No. 98392-5
Court of Appeals No. 79902-9-I

SUPREME COURT OF THE STATE OF WASHINGTON

CITY OF SEATTLE,

Plaintiff/Respondent,

vs.

$43,697.18 U.S. CURRENCY,

In Rem Defendant,

Intervening:

REBEKAH SHIN,

Claimant/Petitioner.

RESPONDENT'S ANSWER TO PETITION FOR DISCRETIONARY REVIEW TO THE WASHINGTON SUPREME COURT

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I. INTRODUCTION

The Court of Appeals correctly concluded that the convoluted procedural history of this matter, created by Petitioner Rebekah Shin's forum shopping, does not obscure the simple fact that Petitioner failed to timely file a claim of ownership in property seized by the Seattle Police. Her property was automatically forfeited by operation of the Washington civil forfeiture statute because, even though the City's notice of forfeiture gave her timely and proper notice and an opportunity to be heard, her claim was untimely.

Petitioner does not establish a basis for review by the Supreme Court: She does not demonstrate that the Court of Appeals Unpublished Opinion conflicts with a published decision of the Court of Appeals or with a decision of this Court. She does not demonstrate a significant constitutional question. She also does not demonstrate that this matter presents an issue of significant public interest. The Petition should be denied.

II. STATEMENT OF THE CASE

A. Statement of Facts

1. The City's service of the notice of forfeiture

On November 24, 2015, Petitioner was arrested pursuant to a drug trafficking investigation. *See* CPI 124. In connection with this arrest, the

Seattle Police Department ("SPD") seized $43,697.18 cash from a recreational vehicle ("RV") Petitioner shared with her boyfriend. *See id*.; CPI 216 at ¶ 7.

SPD twice served Petitioner with a notice of seizure and intended forfeiture of the $43,697.18: First, on November 25, 2015, Seattle Police Detective Rudy Gonzalez handed a notice to Petitioner's boyfriend outside the RV, with instructions to deliver the notice to her. CPI 217; *see* CPI 32.

Second, on November 30, 2015, SPD served Petitioner by certified mail to her last known street address at the time, 77 South Washington Street in Seattle. CPI 219 ¶¶ 23-29; CPI 33. Detective Donald Hardgrove obtained the address from the incident report for the November 24 seizure; he also obtained the address from the SPD's Record Management System ("RMS"), which listed it as Petitioner's most recent address. CPI 217 ¶¶ 8. SPD relies on RMS data; RMS data is entered by officers based on information provided by arrestees and witnesses. CPI 217 ¶¶ 9-10. Detective Hardgrove followed standard practice for ascertaining Shin's address, including consulting RMS, and he used that address in serving Shin with a notice of seizure of the $43,697.18 on November 30, 2015 via certified mail. CPI 23-27. The organization located at South Washington Street provides free mail services for homeless individuals. CPI 219 ¶ 28.

Petitioner's address on her March 30, 2015 vehicle registration is also listed as 77 S. Washington St. CPI 220 ¶ 29.

During an interview with Detective Gonzalez in December 2015, Petitioner acknowledged that she had received the notice of seizure of approximately $43,000. CPI 217-18 ¶¶ 14-17.

2. Petitioner's service of her notice of claim.

January 14, 2016—forty-five (45) days after the service of notice of seizure—was the last day on which Petitioner could timely file a notice of claim of ownership. *See* RCW 69.50.505(4) and (5).

On February 8, 2016—seventy (70) days after SPD's November 30, 2015 certified mail service of the notice of seizure—Petitioner served SPD via certified mail with a notice of claim for the $43,697.18. CPI 37, 39.

B. Subsequent Procedural History

Following Shin's mailing of her notice of claim, the matter proceeded along two separate paths: (1) a seizing agency track and (2) a district court track.

1. The seizing agency track.

Proceedings on the seizing agency track were initiated by operation of the civil forfeiture statute, RCW 69.50.505(4), in the absence of service of a notice of claim of ownership within forty-five days of

service of the notice of seizure of personal property. Pursuant to RCW 69.50.505(5), the matter proceeded under the Administrative Procedure Act, RCW 34.05.

On April 13, 2016, the SPD hearing examiner issued an automatic forfeiture order. CPI 211.

On review of the order of automatic forfeiture, on March 28, 2017, the King County Superior Court issued an Order concluding that (1) "[t]he hearing examiner had an obligation to make a factual determination based on sworn testimony as to whether service [of the notice of forfeiture] was proper" and (2) "[t]he hearing examiner properly ruled that, assuming proper service, if the claim was untimely, the case could not be removed to the District Court." CPI 213. The Superior Court ordered the case remanded to the hearing examiner "to conduct a fact-finding hearing to determine whether the Claimant was properly served." CPI 213.

On April 26, 2017, the hearing examiner held an evidentiary hearing on the issue whether SPD's service of the notice of seizure of the $43,697.18 was proper. CPI 215, 217 ¶ 1. Despite notice of the hearing, neither Petitioner nor her counsel appeared. CPI 216 ¶¶ 2-3.

On July 11, 2017, the hearing examiner issued her Findings of Fact, Conclusions of Law and concluded *inter alia* that:

- Shin received proper notice and actual notice of forfeiture,

- 77 South Washington St., Seattle, was Shin's last known address and a legitimate mail service location,
- Service of the notice of forfeiture was proper and timely, and
- Shin failed to make a timely claim for the $43,697.18.

CPI 215-21; *see esp*. 221.

The Findings of Fact, Conclusions of Law expressly advised that the decision was a final administrative determination pursuant to the Washington Administrative Procedure Act; that a party may file a motion for reconsideration within 10 days of the decision, but that such petition is not a prerequisite for seeking judicial review; and that a petition for judicial review must be filed within 30 days and must be filed with the Superior Court. CPI 221.

Petitioner did not seek review by the Superior Court of the hearing examiner's July 11, 2017 Findings of Fact and Conclusions of Law.

Meanwhile Petitioner initially challenged the Superior Court's March 28, 2017 Order remanding the matter to the hearing examiner for fact finding on the service of the notice of seizure. On August 9, 2017, Petitioner filed a motion for discretionary review with the Court of Appeals. *See* SUPP000115-129. Petitioner argued *inter alia* that she had removed the matter to the District Court and that, as a result, the SPD

hearing examiner and the King County Superior Court decisions were void for lack of jurisdiction. *See id.* at SUPP000116, 118, 122-123, 127; *see also* SUPP000130-139, *see esp.* 133-139.

On January 9, 2018, the Court of Appeals denied discretionary review. CPI 227. The Court of Appeals held (1) the Superior Court had not obviously erred in remanding the matter to the hearing examiner for further fact-finding on the issue of service of the notice of seizure and (2) Petitioner failed to show "that the superior court remand decision rendered further proceedings useless, as she had the right to seek judicial review of the hearing examiner decision by the superior court and ultimately appeal to this court." CPI 226.

2. The district court track.

While Petitioner selectively pursued issues on the seizing agency track, she also pursued the matter in the King County District Court, by way of purported removal under the civil forfeiture statute on March 24, 2016. *See* CPI 16-18. She did so notwithstanding that she had not timely served her notice of ownership and that, as a result, the property had been automatically forfeited.

On April 25, 2017, the District Court stayed proceedings on grounds that the Superior Court's March 28, 2017 Order (on the seizing agency track) had determined removal was ineffective based on

Petitioner's untimely notice of claim. The District Court concluded it did not have "authority to decide factual or legal issues" in the case. CPI 206.

On May 14, 2018, the District Court dismissed the case for lack of jurisdiction, given further developments on the agency track: (1) the hearing examiner's July 11, 2017 determination that Petitioner had received proper and timely notice of forfeiture and (2) Petitioner's failure to seek review of that determination in the Superior Court. CP 270.

On April 9, 2019, the King County Superior Court denied a RALJ appeal by Petitioner, finding the District Court did not err in dismissing the case. CPII 3-14. The Superior Court made no finding as to whether the form of notice of forfeiture was proper, as it had not been addressed in the District Court. CPII 13 lines 13-17.

On March 9, 2020, the Court of Appeals, in an Unpublished Opinion, affirmed the Superior Court's April 9, 2019 order denying RALJ appeal. The Court of Appeals held that Petitioner's claim of ownership was not timely. It held that the City's service of the notice of forfeiture and the contents of the notice satisfied Petitioner's due process rights. "Because Shin received adequate notice and because she failed to file a timely claim of ownership, under RCW 69.50.505(3), Shin's right to the property expired prior to her claim on February 8, 2016 and her petition

for removal on March 24, 2016." Unpublished Opinion, Washington Ct. of Appeals No. 79902-9-I, Mar. 9, 2020 ("Op.") at 17.

The March 9, 2020 Court of Appeals decision, issued in the district court track and not in the agency track, is the decision regarding which Petitioner now seeks review in the Supreme Court.

III. ARGUMENT

The Petition should be denied. First, the Court of Appeals correctly held that the service and content of the notice of forfeiture did not violate Petitioner's due process rights and that Petitioner did not timely serve her claim of ownership. Second, through the review process available to Petitioner on the agency track, she could have made, and did make, the arguments that she now raises. She chose not to pursue further review. As a result, the determinations in the agency track are final and res judicata bars this collateral attack. Third, and not least, Petitioner does not satisfy any of the standards under RAP 13.4(b) that would support further review by the Supreme Court.

A. Petitioner Did Not Timely File Her Notice of Claim.

The Court of Appeals was correct. As discussed more fully below at 13-16, the City's service of the notice of forfeiture was valid, and the contents of the notice both gave Petitioner notice of the forfeiture and provided her the opportunity to object. Petitioner did not serve her notice

of claim of ownership until 70 days after SPD's November 30, 2015 certified mail service of the notice of forfeiture—that is, Petitioner did not serve her notice of claim within the 45-day limitation period under the civil forfeiture statute, RCW 69.50.505(4) and (5). Because the notice of claim was untimely, the property was automatically forfeited by operation of statute. RCW 69.50.505(4) (if no timely claim of ownership is filed, the item seized "shall be deemed forfeited"). The district court correctly disregarded removal and dismissed the matter. *See* Op. at 9-18.

B. Res Judicata Bars Petitioner's Claims.

The arguments that Petitioner raises in this request for review could have been raised, and were raised and decided, in proceedings on the agency track for this case. Petitioner had "the motivation and the opportunity to fully and fairly present" her claim to the seizing agency and in any appeals therefrom. *See Simpson Timber Co., Inc. v. Aetna Cas. & Sur. Co.*, 19 Wn. App. 535, 540, 576 P.2d 437 (1978). But Petitioner did not seek review of the hearing examiner's July 11, 2017 Findings of Fact and Conclusions of Law, which determined that Petitioner received proper and actual notice of the seizure and intended forfeiture, though she could have sought review of that order in the Superior Court. CPI 215-21; *see esp*. 221. Petitioner had constructive and actual notice that she could seek review of that determination pursuant to the Administrative Procedure

Act, RCW 34.05. *See* CPI 221. Because she did not seek review, that determination became a final adjudication of Petitioner's claim regarding service. *See Marriage of Aldrich*, 72 Wn. App. 132, 138-39, 864 P.2d 388 (1993) (decisions rendered under Administrative Procedure Act, RCW 34.05, are adjudicative).

Accordingly, the doctrine of res judicata bars Petitioner's arguments here, on appeal from a decision in the district court track. *Ensley v. Pitcher*, 152 Wn. App. 891, 902, 222 P.3d 99 (2009) (res judicata bars re-litigation where a subsequent action is identical to a prior action). Res judicata prevents Petitioner from allowing her claims before the seizing agency to die without appeal pursuant to applicable Washington statutes, only to take up her claim in a different action—here, in separate proceedings with the District Court. That is, res judicata precludes such "blatant forum shopping." *See Martin v. Ellis*, 154 Wn. App 1041, 2010 WL 599625, at *6 (2010) (affirming summary judgment dismissal; res judicata bars "blatant forum shopping" of claims).

C. Petitioner Demonstrates No Basis for Review by the Supreme Court.

Assuming *arguendo* that Petitioner's claims are not barred, the Petition nevertheless does not satisfy any of the RAP 13.4(b) standards for obtaining review of the unpublished Court of Appeals decision.

1. There is no decisional conflict.

Petitioner invokes RAP 13.4(b)(1) and (2) as a basis for review, asserting 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.

Petitioner asserts that the Court of Appeals decision conflicts with *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 865, 94 L.Ed. 865 (1950); *Morrissey v. Brewer*, 408 U.S. 471, 92 S. Ct. 2593, 33 L.Ed.2d 484 (1972); and *Mathews v. Eldridge*, 424 U.S. 319, 96 S. Ct. 893, 47 L.Ed.2d 18 (1976), but she does not identify the holdings of these cases, let alone how the holdings in those cases are purportedly undermined or disregarded by the Court of Appeals decision here. *See* Ptn. at 18. For clarity: *Mullane* held that a New York banking statute providing for notice by newspaper publication satisfied due process for trust beneficiaries whose locations or interests could not be ascertained with due diligence, but that notice by newspaper publication did not satisfy due process as to trust beneficiaries of a known place of residence. 339 U.S. at 318-19. *Morrissey* held that a state cannot revoke parole without minimal due process, which requires (1) a preliminary hearing, upon adequate notice, to determine whether there is good cause to believe

a parole violation occurred, and (2) upon a finding of good cause, an opportunity for a revocation hearing upon timely written notice, the right to confront witnesses, and other procedural requirements. 408 U.S. at 484-89. *Mathews* held that an evidentiary hearing is not required prior to termination of Social Security disability benefits. 424 U.S. at 349.

To the extent Petitioner asserts that the Court of Appeals decision is in conflict with due process standards for notice followed in those cases, Petitioner fails to demonstrate a conflict. Indeed, the Court of Appeals expressly relied on the standard followed in *Mullane* in stating the Washington due process requirement for notice of forfeiture, which it then applied. *See* Op. at 16 n.44 (citing *Bruett v. Real Property Known As 18328 11th Ave. N.E.*, 93 Wn. App. 290, 298, 968 P.2d 913 (1998) [quoting *Mullane*, 339 U.S. at 314]).

Petitioner makes no showing that the Court of Appeals decision, which affirmed that service of the notice of forfeiture on Petitioner and the contents of that notice satisfied due process, is in conflict with *Mullane*, *Morrissey*, *Mathews*, or indeed any other Supreme Court or published Court of Appeals decision. Review is not warranted under RAP 13.4(b)(1) or (2). *In re Dependency of P.H.V.S.*, 184 Wn.2d 1017, 389 P.3d 460 (2015) (denying petition for discretionary review for failure to identify conflict with identified Washington Supreme Court decision).

2. There is no significant question of constitutional law.

Petitioner also asserts pursuant to RAP 13.4(b)(3) that the Court of Appeals decision "raises significant questions of law" under the state and federal constitutions. But she does not identify any such significant question of law.

The extent of Petitioner's argument is that the City's service of the notice of forfeiture did not satisfy due process.[1] She acknowledges that the Washington civil forfeiture statue allows service of the notice of forfeiture of personal property by mail. Ptn. at 18, 19; *see* RCW 69.50.505(3). But she argues service by mail in compliance with the statute was not enough, that it was a "mere gesture" rather than a "serious effort," that it did not meet the "particular situation." Ptn. at 18-20. Specifically, Petitioner argues that service by mail to Petitioner's address in the Seattle Police Department database was not sufficient—that the City was required to search further for Petitioner's address. Ptn. at 19. And Petitioner argues that the alternative service on Petitioner's boyfriend

[1] *If* Petitioner also can be said to argue in the Petition that the content of the notice of forfeiture was constitutionally deficient, the argument is nominal only. She does not explain how any deficiency in the content of the notice deprived her of notice and an opportunity to be heard, and she does not and cannot show prejudice. The City's response to any argument by Petitioner concerning the content of the notice is contained in its Answer to the $19,000 Petition (Supreme Court No. 98391-7); the City incorporates that response here and respectfully refers the Court to the Answer to the $19,000 Petition at 6-8.

outside the mobile home she acknowledged that she occupied with him, *see* Op. at 17 n.46, with the instruction that he give the notice to Petitioner, was also not sufficient – that the City's detective was required to hand the notice to Petitioner personally. Ptn. at 19.

The Court of Appeals correctly held that the City's service of process satisfied due process. Op. at 16-17. Specifically, the Court of Appeals stated correctly that, under Washington law, due process requires notice reasonably calculated, under all the circumstances, to inform a party of the pendency of the action and an opportunity to be heard; that service must comply with statutory requirements; and that the Washington civil forfeiture statute authorizes service of the notice of forfeiture by certified mail. Op. at 16 (citing *Bruett*, 93 Wn. App. at 298-99; RCW 69.50.505(3)). It noted that Petitioner does not dispute that the City's detective mailed the notice to the address of a homeless shelter that accepts mail, that Petitioner used the address frequently, and that the address was used on her recent vehicle registration. *Id*. It noted also that there is no evidence in the record that a purported address in Department of Licensing records, which Petitioner argues the City should have searched for and used, was in fact valid at the time of service. *Id*. The Court of Appeals concluded that, under the circumstances, service by mail

to the address that Petitioner does not dispute she used and frequented was reasonably calculated to give her notice. *Id*. at 16-17.

The Court of Appeals also noted that the Washington civil forfeiture statute does not require personal service or telephone notice. It found further that, assuming the RV was Petitioner's residence for purposes of service, then providing the notice by hand to Petitioner's boyfriend at the RV with instruction to give it to her was the equivalent of valid substitute service by leaving the notice with a person of suitable age and discretion at her residence. *Id*. at 17.

Petitioner does not identify a significant question of constitutional law. And she does not argue that the Court of Appeals applied the wrong standard: she cannot, because the Court of Appeals applied the same due process standard that she herself advocates—notice reasonably calculated, under all the circumstances, to apprise a party of the pendency of the action and an opportunity to object. *Compare* Op. at 16 (applying "all circumstances" standard) *with* Ptn. at 19 (arguing that service by mail to street address used by Petitioner was not reasonable under all the circumstances).

Rather, Petitioner argues that the Court of Appeals decision that service of the notice of forfeiture satisfied due process under the applicable standard is incorrect. But disagreement with the result does not

constitute a basis for review under RAP 13.4(b)(3). Petitioner has not demonstrated that the Court of Appeals decision raises a significant constitutional question that warrants review. *Dependency of P.H.V.S.*, 184 Wn.2d 1017 (denying review for failure to demonstrate that Court of Appeals decision raises significant constitutional question).

Further, Petitioner did not suffer actual prejudice from the alleged improper service. She received an evidentiary hearing on whether service of the notice of forfeiture was proper; the SPD hearing examiner determined upon an evidentiary record that Petitioner received actual and proper notice of the forfeiture and of her right to object upon a timely notice of claim. CPI 215-21; *see esp*. 221. Petitioner did not appeal that determination to the Superior Court.

Petitioner does not demonstrate actual prejudice. Dismissal of the forfeiture is not warranted in the absence of prejudice. *State v. Storhoff*, 133 Wn.2d 523, 532, 946 P.2d 783 (1997) (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) (holding 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).

3. There is no issue of substantial public interest.

Petitioner also invokes RAP 13.4(b)(4) to suggest that this case presents an issue of substantial public interest. But Petitioner does not establish a basis for review under RAP 13.4(b)(4).

Petitioner states that "the pre-printed documents various law enforcement agencies across Washington, [sic] deny due process to anyone who may be entitled to receive notice that a forfeiture proceeding commenced" (Ptn. at 18), but does not explain further. Such a broad and sweeping claim, without further detail and support, does not demonstrate an issue of substantial public interest that warrants review by the Supreme Court. Petitioner does not demonstrate how the decision in this case has the potential to affect cases other than her own or has the potential to create confusion or generate unnecessary litigation. *Cf. State v. Watson*, 155 Wn.2d 574, 122 P.3d 903 (2005) (identifying "prime example of an issue of substantial public interest" where Court of Appeals decision has potential to affect every sentencing proceeding in county after a given date involving alternative sentencing recommendations at issue and where Court of Appeals reasoning invites unnecessary litigation and creates confusion generally).

And, in any event, the Court of Appeals decision does not present an issue of substantial public interest. This unpublished opinion does not have the potential to generate confusion or unnecessary litigation.

IV. CONCLUSION

Petitioner failed to timely serve her claim of ownership in the seized property. Pursuant to Washington's civil forfeiture statute, the property was automatically forfeited.

In proceedings before the SPD hearing examiner, Petitioner had the opportunity to raise, and did raise, her claims regarding the service and content of the notice of forfeiture. The hearing examiner's adjudication of those claims became final. Petitioner has attempted to shop her claims pursuant to an invalid removal, but res judicata bars them.

And, in any event, 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 - 1:26 PM

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