture is specifically authorized by a section of the Revised Code* or by a municipal ordinance that creates the offense * * * .” (Emphasis added.) R.C. 2981.02(A)(1)(c)(ii). When a provision of the Revised Code does not authorize forfeiture, a weapon underlying that charge is not subject to forfeiture. *See State v. McMeen*, 2014-Ohio-5482, 25 N.E.3d 422, ¶ 16 (3d Dist.) (“Neither R.C. 2917.31 nor Tiffin Municipal Ordinance § 549.08 specifically authorize forfeiture. Therefore, under R.C. 2981.02(A)(3)(b), [defendant’s] two firearms were not subject to forfeiture.”).

As the state also highlights, a misdemeanor under R.C. 2923.15 does not specifically authorize forfeiture of seized items, and the record does not demonstrate the necessary procedures to initiate forfeiture proceedings. Thus, the trial court erred in ordering that Mr. Kenton’s firearm be forfeited. We accordingly sustain Mr. Kenton’s assignment of error and reverse only that portion of Mr. Kenton’s sentence that directs the forfeiture of the firearm and remand this cause for further proceedings. We affirm the trial court’s judgment in all other respects.

A certified copy of this judgment entry shall constitute the mandate, which shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

BERGERON, P.J., WINKLER and KINSLEY, JJ.

To the clerk:

Enter upon the journal of the court on April 14, 2023,
per order of the court_____.

Administrative Judge