STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HUBERT HUDSON,

Defendant-Appellant.

UNPUBLISHED
February 28, 1997

No. 189584
Genesee Circuit Court
LC No. 95 52144

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Defendant appeals by right his guilty plea to possession with intent to deliver a controlled substance less than 50 grams, MCL 333.7401(1)(a)(iv); MSA 14.15(7401)(1)(a)(iv), and sentence to a term of imprisonment of five to twenty years. We affirm.

In April 1995, the court bound over defendant on the above possession charge as well as charges of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), and possession of a dangerous weapon, MCL 750.224f; MSA 28.421(6). The prosecutor later filed an habitual offender enhancement notice. In exchange for defendant's guilty plea, the parties agreed that the prosecutor would dismiss the other two charges and would withdraw the habitual notice. The parties believed that the applicable sentencing guidelines range was twelve to thirty months; the judge agreed to sentence defendant within that range. At sentencing, however, the parties acknowledged that the guidelines range initially had been miscalculated and should have been 60 to 160 months. Defendant declined to withdraw his plea; the judge sentenced him within the adjusted guidelines.

Defendant argues that his guilty plea violates double jeopardy principles under US Const, Am V; Const 1963, art 1, because he earlier had forfeited $2,000. We disagree.

First, defendant did not contest the civil forfeiture action. Accordingly, jeopardy does not attach. *US v Torres*, 28 F3d 1463, 1465-1466 (CA 7, 1994).

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

Second, in *US v Ursery*, ___ US ___; 116 S Ct 2135; 135 L Ed 2d 549 (1996), the Supreme Court resolved this issue.[1] "Forfeitures serve a variety of purposes, but are designed primarily to confiscate property used in violation of the law, and to require disgorgement of the fruits of illegal conduct." *Id.* at 2145. Forfeiture ensures that persons do not profit from their illegal acts. *Id.*

The Supreme Court held that "[i]n rem civil forfeitures are neither 'punishment' nor criminal for purposes of the Double Jeopardy Clause." *Id.* at 2149. Civil forfeitures are remedial in nature and do not constitute punishment. *Id.* at 2147. Forfeitures are not exempt completely from the scope of the Double Jeopardy Clause. Rather, a forfeiture presumptively is exempt from double jeopardy when it is designated as a civil remedy and when it proceeds in rem. Nonetheless, where the "clearest proof" shows that an in rem civil forfeiture is so punitive as to equate to a criminal proceeding, then it may be subject to double jeopardy. *Id.* at 2147-2149. See also, *People v Acoff*, ___ Mich App ___; ___ NW2d ___ (Docket No. 169966, issued December 13, 1996). On the facts of this case, proof does not exist that the forfeiture was so punitive as to equal a criminal proceeding. Moreover, defendant should not be permitted to profit from his crime.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard Ryan Lamb

[1] This decision reverses the Sixth Circuit Court of Appeals' holding in *US v Ursery*, 59 F3d 568 (CA 6, 1995), so defendant's reliance on that opinion is misplaced.