

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANY AND ALL MONIES, et al,

Defendant,

and

SHON A. WATT and LINDA K. PHILLIPS,

Appellants.

UNPUBLISHED

November 12, 1996

No. 185677

LC No. MISC

Before: Michael J. Kelly, P.J., and O'Connell and K.W. Schmidt,* JJ.

PER CURIAM

Appellants Shon Watt and Linda Phillips appeal by right the order of the Kent County Circuit Court denying their motion for hearing on their motion to set aside default forfeiture proceedings under the drug forfeiture statute MCL 333.7521 *et seq.*; MSA 14.15(7521) *et seq.* The court found that appellants failed to take timely action to contest the forfeiture of their property within the time period prescribed by statute. This Court agrees and affirms.

Police arrested appellant, Shon A. Watt, for possession of cocaine with intent to deliver. At the time of arrest appellant Watt was driving a Buick titled in appellant Phillips' name. Phillips was not charged with any crime. The Buick was impounded by the police.

The following day police delivered to appellant Watt, at the jail where he was being held, a notice of seizure of property with intent to forfeit. The notice listed five items, (1) \$261.00 cash, (2) a pager, (3) a leather coat-jacket worn by Watt at the time of arrest, (4) the Buick and (5) a bank

* Circuit judge, sitting on the Court of Appeals by assignment.

account containing \$7,000.00, which was in the joint names of Watt and Phillips. The notice advised appellant Watt that he was required to file a written claim with the police department and post a 10% bond on the value of the property .[MCL 333.7523(1) (c),MSA 14.15 (7523) (1) (c)]. The notice did not state the amount of the bond necessary.

Appellant Watt testified at the motion hearing that he made several attempts to contact the officer handling the forfeiture both by telephone and by letter, to contest the forfeiture. The officer denies any contact with appellant Watt after the service of the notice on him at the jail.

Six days after appellant Watt's arrest Officer Betz called appellant Phillips into the station for an interview. Ms. Phillips was served with a notice of forfeiture at this meeting. Officer Betz testified at the evidentiary hearing that she explained the notice of seizure and forfeiture, the procedure for contesting the forfeiture and the need for a bond. After this meeting, Officer Betz had no further contact with appellant Phillips. Ms. Phillips claims Officer Betz only asked her if she had bond money for the Buick and did not explain the procedure to contest the forfeiture. The officer did not inform Ms. Phillips that the bond could be waived by the court because of indigence.

Thirty-nine days after service on appellant Watt at the jail, appellants filed a motion with the court to waive the bond requirement and for hearing on their motion to set aside the forfeiture. It was appellant Watt's claim that the funds in the bank were the proceeds of an annuity from his mother's estate and not a result of a drug transaction. The motion was heard and an opinion was issued and filed by the court. In its opinion the court makes several findings including the finding that appellants received proper notice of the forfeiture, they did not make a timely claim and that the parties had been in contact with counsel before the expiration of the time limits. Further the court found the forfeiture was properly perfected by the prosecutor and that appellants did not show excusable neglect for not making some attempt to bring the matter on for an earlier hearing. The motion to set aside forfeiture proceedings was denied, by order of the court on April 27,1995.

Appellants claim error in that the bond requirements of the forfeiture statute are unconstitutional as applied to persons who are indigent. This court has addressed the constitutionality of the forfeiture statute, MCL 333.7523; MSA 14.15 (7523), and held that the statute does not contain a constitutional defect which is clearly apparent in. *Derrick v Detroit*, 168 Mich App 560, 563; 425 NW2d 154 (1988). Our Court further found that the statute provided the procedural safeguards necessary to ensure due process. *Derrick, supra.*, 563; *People v One 1973 Pontiac*, 84 Mich App 231; 269 NW2d 537 (1978).

Appellant claims the bond requirement of the forfeiture statute denies due process to indigent parties. However the rules of Civil Procedure apply to drug forfeiture proceedings, *In Re Forfeiture of 301 Cass*, 194 Mich App 381; 487 NW2d 795 (1992). MCR § 2.109(C)(1) specifically provides for waiver of security upon showing of indigence, and when coupled with the forfeiture statute does not violate due process. Appellants were not denied equal protection of the law. Indigent persons are treated similarly to persons who have the financial ability to post bond and the government is not creating impermissible classifications or drawing lines in an arbitrary manner.

Appellants next argue that due process requires that owners be notified that bond can be waived in forfeiture proceedings. Due process in civil cases requires, notice of the proceedings, an opportunity to be heard, and an impartial decision maker. *Cummings v Wayne Co.*, 210 Mich App 249, 253; 533 NW2d 13 (1995). In this matter both appellants received notice of the seizure and the intent to forfeit and had the opportunity to contest the forfeiture. Appellants were in contact with attorneys within the twenty-day time limit, as found by the trial court. The argument that the notice of forfeiture should have contained a statement that bond could be waived, or the police officers should have told them of the possibility of waiving the bond is not compelling. Everyone is presumed to know the law, both civil and criminal, and is bound to take notice of it, *TACT v Wayne Co.*, 203 Mich App 537, 546; 513 NW2d 202 (1994). Appellants do not cite authority for this proposition and this Court will not search for authority to support a party's position on appeal. *Speaker-Hinds & Thomas, Inc v Treasury Dep't*, 207 Mich App 84, 90; 523 NW2d 826 (1994).

Appellants also argue that the Michigan Court Rules apply and that appellants are entitled to relief under MCR 2.603(D), (service of judgment), MCR 2.612(C), (relief from judgment), and MCR 2.108 (E), (extension of time), and the trial court erred in declining to hear appellants' motion on the merits. The court ruled that the motion was not timely, as it was beyond the statutory twenty days, and the court did not have jurisdiction.

Appellant Watt was arrested and charged with possession of cocaine with intent to deliver. At the time of arrest he had 15 rocks of cocaine on his person. Watt was driving a vehicle titled in the name of Ms. Phillips. The property was seized and notice of forfeiture given to appellants in accord with the provisions of the controlled substance act, MCL 333.7521 *et seq*; MSA 14.15(7521) *et seq*. The property was legally seized incident to a lawful arrest. Notice was given to the property owners, the appellants, and they failed to make claim as provided by the forfeiture statute. The only way the Circuit Court obtains jurisdiction is with the owners filing a claim for the return of the property within the twenty-day statutory period. This was not done by appellants. As a matter of law, the property was ceded to the government upon the expiration of the statutory period, and the Circuit Court does not have jurisdiction to hear a tardy motion. *In Re: RETURN OF FORFEITED GOODS, (People v Mierzejewski)*, 452 Mich 659; 550 NW2d 782 (1996).

. Affirmed.

/s/ Michael J. Kelly

/s/ Peter D. O'Connell

/s/ Kenneth W. Schmidt