

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE  
AT JACKSON  
Assigned on Briefs August 2, 2022

**FILED**  
09/27/2022  
Clerk of the  
Appellate Courts

**BENJAMIN OWEN v. STATE OF TENNESSEE**

**Appeal from the Criminal Court for Shelby County**  
**Nos. I16-00052, I16-00053 Lee V. Coffee, Judge**

---

**No. W2021-01049-CCA-R3-CO**

---

The Defendant, Benjamin Owen, filed a petition for the return of seized property pursuant to Tennessee Code Annotated section 39-11-709. The Defendant, however, has no appeal as of right under Tennessee Rule of Appellate Procedure 3. Because we have no subject matter jurisdiction, we dismiss the Defendant’s appeal.

**Tenn. R. App. P. 3 Appeal as of Right; Appeal Dismissed**

ROBERT W. WEDEMEYER, J., delivered the opinion of the court, in which TIMOTHY L. EASTER, J., joined. JOHN EVERETT WILLIAMS, P.J., not participating.<sup>1</sup>

Patrick E. Stegall, Memphis, Tennessee, for the appellant, Benjamin Owen.

Herbert H. Slatery III, Attorney General and Reporter; Samantha L. Simpson, Assistant Attorney General; Amy P. Weirich, District Attorney General; and Leslie Fouche, Assistant District Attorney General, for the appellee, State of Tennessee.

**OPINION**  
**I. Facts**

In 2018, the Defendant filed a petition for return of seized property under Tennessee Code Annotated section 39-11-709, claiming that he was entitled to the return of the property because the State had not initiated forfeiture proceedings within thirty days of the seizure. The property at issue was seized on July 31, 2014, pursuant to a traffic stop that resulted in the Defendant’s arrest. A Shelby County Sheriff’s Office deputy stopped the Defendant for erratic driving. During the course of the stop, the deputy found heroin and three firearms in the Defendant’s vehicle. Due to the discovery of heroin, the Defendant

---

<sup>1</sup> The Honorable John Everett Williams died September 2, 2022, and did not participate in this opinion. We acknowledge his faithful service to this Court.

then consented to a search of his residence, during which law enforcement seized firearms and firearm accessories.

In 2016, a Shelby County grand jury indicted the Defendant for possession of heroin. The Defendant pleaded guilty to the offense and was placed on diversion. The Defendant violated his judicial diversion and, pursuant to a negotiated settlement, the trial court terminated the diversion and sentenced the Defendant to an effective sentence of one day in confinement.

On August 22, 2018, the Defendant filed a “Motion for Return of Property.” The trial court summarily dismissed the petition in an order filed on February 21, 2019, finding that the Defendant had failed to prove lawful ownership of the firearms as required by Tennessee Code Annotated section 39-11-708(c).

The trial court, however, held two more hearings on the issue of ownership: January 17, 2020, and October 30, 2020.<sup>2</sup> Thereafter, the trial court issued a second order stating that the Defendant “has repeatedly failed to present any proof that the [Defendant] has lawful ownership of the firearms that were seized at the arrest of the [Defendant].” The trial court summarized the proof presented at the October hearing as follows:

[T]he [Defendant] testified that his home had been foreclosed in 2016. As a result of the foreclosure, the [Defendant] testified that he had lost all proof of ownership of the weapons. The [Defendant] testified that all the pawn receipts involved in this case were created from memory only. Lastly, the [Defendant] admitted that he had no legal documents to prove ownership of the weapons that were seized when he was arrested for this drug offense.

The trial court dismissed the petition. It is from this judgment that the Defendant appeals.

## **II. Analysis**

The Defendant contends that the trial court erred when it dismissed his petition. The State responds that this Court must dismiss this petition for lack of jurisdiction. We agree with the State.

---

<sup>2</sup> At the October hearing, the trial court referenced the prior order dismissing the petition “more than a year ago[.]” Further, the trial court said, “I think you refiled the petition after the petition was dismissed by the Court originally.” The appellate record, however, contains only the August 22, 2018 petition. The Defendant does not address this issue but, in his brief, explains the drawn out litigation of this issue as due to the pandemic.

A defendant in a criminal case does not have an appeal as of right in every instance. *State v. Rowland*, 520 S.W.3d 542, 545 (Tenn. 2017). Tennessee Rule of Appellate Procedure 3(b) provides:

In criminal actions an appeal as of right by a defendant lies from any judgment of conviction entered by a trial court from which an appeal lies to the Supreme Court or Court of Criminal Appeals: (1) on a plea of not guilty; and (2) on a plea of guilty or nolo contendere, if the defendant entered into a plea agreement but explicitly reserved the right to appeal a certified question of law dispositive of the case pursuant to and in compliance with the requirements of Rule 37(b)(2)(A) or (D) of the Tennessee Rules of Criminal Procedure, or if the defendant seeks review of the sentence and there was no plea agreement concerning the sentence, or if the issues presented for review were not waived as a matter of law by the plea of guilty or nolo contendere and if such issues are apparent from the record of the proceedings already had. The defendant may also appeal as of right from an order denying or revoking probation, an order or judgment entered pursuant to Rule 36 or Rule 36.1, Tennessee Rules of Criminal Procedure, from a final judgment in a criminal contempt, habeas corpus, extradition, or post-conviction proceeding, and from a final order on a request for expunction.

Accordingly, the Defendant has no right to appeal from the trial court's decision under Tennessee Rule of Appellate Procedure 3, and therefore, we have no subject matter jurisdiction to hear Defendant's appeal. *Rowland*, 520 S.W.3d at 544. The appeal is dismissed.

### **III. Conclusion**

Based on the foregoing, we affirm the trial court's dismissal.

---

ROBERT W. WEDEMEYER, JUDGE