

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000832-MR

CHRISTOPHER DUNCAN

APPELLANT

v. APPEAL FROM HANCOCK CIRCUIT COURT
HONORABLE RONNIE C. DORTCH, JUDGE
INDICTMENT NOS. 99-CR-00024 & 99-CR-00034

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * *

BEFORE: GUIDUGLI AND JOHNSON, JUDGES; HUDDLESTON, SENIOR JUDGE.¹

HUDDLESTON, SENIOR JUDGE: Christopher Duncan was charged in an indictment returned in Hancock Circuit Court with several drug-related offenses and with possession of a handgun and firearms by a convicted felon. When Duncan was arrested on the charges, the Hancock County Sheriff's deputies who made the arrest seized twenty five long rifles from his property. Duncan died before he could be tried, and the indictment was dismissed on August 15, 2001.

¹ Senior Judge Joseph R. Huddleston sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

On March 23, 2004, the Commonwealth moved to forfeit the firearms to the Hancock County Sheriff's Department and to destroy the drugs and related paraphernalia. Although Duncan's estate objected, on April 12, 2004, the circuit court sustained the Commonwealth's motion and ordered Duncan's property forfeited and the drugs and drug paraphernalia destroyed.

Kentucky Revised Statutes (KRS) 527.060 provides that:

Upon the conviction of any person for the violation of any law of this Commonwealth in which a deadly weapon was used, displayed or unlawfully possessed by such person the court shall order the weapon forfeited to the state and sold, destroyed or otherwise disposed of in accordance with KRS 500.090.

Duncan's estate argues, and the Commonwealth agrees, that, pursuant to KRS 527.060, a conviction is required before property can be forfeited to the state. Consequently, the Commonwealth concedes that "the guns should be returned to [Duncan's] estate in accordance with the statute."

The forfeiture order entered on April 12, 2004, is, therefore, reversed and this case is remanded to Hancock Circuit Court with directions to order the Hancock County Sheriff's Department to return the firearms at issue to the estate of Christopher Duncan.

ALL CONCUR.

BRIEF FOR APPELLANT:

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BRIEF FOR APPELLEE:

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