

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2017 IL App (3d) 160464-U

Order filed November 7, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 14th Judicial Circuit,
)	Whiteside County, Illinois
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 3-16-0464
)	Circuit No. 16-MR-22
\$541.00 in United States currency,)	
)	
Defendant)	
)	Honorable
(DONTÉE L. BROWN)	John L. Hauptman and
)	William S. McNeal
Defendant-Appellant).)	Judges, Presiding

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Lytton concurred in the judgment.

ORDER

¶ 1 *Held:* Claimant was not denied due process in forfeiture proceedings where he failed to follow statutory procedures to challenge the forfeiture.

¶ 2 Defendant Dontee Brown appeals from the declaration of forfeiture of \$541 United States currency that was found on Brown's person during the execution of a search warrant at his residence. The search of the residence uncovered crack cocaine, heroin, a gun, and indicia of

intent to deliver drugs, including scales and Ziploc baggies. The State sought forfeiture, and after this statutory period during which Brown did not file a verified claim to contest it, the State declared a forfeiture of Brown's \$541. We affirm.

¶ 3

FACTS

¶ 4

On February 25, 2016, the Sterling police department seized \$541 in United States currency from defendant Dontee Brown following execution of a no-knock search warrant. Other items discovered during the search included crack cocaine, heroin, a gun, and other indicia of drug sales. The State filed a notice of seizure of forfeiture and a request for a preliminary determination of probable cause for forfeiture under the Drug Asset Forfeiture Procedure Act (Forfeiture Act) (725 ILCS 150/3.5 (West 2016)). A probable cause hearing took place on March 7, 2016. Brown requested that the hearing be held separate from the probable cause hearing for his co-defendant. The trial court granted Brown's request and his co-defendant was removed from the hearing.

¶ 5

Sterling police department detective Mike Henry testified that he participated in executing the search warrant at Brown's residence. The crack cocaine was found in a bedroom Brown admitted was his room. Mail addressed to Brown was also found in the bedroom. Drugs were found on the other persons in the house and a gun was also recovered. Brown admitted the gun belonged to him, explaining that he purchased it for protection. Henry searched Brown and found \$500 in \$10s, \$20s, \$50s, and a \$100 bill in his pants pocket, and \$41 in \$5s and \$1s in his wallet. He did not uncover any other indicia of drug sales or possession on Brown's person. Indicators of drug sales were found in the residence, including a wastebasket in the living room that was overflowing with Ziploc baggies with the corners cut off. Razor blades and a white residue were found on a TV tray in the living room. In the kitchen, scales and Ziploc baggies

were discovered. In Henry's experience, the baggies are used for packing drugs. The search also uncovered photographs of Brown and his nephew posing with "large amounts" of money. Nine cell phones were discovered, and because there were only four adults in the house, Henry surmised they were probably phones used for drug sales.

¶ 6 The trial court found probable cause existed for the forfeiture, as well as the felony drug and gun charges. The trial court took judicial notice of Brown's prior convictions and set forth the pending felony charges against Brown. Brown entered a not guilty plea in the felony case and the trial court set a trial date. The court inquired why Brown requested the probable cause hearing be separate from his co-defendant. Defense counsel explained Brown was not comfortable having them conducted together. The State requested that the forfeiture case track the felony case. The court stated that the only thing it was doing was entering an order finding there was probable cause and that there were other statutory things required to occur. The State agreed and reiterated that it was seeking to continue the forfeiture with the felony case as it typically did.

¶ 7 On March 10, 2016, Brown was provided notice of the forfeiture and a summary of his procedural rights in the forfeiture proceeding. The notice stated that the \$541 was subject to forfeiture because Brown committed the offense of possession of a controlled substance with intent to deliver and unlawful possession of a controlled substance from which the seizure resulted. The summary explained the process for filing a verified claim for the return of seized property. It stated that Brown's interest in \$541 would be forfeited unless he filed a verified claim with the state's attorney for its return, expressing his interest in the currency and why the interest was not subject to forfeiture, and setting forth other requirements as mandated in the Forfeiture Act. The summary also stated that Brown had to file a cost bond in the form of a

cashier's check to the circuit clerk for 10% of the property's value or \$100, whichever amount was greater and that an indigency affidavit could be filed in lieu of a cost bond. Finally, the summary stated Brown had 45 days from service of the notice to file his verified claim and cost bond and warned that if Brown failed to file a claim and cost bond within 45 days, his interest in the property would be forfeited to the State.

¶ 8 On March 14, 2106, Brown filed a document titled, "Notice Response of Pending Forfeiture," submitting that he could prove from where the funds came and seeking a court date. The State filed a declaration of forfeiture on May 3, 2016, arguing that Brown failed to timely file a verified claim and seeking forfeiture of the \$541 seized from him. On August 1, 2016, Brown sought to vacate the judgment of forfeiture. He argued in his motion that his March 14 response "satisfied the question" on the forfeiture claim. On August 5, the trial court dismissed the motion to vacate for lack of jurisdiction. Brown appealed on August 9, 2016.

¶ 9 ANALYSIS

¶ 10 On appeal, Brown argues that the trial court erred in allowing the State to sever the forfeiture case from the felony case and in requiring him to proceed *pro se*. Brown contends that the trial court ordered the forfeiture case to proceed with the felony action and that severing the cases denied him his due process right to present a defense to the forfeiture action.

¶ 11 Due process requires notice and the opportunity to be heard. *In re Forfeiture of \$2,354.00 United States Currency*, 326 Ill. App. 3d 9, 13 (2001) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). A party who receives actual notice is required to exercise due diligence to preserve his rights. *People ex rel. Kelly v. \$16,500 United States Currency*, 2014 IL App (5th) 130075, ¶28. A party who fails to afford himself the opportunity to be heard is not denied due process. *Id.* (quoting *Campbell v. Cook County Sheriff's Merit Board*,

215 Ill. App. 3d 868, 870-71 (1991)). Whether a party was denied due process is a question of law we review *de novo*. *In re Forfeiture of \$2,354 United States Currency*, 326 Ill. App. 3d at 13.

¶ 12 Property seized under the Controlled Substances Act is subject to seizure under the Forfeiture Act (725 ILCS 150/1 *et seq.* (West 2016)). 720 ILCS 570/505(a)(5) (West 2016) (all proceeds traceable to a drug transaction and used to violate the Controlled Substances Act are subject to forfeiture). The Forfeiture Act is directed toward “detering the use and distribution of controlled substances.” 725 ILCS 150/2 (West 2016). The Forfeiture Act requires a preliminary determination that probable cause exists for the forfeiture. 725 ILCS 150/3.5 (West 2016). The Forfeiture Act creates a presumption that currency was used or intended to be used for illegal drugs or is the proceeds of a drug transaction and subject to forfeiture under the Forfeiture Act when the currency was “found in close proximity to forfeitable substances.” 725 ILCS 150/7(1) (West 2016). The presumption may be rebutted by a preponderance of the evidence. 750 ILCS 150/7 (West 2016). Currency is subject to forfeiture under the Forfeiture Act when it results from the sale of illegal drugs. *People v. \$52,204.00 United States Currency*, 252 Ill. App. 3d 778, 782 (1993).

¶ 13 A party must file a claim and cost bond before challenging a forfeiture. *People ex rel. Kelly*, 2014 IL App (5th) 130075, ¶ 30. The verified claim must be filed with the state’s attorney and indicate the claimant’s interest in the currency and why the interest is not subject to forfeiture, in addition to other requirements. 725 ILCS 150/6(C)(1) (West 2016). The claimant must file a cost bond in the form of a cashier’s check to the circuit clerk for 10% of the property’s value or \$100, whichever amount is greater or submit an indigency affidavit in lieu of a cost bond. 725 ILCS 150/6(C)(2) (West 2016). A claimant has 45 days from service of the notice to file his verified claim and cost bond. *Id.* If the claimant fails to file a claim and cost

bond within 45 days, his interest in the property is forfeited to the State. 725 ILCS 150/6(D) (West 2016).

¶ 14 Brown received notice of the forfeiture and information regarding his right to challenge it on March 11, 2016, while at the Whiteside County jail. He filed a response on March 14, in which he argued that he was innocent of the pending felony charges and sought a court date to claim the \$541 and prove from where his funds came. A hearing took place on March 23, but there is no report of proceedings in the record. Brown bears the burden of providing a complete record on appeal and absent a complete record and we presume the trial court made a decision aligned with the facts and the law. *People v. Lopez*, 229 Ill. 2d 322, 344 (2008). The next document in the record is the declaration of forfeiture dated May 3, 2016, which leads us to conclude Brown failed to prove the funds were not subject to forfeiture.

¶ 15 On appeal, Brown maintains that he has proven the source of his funds but his claim is not supported by the record. In order to challenge the forfeiture, Brown was required to follow the statutory procedures. Brown did not at any time file a verified claim or post a cost bond as instructed under the Forfeiture Act. Because Brown did not avail himself of the procedures to challenge the forfeiture, his claims of a due process violation cannot stand.

¶ 16 He also submits that he was denied due process when the trial court severed his forfeiture case from his felony case, preventing him from offering a timely defense. According to Brown, the trial court ordered the forfeiture case to proceed with the felony case and he presumed it had been continued along with the felony action. He appears to argue that he expected to have the same time to prepare his forfeiture defense as he was given for his criminal charges.

¶ 17 As set forth above, the Forfeiture Act provides a specific procedure a claimant must follow to contest a forfeiture, including a 45-day deadline to file the claim. There is no

mechanism in the Forfeiture Act excusing the requirements if the cause proceeds with the corresponding felony action. At the probable cause hearing, the trial court discussed the felony charges as distinct from the forfeiture action and entered separate orders determining probable cause for forfeiture. At the March 7, 2016, hearing, the State requested that the forfeiture action track the felony case. In response, the trial court stated that it was only entering a probable cause finding and that “there’s other statutory things that have to take place.” Contrary to Brown’s assertion, the trial court did not improperly sever the forfeiture action but deferred to the statutory requirements. We find Brown was not denied due process.

¶ 18 For the foregoing reasons, the judgment of the circuit court of Whiteside County is affirmed.

¶ 19 Affirmed.