

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

IN RE: BLAKE H. BENNER	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
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APPEAL OF: BLAKE H. BENNER	:	
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	:	No. 2931 EDA 2025

Appeal from the Order Entered October 21, 2025
In the Court of Common Pleas of Philadelphia County Criminal Division at
No(s): CP-51-MD-0004373-2025

BEFORE: LAZARUS, P.J., MURRAY, J., and FORD ELLIOTT, P.J.E.*

JUDGMENT ORDER BY LAZARUS, P.J.: **FILED OCTOBER 16, 2026**

Blake Benner appeals from the order denying his motion for return of property, his dog, entered in the Court of Common Pleas of Philadelphia County. Upon review, we reverse and remand to the trial court to reconsider its decision in light of *In re Smith*, 357 A.3d 438 (Pa. 2026) ("**Smith II**"), which reversed this Court's decision in *In re Smith*, 307 A.3d 140, 142 (Pa. Super. 2023) ("**Smith I**"). The trial court relied, in part, on this Court's panel decision in *Smith I* and other cases that similarly found the Commonwealth's right to seek forfeiture was not dependent on success in the related criminal action. **See** Trial Court Opinion, 2/2/26, at 4. At the time the trial court issued its opinion, this Court's decision in *Smith I* was still binding law. However, on May 27, 2026, just a few months after Benner filed his appellate

* Retired Senior Judge assigned to the Superior Court.

brief and one day before the Commonwealth filed its brief, the Supreme Court reversed **Smith I**.¹

In **Smith II**, 357 A.3d 438 (Pa. 2026), the Pennsylvania Supreme Court held that where the Commonwealth objects to a motion for return of property but does not allege an ongoing evidentiary need for that property and none is apparent, the denial of the motion for return of property serves as a *de facto* forfeiture. **Id.** at 445–46. The Supreme Court observed that under **Commonwealth v. Irland**, 193 A.3d 370 (Pa. 2018), forfeiture after conviction is criminal in nature, while forfeiture in the absence of conviction, though founded in a rule of criminal procedure, is civil in nature.² **See id.** at 446. To justify civil forfeiture, the Commonwealth must identify an independent statutory authorization for forfeiting a petitioner’s lawful property rights, which it did not do in **Smith**. **See id.** The Supreme Court further clarified, citing **Irland, supra**, that “[Pa.R.Crim.P.] 588 does not define, and cannot substantively prescribe, what property may be considered contraband.

¹ Benner did not file a reply brief, and neither party filed a post-submission communication pursuant to Pa.R.A.P. 2501(b).

² In our Court’s published panel opinion in **Smith I**, we cited case law supporting the notion that a conviction is not necessary for forfeiture under Rule 588; rather, the Commonwealth need only demonstrate, by a preponderance of the evidence, a nexus between the property at issue and a violation of the criminal statute, thereby designating the property as derivative contraband. **See id.** at 144. The panel rejected the argument that the trial court erred in ordering forfeiture without statutory authorization, declining to apply **Irland** by distinguishing between a Commonwealth petition for forfeiture (as in **Irland**) and a motion for return of property proceedings (as in **Smith** and earlier cases, as well as the instant case).

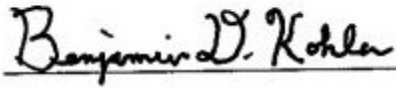
Thus, and in the absence of a developed common law precept for designating derivative contraband, Rule 588's forfeiture provision is limited to forfeitures authorized by sources of law extrinsic to the Rules." *Id.*; *see Irland*, 193 A.3d at 381.

Because neither the trial court nor the parties had a meaningful opportunity to consider the instant case under this new precedent, we remand to the trial court for further consideration, including, if necessary, a new hearing to address the basis for denying Benner's motion under the rubric of *Smith II*. Further, the trial court and parties are to address the retroactivity, or lack thereof, of *Smith II*.³

Order reversed. Case remanded in accordance with the dictates of this decision. Jurisdiction relinquished.

³ Should the trial court decide to hold a new hearing, we further direct the court to consider the timeliness of Benner's petition for return of property. A petitioner must file a petition for return of property within 30 days of the date of his or her underlying criminal disposition. *See Commonwealth v. Allen*, 107 A.3d 709, 711, 716–17 (Pa. 2014); *see also In re Mighty Mouse*, 329 A.3d 852, 858–59 (Pa. Cmmwlth. 2025). Because neither the notes of testimony from the hearing nor the trial court opinion and parties' briefs provide the date of the criminal trial at which Benner was acquitted, we do not know whether the 30-day period expired before Benner brought this action.

Judgment Entered.

A handwritten signature in black ink, reading "Benjamin D. Kohler", is written over a horizontal line.

Benjamin D. Kohler, Esq.
Prothonotary

Date: 10/16/2026