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SUPREME COURT
STATE OF WASHINGTON
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No. 100949-6

SUPREME COURT
OF THE STATE OF WASHINGTON

PAUL J. PASTOR, JR., PIERCE COUNTY SHERIFF,

Plaintiff/Respondent,

v.

REAL PROPERTY COMMONLY DESCRIBED AS 713 SW 353 RD PLACE, FEDERAL WAY, KING COUNTY, WASHINGTON, and all appurtenances and improvements thereon,

Defendant In Rem,

MEI XIA HUANG,

Interested Party/Petitioner.

# REPLY TO ANSWER TO PETITION FOR REVIEW

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## A. REPLY INTRODUCTION

Although the Court of Appeals did not reach the issue raised in the cross appeal of Pierce County Sheriff Paul J. Pastor, Jr., petitioner Mei Xia Huang agrees that this Court should review it. That issue—whether the purported CR 2A agreement between the Sheriff and Huang is enforceable—is closely related to both questions presented in Huang's petition. If this Court agrees with Huang that notice by publication fails to comply with RCW 69.50.505(3), then this Court will decide the jurisdictional consequences of that failure. And the Sheriff's motion to enforce the purported CR 2A agreement serves as a concrete example of what a trial court may and may not do in the face of those jurisdictional consequences. Similarly, if this Court holds that the civil forfeiture of real property here violates the Excessive Fines Clause of the Eight Amendment, then this Court's guidance will be needed on the significance of that constitutional defense. Below, the trial court held that a seizing agency cannot settle a civil forfeiture without obtaining a knowing, voluntary,

and intelligent waiver of the claimant's right to assert that the forfeiture violates the Eighth Amendment. CP 943–45. Thus, by deciding the CR 2A enforcement issue, this Court will provide helpful guidance on the effects of its holdings on the questions raised in Huang's petition. While this Court might be tempted to leave the Sheriff's issue for the Court of Appeals to decide in the first instance, judicial economy would be served by this Court reaching it now.

Reviewing the Sheriff's issue is especially appropriate under RAP 13.4(b)(4) because it raises an issue of statewide importance. As the Sheriff does not deny, most drug forfeitures occur administratively outside the court system. *See* RCW 69.50.505(5). Judicial oversight is crucial. And yet the opportunity might not arise again for this Court to decide whether a seizing agency must obtain a knowing, voluntary, and intelligent waiver of a claimant's Eight Amendment right to challenge the excessiveness of the forfeiture. In short, the Sheriff's cross-appeal issue belongs in this Court.

## B. REPLY TO STATEMENT OF THE CASE

The Sheriff's answer does not accurately describe the circumstances framing his cross appeal. To start, no criminal charges have been brought against Huang. In Huang's petition, she pointed out this fact, and the Sheriff's answer does not deny it. *Compare* Pet. at 2; *with* Ans. at 1–34. Thus, the Sheriff effectively concedes the point. *See, e.g.*, *State v. Ward*, 125 Wn. App. 138, 144, 104 P.3d 61 (2005) ("The State does not respond and thus, concedes this point."); *State v. E.A.J.*, 116 Wn. App. 777, 789, 67 P.3d 518 (2003) ("[T]he State apparently concedes the issue."). Yet the Sheriff's answer tries to litigate the underlying criminal activity. *See* Ans. at 1, 3–5 & n.1.

The trial court's statement about Huang's involvement, which the Sheriff's answer emphasizes, *see* Ans. at 3–4 n.1, is irrelevant in any event. The trial court entered its order on summary judgment. CP 654–59. "Findings of fact are superfluous in summary judgment proceedings," this Court has explained, and "they carry no weight on appeal." *Chelan Cnty.*

*Deputy Sheriffs' Ass'n v. Chelan Cnty.*, 109 Wn.2d 282, 294 n.6, 745 P.2d 1 (1987). And this Court need not make its own decision about Huang's knowledge, because the issues presented in Huang's petition and the Sheriff's answer have nothing to do with what she knew about the growth of cannabis. The meaning and jurisdictional significance of the notice statute here—RCW 69.50.505(3)—do not concern Huang's knowledge, nor does the Excessive Fines Clause question. And the Sheriff never explains how the enforceability of the purported settlement agreement depends on what Huang knew about the growth activity. *See* Ans. at 33–34; PCSD Am. Br. at 36–46. As this discussion shows, the Court may properly disregard the Sheriff's effort to paint Huang with the brush of guilt.

Next, the Sheriff's statement of the case asserts that "[o]n appeal, Petitioner did not dispute she evaded personal service." Ans. at 15. Not so. Huang *did* dispute it. *See* Huang's Reply & Cross Resp. Br. at 33 ("Huang satisfied those duties and did nothing to prevent the Sheriff from meeting the Aug. 29, 2019

service deadline.") And, as the Sheriff cannot dispute, Huang was under no duty to assist the Sheriff with service. *See, e.g.*, *Weiss v. Glemp*, 127 Wn.2d 726, 734, 903 P.2d 455 (1995) ("[T]hose who are to be served with process are under no obligation to arrange a time and place for service or to otherwise accommodate the process server." (quotation omitted)). Huang did not avoid the forfeiture proceeding. She appeared through her attorney and participated in the litigation, as the Sheriff's answer acknowledges. *See* Ans. at 5–10. And the Sheriff's answer discloses no request to Huang or her attorney for her to accept service. *See* Ans. at 2–17.

In any event, evasion of service has nothing to do with the issues presented for review in Huang's petition and in the Sheriff's answer. When the Sheriff filed his motion for leave to serve by publication, the trial court did not find that Huang was evading service. CP 43–54. The Sheriff argued only that Huang "cannot be found," and then the trial court entered a bare order with no findings or conclusions. CP 44, 52–54. Huang's petition

does not raise the question whether the criteria for service by publication were met. Pet. at 4. Rather, her petition focuses on whether notice by publication fails to meet RCW 69.50.505(3) and on the jurisdictional consequences of that deficiency. Pet. at 4, 11–34. Evasion is not related to the questions presented, and Huang's petition explained why the Court of Appeals' waiver argument does not undercut the need for review. *See id.* at 26–27; *see also*, *In re Marriage of McDermott*, 175 Wn. App. 467, 479, 307 P.3d 717 (2013) (stating that "the absence of subject matter jurisdiction is a defense that can never be waived").

The Sheriff's statement of the case also misstates Huang's position in the Court of Appeals as objecting to the Sheriff's failure to "personally serve[]" her. Ans. at 15. Not so. Huang has acknowledged that RCW 69.50.505(3) permits substitute service—as long as the seizing agency accomplishes service within the statutory 15-day deadline. *See* Huang's Reply & Cross Resp. Br. at 19–21, 34. As Huang noted in the Court of Appeals, "[t]he Sheriff could have made a CR 4(d)(4) motion to serve via

the mail, but did not." Huang's Reply & Cross Resp. Br. at 34. But the Sheriff's statement of the case documents no effort to serve the notice to Huang by mail. In short, the Sheriff's statement of the case inaccurately portrays Huang's argument in the Court of Appeals as centering on personal service.

## C. REPLY ARGUMENT

"Forfeitures are not favored; they should be enforced only when within both letter and spirit of the law." *United States v. One 1936 Model Ford V-8 De Luxe Coach*, 307 U.S. 219, 226, 59 S. Ct. 861, 83 L. Ed. 1249 (1939). Despite this precaution, the Sheriff wants to use CR 2A as a tool for enforcing a civil forfeiture that would otherwise fail under RCW 69.50.505(3) and the Eighth Amendment. But that statute and the Excessive Fines Clause are meant to provide some curbs on seizing agencies' exploitation of the drug forfeiture statute. This Court should grant review of the Sheriff's cross-appeal issue to make clear that seizing agencies cannot use the leverage they have to extract a settlement from a proceeding that was improper at the outset.

### (1) This Court Should Grant the Sheriff's Cross Petition and Review Whether the Lack of Jurisdiction Due to a Seizing Agency's Non-Compliance with RCW 69.50.505(3) Deprives the Trial Court of Authority to Enforce a CR 2A Agreement

Reviewing the issue raised in the Sheriff's cross petition will sharpen this Court's analysis of the jurisdictional question and provide guidance to the bench and bar on the consequences of a defective notice in a special statutory proceeding like this one. To recap, as Huang's petition explains, the Sheriff's notice by publication failed to comply with RCW 69.50.505(3), and the Court of Appeals' statutory interpretation failed to give effect to every provision in the statute. *See* Pet. at 19–20. Of course, as the Sheriff notes, the statute provides that "[s]ervice of notice of seizure of real property shall be made according to the rules of civil procedure," RCW 69.50.505(3), and CR 4(d)(3) allows for service by publication. But the Sheriff cites no precedent holding that a seizing agency may use a method of service, such as service by publication, that cannot be completed within the 15-

day window required under RCW 69.50.505(3). The Civil Rules permit service by other methods of substitute service that can be completed within 15 days. One is service by mail. CR 4(d)(4). Another is giving a copy "at the house of [the defendant's] usual abode with some person of suitable age and discretion then resident therein." RCW 4.28.080(16); *see also*, *Weiss*, 127 Wn.2d at 731 (confirming that this method of service is "substitute service"). Thus, allowing substitute service but requiring it to be completed within 15 days is the only interpretation of RCW 69.50.505(3) that gives effect to every provision in the drug forfeiture statute and that recognizes that the statute's specific timing provision trumps the general statutory provision allowing service according to the Civil Rules. *See Wash. State Ass'n of Cntys. v. State*, 199 Wn.2d 1, 13, 502 P.3d 825 (2022) (reaffirming that "[a] general statutory provision must yield to a more specific statutory provision" (quotation omitted)).

This Court should grant review of the Sheriff's cross-

appeal issue to clarify that a seizing agency's failure to comply with this 15-day timing requirement deprives the trial court of jurisdiction over a motion to enforce a purported CR 2A agreement. *See, e.g.*, *Shoop v. Kittitas Cnty.*, 149 Wn.2d 29, 35, 65 P.3d 1194, 1197 (2003) ("When a court lacks subject matter jurisdiction, dismissal is the only permissible action the court may take." (citation omitted)); *Crosby v. Cnty. of Spokane*, 137 Wn.2d 296, 301, 971 P.2d 32, 36 (1999) ("If a court lacks jurisdiction over a writ proceeding, it may do nothing other than enter an order of dismissal." (quotation omitted)).

Of course, "[w]here the CR 2A requirements are met, a motion to enforce a settlement is a commonly accepted practice." *Condon v. Condon*, 177 Wn.2d 150, 157, 298 P.3d 86 (2013) (citation omitted). But the Sheriff's chosen procedural vehicle is not the problem. The problem is that a trial court has no jurisdiction to decide such a motion unless the seizing agency meets the statutory requirements of RCW 69.50.505(3). If a seizing agency wants to settle or still wants to pursue a forfeiture

after realizing that the 15-day notice period has passed, then its recourse is to move for voluntary dismissal and to then properly restart the process before the two-year statute of limitations runs. *See* CP 76, 78 (Sheriff's motion asking the trial court to either continue the trial date or dismiss the case without prejudice, well before the two-year limitations period had run).

This Court should make clear that lower courts should not read an exception for CR 2A agreements into the jurisdictional rule of RCW 69.50.505(3). Otherwise, seizing agencies could use the drug forfeiture statute as leverage to extract a benefit that the trial courts would otherwise have no jurisdiction to grant. While RCW 69.50.505(3) might seem "formalistic," as the Court of Appeals observed in another case, reviewing courts "will not amend the statute by judicial construction." *Bruett v. Real Prop. Known as 18328 11th Ave. N.E.*, 93 Wn. App. 290, 302, 968 P.2d 913 (1998). Indeed, "[f]orfeitures are not favored and such statutes are construed strictly against the seizing agency." *Snohomish Reg'l Drug Task Force v. Real Prop. Known as*

*20803 Poplar Way*, 150 Wn. App. 387, 392, 208 P.3d 1189, 1191 (2009). If allowing notice by publication would be wise policy in a drug forfeiture proceeding, that choice should be left to the Legislature. But until then, the Court should not allow CR 2A to be exploited as an end run around the jurisdictional effects of non-compliance with the statutory timing rule. *See, e.g.*, *In re West*, 154 Wn.2d 204, 214, 110 P.3d 1122, 1126–27 (2005) ("Washington courts have held that even where a defendant clearly invited the challenged sentence by participating in a plea agreement, to the extent that he or she can show that the sentencing court exceeded its statutory authority, the invited error doctrine will not preclude appellate review." (quotation omitted)).

(2) This Court Should Grant the Sheriff's Cross Petition and Review Whether a Settlement Agreement in a Drug Forfeiture Proceeding Must Include a Knowing, Voluntary, and Intelligent Waiver of the Claimant's Eighth Amendment Right Under the Excessive Fines Clause

For similar reasons, this Court should review whether a

settlement agreement in a drug forfeiture proceeding is unenforceable absent a knowing, voluntary, and intelligent waiver of the claimant's constitutional right to challenge the forfeiture under the Excessive Fines Clause. Huang did not know that she had a constitutional right to be free from excessive fines. CP 886. Her then-trial attorney failed to tell her. CP 886. She was completely unaware until a different attorney informed her of her constitutional right. CP 886. Huang immediately acted on her new knowledge by telling her attorney to tell the Sheriff that she refused to settle. CP 886. Of course, the Sheriff argues that she knowingly waived her constitutional right. *See* PCSD Cross Reply 16–19. And the Sheriff argues that she invited any error by proposing the terms of the purported CR 2A agreement. *See id.* at 22–24. But the Sheriff does not challenge the core issue—whether, in a drug forfeiture, a claimant must knowingly, voluntarily, and intelligently waive the right to challenge the forfeiture under the Excessive Fines Clause. The trial court correctly ruled that the Sheriff had to establish such a waiver but

had failed to do so. CP 943–45.

This issue has broad statewide significance. *See* RAP 13.4(b)(4). As Huang stressed in her petition, the Eighth Amendment question is "likely to recur but evade review because most forfeitures occur administratively outside of court oversight." Pet. at 34 (citing RCW 69.50.505(5)). That is equally true for the purported waiver. Judicial oversight is necessary to ensure that, behind the closed doors of the sheriffs' offices of this state, settlement agreements have safeguards that comply with the constitutional constraints on civil forfeitures.

## D. CONCLUSION

For these reasons, this Court should grant review of the issue that the Sheriff raised in his cross appeal in the Court of Appeals.

This document contains 2,457 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 26th day of July 2022.

Respectfully submitted,

/s/ Gary W. Manca

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DECLARATION OF SERVICE

On said day below I electronically served a true and accurate copy of the ***Reply to Answer to Petition for Review*** in Supreme Court Cause No. 100949-6 to the following:

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I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: July 26, 2022 at Seattle, Washington.

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