

63908-1

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No. 63908-1-I

IN THE COURT OF APPEALS OF WASHINGTON

Division One

State of Washington,

Respondent,

v.

James W. Cameron,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2010 FEB -4 AM 10:14

ON APPEAL FROM THE SUPERIOR COURT OF WASHINGTON

FOR SNOHOMISH COUNTY

N. 08-1-01818-5

BRIEF OF APPELLANT

James W. Cameron
Appellant, pro se
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B. IDENTITY

- 1) James W. Cameron, Appellant, pro se, currently resides at the McNeil Island Correction Center, at Steilacoom, WA.
- 2) Pursuant to CR 10(c), appellant incorporates by reference all pleadings, responses, replies, correspondence, and all other documents filed in the above-referenced cause number.

C. ASSIGNMENT OF ERROR

- 1.1 Snohomish County Superior Court Judge Michael Downes errors when he ruled not to hear Motion to Release Property on August 7, 2009. The Petition will also show many errors in hearings on money that never happened. This money should be released to Appellant.
- 2.1 The Court made errors throughout the process that substantially prejudiced appellant's rights to obtain his money (that is rightfully his) which resulted in a wrongful taking of property without due process of law:
 - A. The court date assigned at sentencing that never happened. (See VR 9-10 CP 15-16
 - B. The misruled CrR 7.8 Motion filed on may 5, 2009.
 - C. The Court's assertion that this motion was covered in Judge Larry McKeeman ruling to not terminate LFO's, courts erred when it did not rule on the specifics of forfeiture. Just to not terminate LFOs. See: CP 15-16, 32-45

D. STATEMENT OF THE CASE

- 1) Factual History
 - 1.1 On 7-18-08, James Cameron was found in the area of a pursuit (elude) by Edmonds and Lynwood Police Department.

Mr. Cameron was found in the woods near a motorcycle they were pursuing. The officers found .3 gram of cocaine on the motorcycle key chain in the ignition. CP38-39. They took Mr. Cameron into custody on a DOC warrant and new charges - one being in possession of cocaine. When Cameron was searched, three thousand one hundred twenty (\$3,120.00) dollars was found in his pocket. CP 38-39. L.P.D. has k-9 sniff the money, and the dog allegedly alerts. LPD then does seizure paperwork and provide a copy. CP 26

2. PROCEDURAL HISTORY

- 2.1 As listed above in the factual history, the money was seized on 7-18-08. On 8-19-2008, the appellant is in court for sentencing on a plea bargain for the possession of cocaine that the LPD charged him with on 7-18-08. They were in front of Superior Court Judge James Allendoerfer. Which at that time the petitioner asserts ownership of the money and notification that he wants to prove that the money is his. VR9-10; CP 15-16
- 2.2 The appellant then filed a CrR 7.8(b) Motion to Modify Ruling, asking to have his money released with a portion being applied to fines and the remainder to be sent to him. The Judge, Larry McKeenan, erred and ruled to not terminate LFOs, not addressing the issue of the money seized and the court date that never happened.
- 2.3 The Appellant writes a letter to Judge McKeenan, asking him why he didn't rule on the basis of the motion to release

money. He responds on June 11, 2009, stating that he didn't have the money, and that appellant had to contact LPD for its return. CP 37. The Appellant then files a motion to release property, filed July 9, 2009. This time it is assigned to Judge Michael Downes, who rules not to hear the motion, stating it had already been heard and he would have denied it anyways. CP 17-18

2.5 The procedural history of this case has been passed from judge to judge, making it confusing and avoiding an accurate ruling.

- 1) Judge Allen Doerfer: Sentencing Judge scheduled hearing;
- 2) Judge McKeenan: Received the Motion to Modify, which was asked to be addressed by Judge Allen Doerfer because he set initial hearing that never happened;
- 3) Judge Michael Downes: Received the Motion to release property that was asked to go in front of Judge McKeenan, because of the error in the ruling to modify.

ARGUMENTS

3) Dog Sniff and forfeiture

3.1 LPD on 7-18-08 states that K-9 dog alerts to money for traces of drugs. CP 39. Almost all U.S. currency is tainted, and this is not enough grounds for forfeiture. See Adams v. 1978 Blue Ford Bronco, 74 Wn App 702, 875 P2d 690 (1994)(A dog sniff is not enough evidence for forfeiture); State v. Loucks, 98 Wn 2d 563, 656 P2d 480 (1983), holding that

a dog sniff by itself is not sufficient to convict a criminal defendant.

3.2 The fact that no drugs were found on defendant and the amount .3 gram (~~SP: 38-39~~) does not constitute forfeiture in and of itself. See Escamilla v. Tri-city Task Force, 100 Wn App 742, 999 P2d 625 , [hn 3] (2000). The seizing agency has the initial burden of showing probable cause to believe the seized items were the proceeds of illegal activity. See also Rozner v. Bellevue, 56 Wn App 525, 784 P2d 537(1990). Property sought to be forfeited must have been used or intended to be used to facilitate drug sale. The LPD never established these required grounds. See: RCW 9.92.110 - Convicts Protected - Forfeiture abolished (A conviction of a crime shall not work a forfeiture of any property). Petitioner would then urge this court to look at the facts that LPD shows no credible merits in which forfeiture was initiated. It is not a crime to have money. If courts uphold this, then anytime a person has money on them while a dog alerts (which could be as high as 100% of the time) the money would be automatically forfeited without regard to its being associated with drug activities.

3.3 CrR 2.3 (e) Motion for Return of Property, provides that a person aggrieved by an unlawful search and seizure may move the Court for the property that was illegally seized and that the person is entitled to possession thereof. Appellant asserts the courts of competent jurisdiction as in notice of seizure where it states a court

of competent jurisdiction and the judge takes jurisdiction when he tells prosecuting attorney for LPD to note and schedule forfeiture hearing (VR 9-10;). This hearing never happened.

4. Petitioner's Assertion for Hearing with Court of Competent Jurisdiction

4.1 On 7-08-08, LPD gives notice of seizure and forfeiture of \$3,120.00 from defendant. The notice cites RCW 69.50.50 as its intention. Further down the notice states he has a right for hearing before City of Lynwood or court of competent jurisdiction. CP 26-27. In accordance with the notice his intentions are to be made within 45 days of notice. The petitioner on 8-19-09 is Snohomish Coupty Superior Court on the Drug possession charge that arose out of the time as the forfeiture. The LPD was represented by the prosecuting attorney, Andrew Alsdorf, and it was in front of Judge James Allendoerfer. The Defendant brings up the matter of the money stating that it is his and he can prove it through bank statements, etc. VR 9-10,

4.2 Mr. Alsdorf contends that the money (because of the amount) was probably the result of drug activity. VR 9-10,

4.3. At that point, the court asserted that it has competent jurisdiction by stating to defendant that there would be a hearing to decide the fate of the money, and instructing Mr. Alsdorf "Weel, you're going to have a hearing set-up for that." VR 9-10, The Appellant attempts to

address the court on the matter then, and assert that he can establish his rightful ownership of the monies in question. In response, the Court states, "That's what the hearing's for." VR 9-10.

4.3 The Court then orders the hearing to be noted, and Mr. Alsdorf responds, "Yes, Your Honor." VR 9-10.

4.4 The petitioner claims he has met his merits in assertion for a hearing, and it never happened. See Bruett v. 18328 11th Ave N.E., 93 Wn App 290, 295, 968 P2d 913 (1998): "Forfeitures are not favored; they should be enforced only when within both letter and spirit of law." Citing United States v. One 1936 Model Ford V-8 De Lux Coach, 307 US 219, 59 S. ct 861, 83 L ed 1249 (1939).

4.5 The Bruett court continued along that line by stating "An elementary and fundamental requirement of due process is any proceeding which is to be accorded finality is notice reasonably calculated under all circumstances, to apprise interested parties of the pendency of action and afford them an opportunity to present their objections." [Mullane v. Central Hanover Bank & Trust Co., 339 US 306, 314, 94 L. ed 865 (1950)].

4.6 The Superior Court asserted jurisdiction over the money when LPD was being represented Prosecuting Attorney Alsdorf, and the court apprised all interested parties of the pendency of the hearing to determine the competency of the taking. VR 9-10. See also RCW 34.05.413(5).

4.7 "An adjudicative proceeding commences when the agency or a presiding officer notifies a party that a pre-hearing conference, hearing, or other stage of an adjudicative proceeding will be conducted...." (ibid).

4.8 Judge Allendoerfer acquired competent jurisdiction over the monies in question when he ordered that a hearing on the matter be noted within one to two weeks. VR9-10;

Then see: Malnar v. Carlson, 128 Wn 2d 521, 534-36, 910 P2d 455 (1996) Where the trial court correctly concluded that the statutory scheme does not require constituent members of such a joined venture to be explicitly named. The only identifying information necessary at this stage is contact information so that the parties can schedule further proceedings.

4.9 In the present matter, the Appellant fulfilled his limited requirements of identifying the constituent parties, when the LPD was **represented** by Mr. Alsdorf. See VR9-10, and

See also Escamilla, supra, (1) Timely commenced if within 90 days of the date that the claimant notifies the seizing agency of a claim of ownership or a right to possession of seized property. The agency notifies the claimant that some stage of the hearing will be conducted. And also, Lowery v. Nelson, 43 Wn App 747, 719 P2d 594 (1986) (4) The courts conclude that the provisions for removing the hearing to a court of competent jurisdiction satisfies any separation of powers concerns.

- 4.10 This would back the defendant's assertion to Superior Court and Judge Allendorfer accepted this assertion by stating he would have a hearing to decide the fate of the monies.
VR 9-10
- 4.11 This is also supported by RCW 34.04. Under provisions of the Washington Administrative Procedure Act, the Petitioner, unlike Lowery, was within the 45 day notice when he addressed the court of competency and they accepted it. VR 9-10
See also Espinoza v. City of Everett, 87 Wn App 857, 943 P2d 387 [HN 4] The Uniform Controlled Substance Act defines 'Person' as including corporations, associations, partnerships, and joint ventures. This means that notifying Mr. Alsdorf (who is representing both LPD and the City of Lynnwood in these proceedings) constitutes acceptable and sufficient notification. VR 9-10
- 4.12 As the trial court noted, the law recognizes de facto joint ventures. This would also apply to notification of the prosecuting attorney representing the City of Lynnwood, and LPD. (See RCW 69.50.101(u)); and State v. Alawall, 64 Wn App 796, 799-801, 828 P2d 591 (1992).
- 4.13 By courts setting a hearing or stating they would have a hearing and then letting the hearing come to pass is setting a trap for the unwary, as quoted in 1 David B. Smith, Prosecution and Defense of Forfeiture Cases, 9.04 at 9-68.7 (1996) [footnote omitted].

4.14 We agree with this decision, as the facts demonstrate these concerns are well founded. The defendant being incarcerated and establishing a claim with the courts to the monies and the court not only acknowledges this claim but notes it and motions it for a hearing then follows with no further responses is just like a trap of the unwary. See United States v. \$38,570 US Currency, 950 F2d 1108 (5th c., 1992).

V - Due Process

5.1 Due process requires that an owner be given notice and an opportunity to be heard before property is seized, except in extraordinary situations. Tellevick, 125 Wn 2d at 370-71. Court imposed the 90 day time limitation. When courts promised a hearing with defendant that never happened they violate his due process rights. [See Sam v. Okanogan County Sheriff, 136 Wn App 220, 148 P3d 1086 (2006) Due process requires that a claimant who contests a seizure of property by a law enforcement agency under RCW 69.50.505 be given a full adversarial hearing within 90-days of asserting the claim, regardless of the forum chosen by claimant, if there was no pre-seizure adversarial hearing.

5.2 The court asserted a hearing date that never happened. VR 9-10'. The appellant's due process rights were violated because he was not provided the promised hearing within 90 days, as assertedly noted by the court. Ibid. Espinoza, supra; see also Valsnio v. Lacy Police Dept., 110 Wn App 163, 39 P3d 332 (Commencement of Forfeiture).

VI - CAN PROVE MONIES ARE HIS

6.1 The Appellant provided documentation and bank statements [CP 39-45]. and records of deposit and withdrawals just prior to being arrested demonstrating an independent source for the monies. (ID.) In addition, he showed a record of automatic deposits C.P 32-45. as well as tax return statements and earnings. C.P 32-45).).

VII - INTEREST AND STATUTORY COSTS

- 7.1 When the monies are returned, the appellant should rightfully be entitled to interest and costs. See Espinoza, supra. Plaintiffs are, as trial court ruled, entitled to any interest that city actually earned on the money. In accord U.S. v. \$277,000 US Currency, 69 F3d 1491, 1492 (9th c., 1995).
- 7.2 The courts remanded award of statutory costs: Appellant is asking for the statutory attorney fees, filing costs, transcription and transmittal costs, and all other costs reasonably necessary for review.

VIII - PREJUDICE

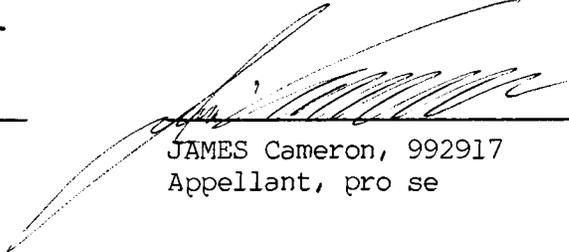
8.1 The appellant asserts that his claims that his proprietary interests were prejudiced by the court's failure to hold the hearing mandated by Judge Allendoerfer. See Forfeiture of Chevrolet Corvette, 91 Wn App 320, 963 P2d 187, citing a United States Supreme Court hearing on seizure (3) the claimant's assertion of his right to a hearing, whether the claimant suffered any prejudice. This prejudice happens when the hearing never happened. VR 9-10

F. - CONCLUSION

The appellant has clearly and unequivocally met his burden for establishing a meritorious claim. The way the courts shuffled the different stages of the actions in trying to get his monies caused confusion, if not prejudice. The petitioner meets his burden its the Courts that fail to meet the burden of a hearing. Quote out of Lee v. Barnes, 58 Wn 2d 265, 268, the court concluded as follows: Courts should endeavor to keep the law at a good grade at least as high as the standards in ordinary ethics. The appellant has not only met, but surpasses any standards of ethics on his part and the courts should honor these merits and recognize the appellant's efforts in a hearing. The Superior Court took jurisdiction of the hearing, had it noted by the prosecuting attorney, who further represented the seizing agency. If the petitioner cannot rely upon an agreement made in open court, then there is nothing in jurisprudence to rely upon.

Based upon the foregoing facts and argument, and the record and file to date, this court should determine that the monies should be returned to appellant, together with costs and interests.

Date: 12-23-09



JAMES Cameron, 992917
Appellant, pro se

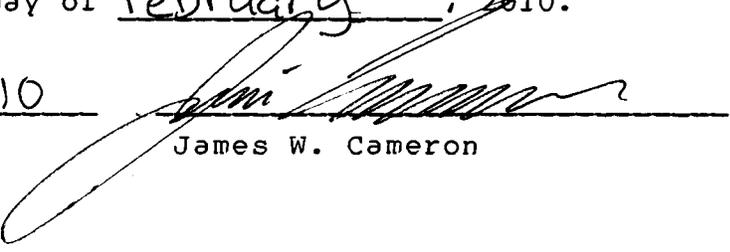
DECLARATION OF SERVICE BY MAILING

I, James Cameron, declare under penalty of perjury that I mailed a true and correct copy of the foregoing "Brief of Appellant" to:

Seth Aaron Fine
Snohomish County Prosecutor's Office
3000 Rockefeller Ave.
Everett WA 98201-4060

On this 2 day of February, 2010.

Date: 2-2-10


James W. Cameron