

NO. 81116-4

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

In re Forfeiture of
ONE 1970 CHEVROLET CHEVELLE.

ALAN and STEPHNE ROOS,

Petitioners,

v.

SNOHOMISH REGIONAL DRUG TASK FORCE,

Respondent.

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STATE OF WASHINGTON
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SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ISSUES

During the administrative proceedings, the claimants did not object to the hearing officer's definition of "knowledge." Can they raise this challenge for the first time in the petition for review?

II. STATEMENT OF THE CASE

The facts are set out in the Court of Appeals decision.

III. ARGUMENT

BY STATUTE, AN ISSUE THAT WAS NOT RAISED IN THE ADMINISTRATIVE PROCEEDINGS CANNOT BE RAISED ON JUDICIAL REVIEW.

The sole issue raised in the Petition for Review is whether the hearing officer erroneously applied an objective standard of "knowledge." This issue was not raised before either the hearing officer, the Superior Court, or the Court of Appeals. As a result, it cannot now be considered by this court.

When property is forfeited because of its use in a drug offense, the hearing and any appeal are governed by the Administrative Procedures Act. RCW 69.50.505(5). That Act precludes raising issues for the first time on judicial review:

(1) Issues not raised before the agency may not be raised on appeal, except to the extent that:

(a) The person did not know and was under no duty to discovery or could not have reasonably discovered facts giving rise to the issue;

(b) The agency action subject to judicial review is a rule and the person has not been a party in adjudicative proceedings that provided an adequate opportunity to raise the issue;

(c) The agency action subject to judicial review is an order and the person was not notified of the adjudicative proceeding in substantial compliance with this chapter; or

(d) The interests of justice would be served by resolution of an issue arising from:

(i) A change in controlling law occurring after the agency action; or

(ii) Agency action occurring after the person exhausted the last feasible opportunity for seeking relief from the agency.

(2) The court shall remand to the agency for determination any issue that is properly raised pursuant to subsection (1) of this section.

RCW 34.05.554.

“In order for an issue to be properly raised before an administrative agency, there must be more than simply a hint or a slight reference to the issue in the record.” King County v. Washington State Boundary Review Bd., 122 Wn.2d 648, 670, 860 P.2d 1024 (1993). Here, the claimants argued to the hearing officer that the seizing agency had failed to prove knowledge. 2 RP 540-49. When the hearing officer issued a decision that relied on a “should have known” standard, the claimants did not seek

reconsideration. At no point in the administrative proceedings did they argue that the hearing officer had applied an erroneous standard of “knowledge.”

RCW 34.05.554 recognizes several exceptions to the preservation requirement. None of them apply to the present case. The claimants were fully aware of the relevant facts, so exception (a) does not apply. They fully participated in the adjudicative proceeding, so (b) and (c) do not apply. There has been no change in controlling law, so (d)(i) does not apply

With regard to (d)(ii), it is arguable that the issue first arose when the hearing officer issued his decision. It was, however, feasible for the claimants to seek relief via motion for reconsideration, as authorized by RCW 34.05.470. Since they failed to do so, exception (d)(ii) does not apply either. Because the claimants failed to raise the issue before the agency, and there is no applicable exception to that requirement, this court is barred by statute from considering the issue.

This conclusion is reinforced by the claimant's failure to raise the issue in a timely manner during the judicial review proceedings. In Superior Court, the petition for judicial review stated: “The sole issue before the court is whether the agency's decision is

supported by substantial evidence when viewed in light of the record as a whole.” 5 Sentra CP 930-31; 2 Chevelle CP 357. At no point during the Superior Court proceedings did the claimants argue that the agency had applied the wrong legal standard.

In the Court of Appeals, the claimants raised two issues:

(1) Did the legislature intend for RCW 69.50.505 to be applied to families trying to cope with drug addicted children, when the intent of the statute was to deter drug dealers by imposing economic sanctions on them?

(2) Was the Designated Hearing Examiner’s decision supported by substantial evidence when viewed in light of the record as a whole, despite the State’s failure to produce evidence to show that the Roos [sic] had knowledge and consented to their son’s drug activities?

Brief of Appellants at 2. Again, the claimants did not argue that the hearing examiner’s decision was based on an erroneous definition of “knowledge.” This issue was raised by the Court of Appeals on its own initiative.

Ordinarily, this court will not consider issues that were not raised in the trial court or the Court of Appeals. Peoples Nat’l Bank v. Peterson, 82 Wn.2d 822, 829-30, 514 P.2d 159 (1973); see Obert v. Environmental Research & Development Corp., 112 Wn.2d 314, 333, 771 P.2d 340 (1989) (exercising discretion to consider issue not raised below). In view of the claimant’s failure to raise the

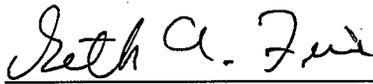
issue at any stage of the proceedings, this court should exercise its discretion to decline to consider it.

IV. CONCLUSION

The claimants have not properly preserved a challenge to the hearing officer's definition of "knowledge." They have not sought review of the Court of Appeals rejection of their other arguments. The orders of forfeiture should therefore be affirmed.

Respectfully submitted on October 23, 2008.

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