

NO. 63908-1-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

JAMES W. CAMERON,

Appellant.

BRIEF OF RESPONDENT

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I. ISSUES

1. Is an appeal of a civil order of forfeiture properly raised in the context of a criminal case?
2. Did the trial court properly refuse to grant the defendant's motion for return of property where all of the evidence showed the property was legally forfeited in a civil forfeiture proceeding?
3. Is the defendant entitled to appeal when his notice of appeal states it is from a trial court's decision that was not a final judgment of the court?

II. STATEMENT OF THE CASE

The defendant, James W. Cameron, was arrested and was charged with one count of attempting to elude a pursuing police vehicle alleged to have occurred on July 18, 2008. 2 CP 97-98. Upon his arrest police found on the defendant's person controlled substances and \$3,120 in cash. 2 CP 94-96.

After he was arrested the police served the defendant with a Notice of Seizure and Intended Forfeiture. In the notice the defendant was informed that he was entitled to a hearing before the hearing examiner for the City of Lynnwood, or before a court of competent jurisdiction. He was further informed that in order to protect his right to a hearing he must notify the City of Lynnwood

Police Department in writing by certified mail to claim ownership or right of possession of the seized property within 45 days of the date of the seizure. Otherwise the property would be seized and the defendant would lose all right to the property. 2 CP 61 (sub 26, Appendix A to State's Response to Defendant's Motion to Modify Judgment and Sentence). On October 16, 2008 Commander James Nelson certified that he had received no request for a hearing and therefore sought seizure of the funds. 2 CP 62. The Hearing Examiner ordered forfeiture of the funds referenced on the seizure notice. Those funds were transferred to the Lynnwood Police Department. 2 CP 64.

The defendant ultimately pled guilty to one count of possession of a controlled substance, cocaine. He was sentenced on August 19, 2008. 2 CP 79-93. At sentencing the defense attorney suggested that unless the money that had been seized from the defendant was subject to civil forfeiture it could be used to pay some of the fines imposed by the court. The prosecutor stated that he was unaware at that time whether the police had filed a notice of forfeiture. The court suggested the parties set a hearing before the criminal motions judge. 8-19-08 RP 9-10. No hearing

was ever held before the funds were forfeited to the Lynnwood Police Department.

On May 5, 2009 the defendant filed a Motion to Modify or Correct Judgment and Sentence pursuant to CrR 7.8. In his motion the defendant asserted \$3,140 had been wrongfully taken from him. He asked the court to apply \$1,600 of the money to pay his legal financial obligations. He requested that the balance be mailed to him at the prison. 2 CP 70-78. The State responded arguing the money had lawfully been forfeited pursuant to RCW 69.50.505. 2 CP 58-59. On May 28, 2009 Judge Larry McKeeman denied the defendant's motion to modify the judgment and sentence. 2 CP 57. The defendant did not appeal from this order.

On July 9, 2009 the defendant filed a Motion to Release Property pursuant to CrR 2.3(e), RCW 9.92.100, Washington Const., Art. 1, Section 15. 1 CP 32-45. The State responded that the money had been lawfully forfeited, and this issue had already been decided by Judge McKeeman. 2 CP 50-51, 53-56. On July 17, 2009 the trial court sent a letter to the parties informing them that Judge Downes would consider the defendant's motion and the State's response on July 31, 2009. 2 CP 52. The defendant filed a notice of appeal seeking review of the Motion to Release Property

entered on July 16, 2009. 2 CP 49. On August 7, 2009 Judge Downes signed an order declining to rule on the motion previously ruled on by Judge McKeeman. The court further stated that had it considered the motion on its merits the court would not have granted the defendant's motion. 2 CP 48.

III. ARGUMENT

A. THE APPEAL OF THE FORFEITURE PROCEEDING IS IMPROPERLY FILED IN THE CRIMINAL CASE.

The defendant's original motion to release property was nominally based on CrR 2.3(g). 1 CP 32. That court rule permitted the defendant to move the court for release of property seized pursuant to a search warrant on the basis that it had been illegally seized and that he was lawfully entitled to possession of it. The defendant was not lawfully entitled to possession of the property because, as discussed below, it had been forfeited pursuant to RCW 69.50.505.

The defendant's appeal does not address whether or not the court erred in finding he was not lawfully entitled to the property. Rather he argues error resulting from the forfeiture itself. He argues he was erroneously denied a forfeiture hearing, and that the evidentiary requirement for forfeiture had not been met.

The civil forfeiture action is completely separate from the criminal prosecution. State v. Moen, 110 Wn. App. 125, 130-31, 38 P.3d 1049 (2002), affirmed, 150 Wn.2d 221, 76 P.3d 721 (2003). An appeal from a decision in a forfeiture action is governed under Title 34 RCW. RCW 69.50.505(5). RCW 34.05.510 et. seq. provides the sole means of judicial review of an agency action. In order to obtain review of an administrative decision forfeiting property the claiming party must file a petition for review in the Superior Court and pay the requisite filing fee. RCW 34.05.514. To seek direct review by the Court of Appeals the claiming party must first file a petition for review in the Superior Court and then within thirty days file an application for direct review. RCW 34.05.518(1),(2). If direct review is not certified or accepted, or if no application for review is filed, then the claiming party may obtain review by the Court of Appeals of a decision of the Superior Court in the same manner as other civil cases. RCW 34.05.526.

The defendant has followed none of these procedures. Instead he appeals the forfeiture in the context of the criminal case. His appeal from the forfeiture action is in the wrong forum.

B. THE TRIAL COURT CORRECTLY DENIED THE DEFENDANT'S MOTION FOR RETURN OF PROPERTY.

The trial court did not err when it declined to consider the defendant's motion because it in effect had already been considered and denied by another judge. That judge denied the defendant's motion titled motion to modify or correct judgment and sentence. The substance of the motion was to return funds, applying some to the defendant's legal financial obligations, and remitting the remainder to the defendant. Although the trial court erroneously titled the order "Order Denying Motion to Terminate Legal Financial Obligations" the order in effect denied the defendant's request for return of the money seized from him. That decision was correct because the funds had been forfeited pursuant to the requirements of the civil forfeiture statute. The defendant no longer had an interest in the property once it had been forfeited. RCW 60.50.505(4). For that same reason the trial court also did not err in stating that had it considered the defendant's motion it would not have granted the motion.

The defendant has not established that he was entitled to the property or that he was wrongly denied a hearing on the merits of his claim. A party claiming an interest in personal property that

has been seized pursuant to the drug forfeiture statute must file a claim in writing with the seizing law enforcement agency within forty-five days of the service of notice from seizing agency. Service may be effected by any method authorized by law or court rule including service by first-class mail. RCW 69.50.505(5). If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the property within the prescribed time limits the item seized is deemed forfeited. RCW 69.50.505(4). A party who has a legitimate claim on the property must comply with the statutory procedures for filing a claim and obtaining a hearing on that claim or the property is lawfully forfeited. Key Bank of Puget Sound v. City of Everett, 67 Wn. App. 914, 920, 841 P.2d 800 (1992), review denied, 121 Wn.2d 1025, 854 P.2d 1085 (1993).

The defendant does not assert that he served any written claim to the money he now argues was unlawfully forfeited. Nor is there any evidence the defendant did so. Rather he asserts that he verbally made a claim at the time he was sentenced on the underlying charge. RCW 69.50.505(4) and (5) do not contemplate a verbal request for a hearing.

In addition the request the defendant did make for a hearing was insufficient to afford him a hearing under the civil forfeiture statute. This Court has held that notice of claim is sufficient if served on the attorney for the seizing agency if it contains contact information so that further proceedings may be scheduled. Snohomish Regional Drug Task Force v. Real Property Know as 20803 Poplar Way, 150 Wn. App. 387, 397, 208 P.2d 1189 (2009).

The defendant relies on his attorney's oral claim for return of the money at sentencing. Counsel stated "there was over \$3,000 that was taken from Mr. Cameron when he was arrested that night. Unless the state has civilly forfeited that money should be returned to Mr. Cameron." 8-19-08 RP 9. This statement contemplates a return of money pursuant to CrR 2.3, not the civil forfeiture statute.

In addition defense counsel's request was not addressed to counsel representing the Lynnwood Police Department. The defendant's contention that the deputy prosecutor was representing the city at the hearing is unsupported by fact or law. The deputy prosecutor was an employee of the Snohomish County Prosecutor. 2 CP 93. The county prosecutor's duties are set out in RCW 36.27.020. Those duties are limited to representing the State of Washington, the local county, and the school districts within the

county. The prosecutor does not represent municipalities or individual police departments. Thus, a request for a hearing on return of the cash seized from the defendant to the deputy prosecutor at sentencing does not qualify as sufficient notice to the seizing agency for the purposes of RCW 69.50.505 when the seizing agency was the Lynnwood Police Department.

The court's comments regarding setting a hearing would only contemplate a hearing under CrR 2.3. To the extent the court contemplated setting a hearing it was to determine the issues under that court rule, not under the civil forfeiture statute. In order for the court to have had jurisdiction to hear the civil forfeiture action the defendant must first have timely filed the claim, and then timely served the City of Lynnwood with notice that it was seeking to remove the matter to Superior Court within 45 days of filing his claim with the city. RCW 69.50.505(5). Because the defendant failed to comply with the procedures outlined in RCW 69.50.505(5) the defendant failed to make an effective claim for the money, the superior court did not have the authority to hear the defendant's claim under the statute, and the property was lawfully forfeited forty-five days after the defendant was served with notice of seizure.

C. THE RULING THE DEFENDANT APPEALED FROM IS NOT A FINAL DECISION OF THE COURT.

A party must file a notice of appeal 30 days from the decision of the trial court which the party filing the notice wants reviewed. RAP 5.2(a). The defendant's notice of appeal states he is appealing from the court's decision on July 16, 2009 on his Motion to Release Property.

The only decision made by the court on or about July 16 was the decision to set the hearing to consider the defendant's motion and the State's reply on July 31, 2009 without oral argument. 2 CP 52. That decision setting a hearing was not a final decision on the motion.¹ A party only has a right to appeal from a final judgment from the court. RAP 2.2(a)(1). Because the notice of appeal is from a decision of the court that was not a final judgment the appeal should be dismissed.

¹ It was not even a final decision on the hearing date as the court ultimately did not decide the motion until August 7, 2009.

IV. CONCLUSION

For the forgoing reasons the State asks the Court to deny the relief requested by the defendant.

Respectfully submitted on March 16, 2010.

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