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STATE OF WASHINGTON  
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No. 98391-7  
Court of Appeals No. 79002-1-I

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SUPREME COURT OF THE STATE OF WASHINGTON

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CITY OF SEATTLE, SEATTLE POLICE DEPARTMENT & SEATTLE  
CHIEF OF POLICE,

Plaintiffs/Respondents,

vs.

\$19,560.48 U.S. CURRENCY,

In Rem Defendant,

REBEKAH SHIN,

Claimant/Petitioner.

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**RESPONDENTS' ANSWER TO PETITION FOR  
DISCRETIONARY REVIEW TO THE  
WASHINGTON SUPREME COURT**

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## I. INTRODUCTION

This matter presents a straightforward application of the Washington civil forfeiture statute, RCW 69.50.505. There is no basis for further review by the Supreme Court.

In connection with an arrest of Petitioner Rebekah Shin for drug trafficking, Seattle Police (“SPD”) seized approximately \$19,000 in cash. At the time, Petitioner was living in a recreational vehicle with her boyfriend. SPD timely served Petitioner with a notice of forfeiture by certified mail to an address for Petitioner obtained from an SPD database. Petitioner timely served a notice of claim of ownership and then timely removed the matter to the King County District Court. Following an evidentiary hearing, the District Court determined *inter alia* that service of the notice of forfeiture satisfied due process and that Petitioner suffered no prejudice from the service of the notice. The District Court ordered the property forfeited. On RALJ appeal, the King County Superior Court affirmed the District Court findings and the order of forfeiture. The Court of Appeals likewise affirmed in an Unpublished Opinion, from which Petitioner now seeks review.

Petitioner does not demonstrate that any of the grounds under RAP 13.4(b) support review of this matter by the Supreme Court. Petitioner makes no showing of a decisional conflict or a significant constitutional

question. She also does not demonstrate that there is an issue of significant public interest. The City agrees with Petitioner that homeless individuals are entitled to due process. But Petitioner got that—and she does not show that the Court of Appeals Unpublished Opinion would create confusion or generate more unnecessary litigation.

## **II. STATEMENT OF THE CASE**

On November 17, 2015, Seattle Police seized \$19,560.48 cash pursuant to the arrest of Petitioner Rebekah Shin and her boyfriend, Kiel Krogstadt, for trafficking heroin and methamphetamine. KCDC CP000704-05.

On November 24, 2015, Seattle Police arrested Petitioner and Krogstadt a second time for drug trafficking. Pursuant to that second arrest, police seized \$43,697 in cash. KCDC CP000706-07 at ¶¶ 20, 23.<sup>1</sup>

On November 24, 2015, Seattle Police Detective Donald Hardgrove sent a notice of seizure and intended forfeiture (“notice of forfeiture”) for \$19,560.48 and also a notice of forfeiture for \$43,697, by certified mail and by regular mail, to Petitioner at 77 South Washington Street, Seattle, 98104. KCDC CP000707; *see* KCDC CP000061. Detective Hardgrove obtained the address from the General Offense

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<sup>1</sup> In a separate matter, Petitioner also challenges the seizure of the \$43,697. See Supreme Court No. 98392-5.

Report and from a search of the SPD records management system, which showed 77 South Washington Street as Petitioner's most recent address and also as the address listed for Petitioner in multiple contacts with SPD. *Id.* 77 South Washington Street is the address for a mail receiving service for homeless individuals. *Id.*

The notice of forfeiture advised that \$19,560.48 had been seized pursuant to RCW 69.50.505. *See* KCDC CP000061. It also stated *inter alia* that (1) a notice of claim must be served by certified mail, (2) the time period for filing a claim commences upon seizure, and (3) the claim must be received within the 45-day limitations period. *Id.*

Petitioner timely filed a claim of ownership of the \$19,560.48. She then timely removed the matter to the King County District Court.

On June 20, 2017, the District Court held an adversarial evidentiary hearing. KCDC CP000703. Petitioner did not appear. KCDC CP000704. Petitioner did not enter any evidence at the District Court hearing asserting an address other than 77 South Washington Street. The District Court concluded, *inter alia*, that Petitioner and her attorney were aware of the seizure of \$19,560.48 prior to the deadline for filing a claim, that Petitioner was able to file a timely claim, that Petitioner suffered no prejudice from service of the notice of forfeiture, and that service of the

notice of forfeiture satisfied due process. The District Court ordered forfeiture of the \$19,560.48. KCDC CP000710-11.

Petitioner timely filed a RALJ appeal with King County Superior Court. In that appeal, Petitioner did not challenge the District Court Finding of Fact that Detective Hardgrove had sent the notice via regular mail and certified mail to Petitioner at 77 South Washington street, Seattle. CP 570. On August 24, 2018, following briefing and oral argument, the Superior Court affirmed the District Court's Findings of Fact and Conclusions of Law and denied the RALJ appeal. CP 570-73.

The Court of Appeals subsequently granted Petitioner's request for discretionary review. On March 9, 2020, the Court of Appeals affirmed. *See Unpublished Opinion, Washington Ct. of Appeals No. 79002-1-I, Mar. 9, 2020 ("Op.")*. The Court of Appeals held that neither the service of the notice of forfeiture nor the content of the notice violated Petitioner's due process rights. *See id.*

### **III. ARGUMENT**

Petitioner invokes all four criteria in RAP 13.4(b) in seeking review by this Court, but she does not demonstrate that any of them apply. The petition should be denied.

**A. There Is No Decisional Conflict.**

Pursuant to RAP 13.4(b)(1) and (2), Petitioner asserts that the Court of Appeals decision conflicts with United States or Washington Supreme Court decisions and published decisions of the Court of Appeals. Ptn. at 17-20. But she does not identify a decisional conflict.

In her Petition in the \$19,000 matter, Petitioner's argument that there is a decisional conflict refers the Court to her Petition in the \$43,000 matter (Supreme Court No. 98392-5). *See* Ptn. at 17. She does not make a separate argument in this Petition.

The City addresses Petitioner's argument regarding purported decisional conflict in its Answer to the Petition in the \$43,000 matter. Rather than repeat that argument, the City incorporates it here and respectfully refers the Court to the City's Answer to Petition for Discretionary Review, No. 98392-5, at 11-12.

**B. There Is No Significant Question of Constitutional Law.**

Pursuant to RAP 13.4(b)(3), Petitioner asserts that the Court of Appeals decision "raises significant questions of law" under the state and federal constitutions. But she does not identify or explain any such significant question of law. She merely disputes the Court of Appeals decision regarding (1) adequacy of service of the notice of forfeiture and (2) the adequacy of the contents of the notice.



**1. Service of the notice satisfied due process.**

In her Petition in the \$19,000 matter, Petitioner's argument that service of the notice of forfeiture was not adequate is identical to her argument on the same issue in the \$43,000 matter. *Compare* \$19,000 Petition at 13-15 *with* \$43,000 Petition at 19-20. The City has addressed Petitioner's argument on this issue in its Answer to the Petition in the \$43,000 matter. The City incorporates its argument here and respectfully refers the Court to the City's Answer to Petition for Discretionary Review, No. 98392-5, at 13-16.

**2. The content of the notice satisfied due process.**

In her Petition in the \$19,000 matter, Petitioner's argument that the content of the notice of forfeiture denied her due process refers the Court to her Petition in the \$43,000 matter. *See* Ptn. at 13. She does not make a separate argument in this Petition.

The \$43,000 Petition notes discrepancies under RCW 69.50.505(5) in the City's notice form served on Petitioner. *See* \$43,000 Petition at 9-10. But the \$43,000 Petition does not explain how the content of the notice deprived her of due process.

In any event, the notice of forfeiture served on Petitioner did not deprive her of due process. Preliminarily, the City acknowledges, as it did below, that its notice form contained minor discrepancies under the civil

forfeiture statute. The City's notice stated that (1) a notice of claim must be served by certified mail, (2) the time period for filing a claim commences upon seizure, and (3) the claim must be received within the 45-day limitations period. *See* KCDC CP000061. But the Washington civil forfeiture statute (1) authorizes several forms of service of the notice of claim, including regular mail; (2) provides that the 45-day limitations period for filing a notice of claim begins on the date of service of the notice of forfeiture; and (3) provides that mail service of the notice of claim is effective as of the date of mailing:

The notice of claim may be served by any method authorized by law or court rule including, but not limited to, service by first-class mail. Service by mail shall be deemed complete upon mailing within the forty-five day period following service of the notice.

RCW 69.50.505(5). *Compare* KCDC CP000061 *with* RCW 69.50.505(5).

*See* Op. at 5.

Notwithstanding these discrepancies, the City's notice of forfeiture did not violate Petitioner's due process rights. Due process pursuant to the Washington civil forfeiture statute requires notice and an opportunity to be heard. *Tellevik v. Real Property Known As 31641 West Rutherford Street Located in City of Carnation, Wash.*, 125 Wn.2d 364, 370-71, 884 P.2d 1319 (1994); *see also State v. Rogers*, 127 Wn.2d 270, 275, 898 P.2d 294 (1995).

The City's notice met those requirements. It advised Petitioner that the property had been seized and that upon filing a timely notice of claim she could contest the seizure. KCDC CP 000061. The discrepancies in the form did not deny Petitioner either notice or the opportunity to be heard. *State v. Storhoff*, 133 Wn.2d 523, 527, 946 P.2d 783 (1997) (notice of driver's license revocation that misstated time to request hearing did not deprive defendants of notice or opportunity to be heard). The inconsistencies were "minor procedural errors" that do not rise to the level of a due process violation. *See Storhoff*, 133 Wn.2d at 527 (holding notice of revocation that incorrectly stated time period to request formal revocation hearing did not violate due process); *see Op.* at 9.

Further, the City's notice also cited the Washington civil forfeiture statute, which provided Petitioner correct information as to the method of service of the notice of claim, commencement of the limitations period, and completion of service of the claim. KCDC CP 000061. The citation to RCW 69.50.505 satisfied minimum due process requirements. *Storhoff*, 133 Wn.2d at 528.

**3. Petitioner cannot show prejudice.**

Further, Petitioner does not and cannot show prejudice resulting from the City's service of the notice or the contents of the notice. Petitioner timely served her notice of claim. And she received an

opportunity to be heard and was heard: she timely removed the matter from the seizing agency to King County District Court—where she received a hearing. *See* KCDC CP 000703-711.

Dismissal of the forfeiture is not warranted in the absence of prejudice. *Storhoff*, 133 Wn.2d at 532 (in absence of showing of actual prejudice, incorrect notices did not invalidate license revocation notices); *City of Seattle v. 2009 Cadillac CTS*, 2 Wn.App.2d 44, 409 P.3d 1121 (2017) (no denial of due process where hearing commenced outside of 90-day period prescribed by Washington civil forfeiture statute; more timely hearing not required where claimant failed to establish prejudice from delay in hearing); *State v. Getty*, 55 Wn. App. 152, 155-56, 777 P.2d 1 (1989) (issuance of adult court citation to juvenile did not violate due process; even though due process violation had occurred, dismissal of conviction not appropriate because no showing of prejudice). Dismissal of the forfeiture under these circumstances would be an absurd result, which should be avoided. *Storhoff*, 133 Wn.2d at 532.

**C. There Is No Issue of Substantial Public Interest.**

Petitioner also argues that this case presents an issue of substantial public interest. But Petitioner does not establish a basis for review on such grounds.

Petitioner's argument pursuant to RAP 13.4(b)(4) is that, at the time her property was seized, she was homeless; there are thousands of homeless people; and homeless individuals deserve due process. Ptn. at 15-17. But Petitioner fails to demonstrate that even one other homeless person has been served with a notice of forfeiture in the same manner as her—by certified mail to an address where there is an organization that provides mail service to homeless individuals and that the police department database identified as a frequent and most recent address for that person. She fails to demonstrate that other homeless individuals have been served with a notice of forfeiture containing the same discrepancies. She has not demonstrated that anyone suffered any prejudice from such service or such notice. She has not demonstrated that she was singled out to be given notice of the seizure and her right to object in the manner that she was because she was homeless—or that anyone else was. She has not established that the unpublished Court of Appeals decision either has the potential to affect the due process rights of a large volume of forfeiture proceedings commenced in the City of Seattle or elsewhere. *Cf. State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005). And she has not demonstrated that the decision below may induce unnecessary litigation or create confusion. *Cf. id.*

The City agrees without reservation that homelessness is an important problem and that homeless individuals deserve the same due process protections that everyone else does. But Petitioner has made no showing that other homeless individuals or indeed anyone received notices of forfeiture with the same method of service and content that she received, let alone that anyone else thereby was denied due process. Petitioner also has not shown and cannot show prejudice. In short, she has made no showing that this dispute involves an issue of significant public interest that should be decided by the Supreme Court.

#### **IV. CONCLUSION**

Petitioner has not demonstrated any basis under RAP 13.4(b) for review by the Supreme Court of the Court of Appeals Unpublished Opinion. The Petition should be denied.

DATED: May 8, 2020.

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that, on May 8, 2020, I electronically filed the foregoing document via the Court's E-Filing Portal which will send notification of such filing to all counsel of record.

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

DATED this 8th day of May 2020 at Seattle, Washington.



Nate Garberich



**SAVITT BRUCE & WILLEY LLP**

**May 08, 2020 - 1:21 PM**

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