

FILED

MAR 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Supreme Court No. 90001-9

**IN THE SUPREME COURT
OF THE STATE OF WASHINGTON**

Real Property known as
29770 HIGHWAY 20 WEST, Republic WA
(Parcel Number #23731240002000)
And all appurtenances and improvements Thereon, and
DANIEL DAVID MATZ (10/08/1948)
Interested Party.

Appellant(s)

v.

Ferry County Sheriff's Office

Appellee.

PETITION FOR REVIEW

APPEAL FROM THE WASHINGTON STATE
COURT OF APPEALS - DIVISION III
Order Denying Modification of Decision to Terminate Review
Judges Korsmo, Brown, and Siddoway
Cause No. 311571

C. Olivia Wood, J.D. (WSBA #43924)
Attorney for Appellant(s)

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FILED

MAR 11 2014

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

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I. ASSIGNMENT OF ERROR

The Court of Appeals erred in denying Appellants' uncontested Motion to Modify its Order Terminating Review, entered January 31, 2014.

II. ISSUE ON APPEAL

Should the Court of Appeals denial of uncontested motion to modify ruling to terminate the case be reversed, and the matter remanded, so that the appeal may be reviewed on the merits on causes of action not considered settled law?

III. STATEMENT OF CASE

Appellants seek Supreme Court review of the Appellate Court Commissioners denial of Appellant's Motion to Modify their decision to terminating review as provided for under RAP 13.2(a) (2) and 13.4(a). (Appendix A) Termination of review is in conflict with other decisions by the Court of Appeals pursuant to RAP 13.4(b)(1), in that review on the merits of the appeal is precluded counter to RAP 1.2(a) and RAP 1.2(c) as well as RAP 18.8(a).

Appellant(s) opening brief concerns several significant questions of law under the Constitution of the State of Washington or of the United States is involved (RAP 13.4(b)(3)). While all are brought in good faith, some are arguably "settled law" in that the court has given them some treatment, albeit inconsistent. However

that is not the case with regard to the Appellants claim under Washington State eminent domain sections as providing broader and additional to protections than under the corresponding Federal provision(s) under *Gunwall* doctrine. This raises issue(s) of substantial public interest that should be determined by the Supreme Court, if not by the Court of Appeals, as upon proper analysis the courts opinion may fundamentally affect the nature and process of civil forfeiture in more than one area of Washington State law. (RAP 13.4(b)(4))

IV. ARGUMENT

A. Termination of review is in conflict with other decisions by the Court of Appeals pursuant to RAP 13.4(b)(2)

Person of Interest Daniel Matz, the prior/evanescent owner of the Defendant in Rem, is indigent and qualified for appointed counsel in his criminal case. However, as the Supreme Court denied payment of appeal costs for this civil case Counsel for the *Appellant (s) in Rem*. Appellant's moved for and were granted an extension of the deadline to August 14, 2013 to submitting opening

brief. The appeal of State v. Matz (30645-3-III) the criminal case pendant/correlative to this civil appeal was decided on August 29, 2013, and re-sentencing conducted consistent with that order on October 25, 2013 in Ferry County Court. (See 11/15/2014 Motion to Modify; Appellant's Opening Brief, Appendix A) The Appellants did not meet the extended deadline for submission of the appellate brief in this case. Sanctions were imposed on September 17, 2013, and were paid as of 10/17/2013. Review was terminated by commissioner ruling on 10/14/2013. Appellant's Motion to Modify that ruling was accepted by the Court on November 15, 2013 in consideration of Appellant's Motion to Extend Time for Motion to Modify. Appellants' Opening brief was filed concurrent with Motion to Modify. Appellants Counsel submitted Sealed Health Information in support of Motion to Modify, which was excluded from review for not being accompanied by a Motion to Seal or Redact under GR 15. Appellees did not object to Appellant's Motion to Modify. Commissioner Wasson denied Appellant's Motion to Modify without oral argument or written findings on

1/31/2014. (Appendix A) As the motion itself cited issues stemming from the Appellant indigency, diminished capacity of the attorney, and the lack of finality/timing of proceedings on remand of *State v. Matz*, the underlying/pendant criminal case The Court of Appeals decision to deny that uncontested motion without oral argument on January 31, 2014 is in conflict with RAP 1.2(a) which provides that Rules of Appeal be “liberally interpreted to promote justice and facilitate the decision of cases on the merits,” and RAP 1.2(c) empowers this court to waive or alter the provisions of any of these rules in order to serve the ends of justice,”including extension or alter time-lines and/or requirements as also provided for under RAP 18.8(a).

B. This appeal of the applicability of RCW 69.50.505 raises several interlaced fundamental rights of defendants/appellants forming a significant question of law under the Constitution of the State of Washington or of the United States is involved.

As Appellants argue in the brief they've submitted, herein incorporated by reference a “Judicial Maelstrom” of specious reasoning has come to surrounds civil forfeiture under RCW

69.50.505 since its enactment. (*State v. Catlett*, 133 Wn.2d 355, 357 (Wash. 1997); citing *State v. Cole*, 128 Wash.2d 262, 273, (1995), See Sander's Dissent in *Catlett*, at 388-89; WA Const. Article 1 § 32) Procedure goes as the wind blows as the Courts have strained to rationalize its constitutionality as a "quasi-"criminal law in civilian clothing, whereby the State gets the best of both worlds, and defendants the protection of neither, as a matter of legal process. *Deeter v. Smith*, 106 Wash.2d 376 (1986) (for purposes of the U.S. Const. Amd IV/WA Const. Art. I, §9, civil forfeitures under RCW 69.50.505 are quasi-criminal in nature, and and punitive in effect.) On the one hand, WA Courts have found RCW 69.50.505 to be criminal/punitive enough to trigger Constitutional rights to a speedy trial (U.S. Constitution, Amd. VI, WA Const. Article 1, § 9; *Tellevick v. Real Property*, 125 Wash. 2d 364, 373 (1994) and application of the exclusionary rule--both of which were denied the appellants in this case (See *State v. Catlett*, 945 P.2d 700 at 704 (1997); *Defendant's Motion to Dismiss* (CP at 25-46); 5/31/12 Order of Continuance (CP at 14); *Findings of Fact, Conclusions of Law and*

Ruling, CP at 47-54). On the other hand, Courts have deemed forfeiture civil/remedial enough to be governed by civil rule inclusive of a lower burden of proof, and exclusive of a constitutional presumption of innocence, or right to appointed attorney. The court split decisions on double jeopardy(U.S. Const. Amd. V/WA Const. Article 1, § 22 (See *State v. Clark*. 68 Wn.App. 592 (1993); See also *State v. McLendon*, 131 Wn.2d 853 (1997)) (*State v. Catlett*, 133 Wn.2d 355 (1997)), and no clear ruled established with regard to forfeiture as excessive fine or bail under under Washington State Constitution, Article I § 14 and US Const., Amd VIII, beyond that it must be evaluated on a case-by-case basis; nor has the Court formed a direct opinion on whether and when RCW 69.50.505 actions constitute a conviction working forfeiture of estate under under WA Constitution, Article 1 § 15. Appellants maintain that “punitive” or “remedial” rhetoric is purely semantic, and that all of the above fly in the face of the fundamental principles of Due Process as against the Person of Interest as a criminal defendant.

However, these might be considered settled to the extent that it has addressed them as described herein.

C. As a Civil Remedy, forfeiture violates unique and distinct state Constitutional provisions, proper review of which is of substantial public interest.

The issue that is not settled law and is of significant public interest is the nature of civil forfeitures as State Taking under U.S. Const. Amd.V as well as broader and unique State Constitutional Eminent Domain sections-- WA Const. Article 1, § 16 and WA Const. Article 1, § 13.

The test for whether a regulatory taking exists under Amendment V is the "degree" of the taking (See *WA Manufactured Housing Communities v. WA and Mobile Homeowners of America*, 142 Wn.2d 347, 355-388 (Wash. 2000)), which under RCW 69.50.505 is total (RCW 69.50.505(1)(a-h) ("The following are subject to seizure and forfeiture and no property right exists in them:..."). Compensation due would be based on the property's value based highest-best use per establish Takings Doctrine not the statutory valuation of "price upon sale" (RCW 69.50.505(9)(c)) RCW

69.50.505 has not been subjected to nor would it meet the strict scrutiny standard of review (See *Manufactured Housing v. State of Washington et al*, 142 Wn.2d 347 (Wash. 2000) (Sander's Concurrence at 380)).

More importantly, as argued in the Appellant's opening brief, (Sections E-F, Pages 14-18) State Constitutional Eminent Domain provisions which provide unique and broader protections to the extent that it runs awry of unique state protections found within the State Constitution under the *Gunwall* Doctrine (*State v. Gunwall*, 106 Wash.2d 54, 58 (1996); *City of Woodinville v. NorthShore Church of Christ*, 166 Wn.2d 633, 641-642 (2009)) Under WA Const. Article 1, § 16 deprivation of right to property cannot be a statutory presumption, but a finding pursuant to specific detailed procedure that such a per se regulatory taking is indeed being put to a public use. Furthermore, that public use cannot be takings/liquidation of personal property a method of replenishing State or corporate coffers, because WA Const. Article 1, § 13 bars it. There is no corresponding Federal Clause to Section 13 for the purposes of

Gunwall analysis. This would also be a case of first impression analyzing RCW69.50.505 under this provision. Justice Johnson's mentions it briefly in dissent in *Grant County PUD v. NAFTZ*, 159 Wn.2d 555 at 607 (2007).

IV. CONCLUSION

Justice and Public Interest require his case must be remanded to the Court of Appeals to determine whether RCW 69.50.505 must be found as void and/or severable as unenforceable in this case, and the Trial Court's order transferring title of the *Defendant in Rem* to the Ferry County Sheriff's office vacated.

Respectfully submitted this 28th day of February, 2014


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**APPENDIX A: 1/31/2014 Order Denying Motion to Modify
10/14/2013 Ruling Terminating Review**

FILED

January 31, 2014

**In the Office of the Clerk of Court
WA State Court of Appeals, Division III**

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

FERRY COUNTY SHERIFF'S OFFICE,)	No. 31157-1-III
)	
Respondent,)	
)	
v.)	ORDER DENYING
)	MOTION TO MODIFY
REAL PROPERTY, et al.,)	
)	
Appellants.)	

THE COURT has considered appellant's motion to modify the Commissioner's Ruling of October 14, 2013, and is of the opinion the motion should be denied.

Therefore,

IT IS ORDERED, the motion to modify is hereby denied.

DATED: January 31, 2014.

PANEL: Judges Korsmo, Brown, Siddoway.

FOR THE COURT:



KEVIN M. KORSMO, Chief Judge



FILED

The Court of Appeals
of the
State of Washington
Division III

OCT 14 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

FERRY COUNTY SHERIFF'S)
OFFICE,)
)
Respondent,)
)
v.)
)
REAL PROPERTY, et al.,)
)
Appellants.)
_____)

No. 31157-1-III

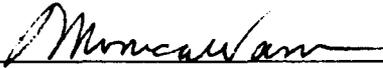
COMMISSIONER'S RULING

Having considered the Court's motion to dismiss the above appeal for abandonment for failing to comply with the extended due dates for filing of appellants' brief; and having also considered the record and file herein, including this Court's letter of September 17, 2013, which notified the appellant that the matter had been set on the October 9, 2013 motion docket for dismissal for abandonment, and the fact the appellants have not responded in any fashion to the Court's letter; the Court finds that the appellants have abandoned their appeal; now, therefore,

No. 31157-1-III

IT IS ORDERED, the Court's motion to dismiss for abandonment is granted.

October 14, 2013



Monica Wasson
Commissioner

FILED

MAR 03 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

IN THE COURT OF OF APPEALS of THE STATE OF WASHINGTON
DIVISION III

Ferry County Sheriff's Office
Plaintiff

No. 311571

v.

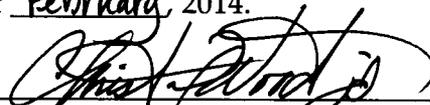
CERTIFICATE OF SERVICE

Real Property known as
29770 HIGHWAY 20 WEST, Republic WA
(Parcel Number #23731240002000)
*And all appurtenances and
improvements Thereon, and*

DANIEL DAVID MATZ (10/08/1948)
Interested Party.
Defendants in rem.

I, Christal Olivia Wood, J.D., am over the age of 18 years, competent to testify to the matters stated herein, and declare that on the 28th day of February, 2014, I served copies of Appellant(s) Petition for Review to the Supreme Court of Washington upon : Michael George Sandona, Attorney for the Appellee/Respondent, Office of the Ferry County Prosecuting Attorney, 350 E. Delaware Ave. Stop 11, Republic, Washington, 99166, by hand-delivery.

DATED this 28th day of February, 2014.


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Attorney for Appellant(s)

CERTIFICATE OF SERVICE - 1 of 1

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