

IN THE SUPREME COURT
OF THE STATE OF CALIFORNIA

PEOPLE OF THE
STATE OF CALIFORNIA,

Respondent,

PETITION FOR REVIEW

vs.

LEE JACKSON and
NESSIE JACKSON,

Petitioners.

Please note:

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To the Honorable Chief Justice of California and the Associate
Justices of the Supreme Court of California:

This case concerns the state's right to pursue a forfeiture of funds seized from claimants and petitioners Lee and Nessie Jackson under the forfeiture provisions of the California Uniform Controlled Substances Act (Health & Safety Code § 11470 et seq.). The Jacksons respectfully petition this Court for review following the decision of the Court of Appeal, Sixteenth Appellate District, Division Z, filed on April 12, _____, on the People's petition for writ of mandate. The Court of Appeal granted the

petition and directed the Superior Court to vacate its order granting The Jacksons' motion to strike or in the alternative for judgment on the pleadings. Petitioners' petition for rehearing in the Court of Appeal was denied.

A hearing in the Supreme Court is necessary to settle important questions of law concerning forfeiture.

ISSUES PRESENTED FOR REVIEW

1. Does former Health & Safety Code § 11488.2 establish a 15-day statute of limitations for filing a petition for forfeiture?

The Court of Appeal held that § 11488.2 does not bind district attorneys or the Attorney General and that the controlling statute of limitations is the one-year limitations period set forth in Code of Civil Procedure § 340(2). The Court of Appeal failed to address petitioners' argument that the application of § 340(2) to forfeitures under the Health & Safety Code renders the forfeiture statute internally inconsistent. The Court of Appeal's holding also contradicts the legislature's clearly expressed intent that the government act expeditiously in filing for forfeiture.

2. Did the government waive its right to pursue forfeiture by failing to return petitioners' property when it did not file a petition of forfeiture within 15 days of the seizure?

The Court of Appeal failed to address this argument, which petitioners raised both in their brief in opposition to the People's petition for writ of mandate and in their petition for rehearing in the Court of Appeal.

3. Must a petition for forfeiture be filed in criminal court—and not in civil court—when there is an underlying related criminal action pending?

The Court of Appeal failed to address this argument, which is of great concern to criminal defendants and to the criminal defense bar.

STATEMENT OF THE CASE

On September 30, ____, the Honorable William Smith, Judge of the Criminal Division, granted Mr. Jackson’s motion to return \$20,000 of seized funds, finding that the funds’ release was necessary for Mr. Jackson’s effective representation by private counsel of his choice. See Order, Exhibit 1. This order was stayed pending disposition of the District Attorney’s petition for forfeiture filed in the Civil Division of the Superior Court.

On September 30, ____, the Honorable Fred Green of the Superior Court granted The Jacksons’ motion to strike the People’s petition for forfeiture with respect to \$20,000 of the seized funds, finding the petition to be time-barred because it was filed after the 15-day period for forfeiture established in Health and Safety Code §11488.2. The People did not seek review of this order by appeal or writ within the 60 days prescribed by law (see Cal. Rules of Court, Rule 31(a)) and this order is not before this Court.

On February 24, ____, the Honorable Florence Purple granted the Jacksons’ motion to strike the People’s petition of forfeiture with respect to the remaining \$51,693.50 of the seized funds, the court finding once again that § 11488.2 establishes a 15-day limitation period with which the People had failed to comply.

The People petitioned the Court of Appeal for a writ of mandate.

The Court of Appeal granted the People’s petition and directed the lower court to vacate its order striking the People’s petition for forfeiture. Petitioners filed a petition for rehearing in the Court of Appeal; that petition was denied.

ARGUMENT

1. The superior court correctly concluded that Health and Safety Code § 11488.2 establishes a 15-day statute of limitations for filing a petition of forfeiture.

A. This court must strictly construe the forfeiture provisions against allowing the state to pursue forfeiture and in favor of claimants.

The California Uniform Controlled Substances Act, Health and Safety Code § 1100 et seq. (“the Act”), provides a “comprehensive legislative scheme for disposition of controlled substances held and used in criminal prosecutions.” *People v. Backus* (1979) 23 Cal.3d 360, 385, 152 Cal.Rptr. 710. In construing the forfeiture provisions of Health and Safety Code § 11470 et seq., this Court must apply well-established principles of statutory interpretation concerning forfeiture provisions.

First, forfeitures are not favored. *People v. One 1937 Lincoln Zephyr Sedan* (1945) 26 Cal.2d 736, 738, 160 P.2d 769. Since they are considered harsh penalties, they are to be avoided when possible. *General Ice Cream Corp. v. Benson* (N.D.N.Y. 1953) 113 F.Supp. 107, 109, aff’d (2d Cir. 1954) 217 F.2d 646. Statutes imposing a forfeiture are to be strictly construed (*People v. United Bonding Insurance Co.* (1971) 5 Cal.3d 898, 906, 98 Cal.Rptr. 57), in a manner as favorable to the person whose property is to be forfeited as is consistent with fair principles of

interpretation. *People v. One 1950 Mercury Sedan* (1953) 116 Cal.App.2d 746, 749, 254 P.2d 666; *People v. One 1941 Cadillac Club Coupe* (1944) 63 Cal.App.2d 418, 421, 147 P.2d 49; accord, *One 1937 Lincoln, supra*, 26 Cal.2d at 738. Statutes must not be construed to forfeit an owner's property unless it is certain that the legislature intended this result. *County of Madera v. Gendon* (1963) 59 Cal.2d 798, 803, 31 Cal.Rptr. 302. The claimant is entitled to all reasonable doubts as to whether forfeiture is allowed under the circumstances. *One 1941 Cadillac Club Coupe, supra*, 63 Cal.App.2d at 421.

The language of § 11488.2 is clear. The Court of Appeal, however, evidently found the statute's language ambiguous. See Opinion at 12 (“A statute of limitations as startlingly short as fifteen days should not be inferred from ambiguous language.”). The Court of Appeal failed to recognize that any ambiguity must weigh *against* the government's right to pursue forfeiture—not in favor of it. The Court of Appeal should have resolved any ambiguity in claimants' favor.

B. Since the district attorney did not bring a petition of forfeiture within 15 days of the seizure he is time-barred from filing for forfeiture.

As even federal courts have recognized, Health & Safety Code § 11488.2 plainly established a 15-day limitation period for filing for forfeiture of property that has been the subject of seizure. See *Guerra v. United States* (C.D. Cal. 1986) 645 F.Supp. 775, 777, fn.4 (comparing §11488.2's 15-day requirement with federal law).

The procedures that Health and Safety Code § 11470 et seq. provide for forfeiture are comprehensive and complete. See *People v. Backus*,

supra, 23 Cal.3d at 385; *People v. Narron* (1987) 192 Cal.App.3d 724, 237 Cal.Rptr. 693, 699-702 (Penal Code procedures for restitution conditions upon probation do not apply to petitions for recovery brought under Health and Safety Code §§ 11470.1 and 11470.2).

Section 11488(a) (amended 1983) authorizes a peace officer to seize property traceable to an exchange for a controlled substance in making an arrest for violations of the Health and Safety Code. Under § 11488.1, state and local governments are authorized to initiate forfeiture proceedings with respect to any property seized under § 11488 by an officer employed by their law enforcement agencies. The Attorney General or the District Attorney for the jurisdiction are the state and local governments' agents with respect to these forfeiture proceedings. Health and Safety Code § 11488.1.

In giving the government authority to work a forfeiture on the property, the legislature was clearly concerned that the government act expeditiously in initiating forfeiture proceedings. Section 11488.2 makes it plain on its face that the District Attorney in this case was required to bring a petition for forfeiture within 15 days of the seizure or be time-barred from filing for forfeiture. Section 11488.2 provides in pertinent part:

Within 15 days after the seizure, if the peace officer does not hold the property seized pursuant to Section 11488 for evidence or if the law enforcement agency for which such person is employed does not initiate forfeiture proceedings pursuant to Section 11488.1, the officer shall comply with any notice to withhold issued with respect to the property by the Franchise Tax Board. If no notice to withhold has been issued with respect to the property by the Franchise Tax Board, the officer shall return the property to the individual designated in

the receipt therefor

The Court of Appeal mistakenly concluded that § 11488.2 binds only law enforcement agencies, and not District Attorneys or the Attorney General, relying on the fact that § 11488.2 refers to forfeiture proceedings initiated by “the law enforcement agency.” But § 11488.2 cannot be taken literally. To do so would make it inconsistent with § 11488.1, which states that “[t]he state or any city, county, or city and county may initiate forfeiture proceedings” (emphasis added). The reference in § 11488.2 to “law enforcement agency” must therefore be a reference to forfeiture proceedings initiated by the state or local government. Because the Attorney General or the District Attorney are the *only* entities authorized to initiate forfeiture proceedings on the state or local government’s behalf (§ 11488.1), § 11488.2 *must* therefore bind the Attorney General and the District Attorney.

The Court of Appeal also held that, because forfeitures may be instituted whether or not the property has been physically seized, there is no necessary connection between seizure of the property and the statute of limitations for filing of forfeiture. The appellate court is correct that physical seizure of the property is not a precondition to forfeiture. See Health & Saf. Code § 11488.4(c). But once the government decides to pursue forfeiture by physically seizing the property, the 15-day limitation period comes into play. That is, the government need not physically seize the property, but once it does so it must file for forfeiture within 15 days of the seizure. Newly amended Health & Safety Code § 11488.4(a) provides:

A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture, or within one year of the filing by the Attorney General or District Attorney of a lis pendens or other process

against the property, whichever is earlier.

Thus, under both the old and the new statute, once the government seizes the property, the statute of limitations for filing forfeiture proceedings is measured with reference to the day of the seizure.

The Government must not be allowed to pursue a forfeiture unless it is certain that the statute authorizes a forfeiture under the circumstances. Section 11488.2 must be strictly construed against the Government and in favor of claimants. In light of the well-established policy against forfeiture and in light of the statute's plain language, the Superior Court correctly concluded that the District Attorney's petition for forfeiture in this case is time-barred because filed after the 15-day period established in § 11488.2.

The People erroneously assert that § 11488.2 cannot impose a 15-day period for initiating forfeiture proceedings because the legislature did not repeal or amend § 11488.2 when it established a one-year limitation period in the 1987 amendments to the Uniform Controlled Substances Act. See Health and Safety Code § 11488.4(a) (Stats. 1987 Chap. 924) (“A petition of forfeiture under this subdivision shall be filed within one year of the seizure of the property which is subject to forfeiture . . .”). But because a statute must be interpreted in its statutory context, the legislature did not have to amend § 11488.2 in order to give it a different scope and effect. The newly amended § 11488.4 provides for a one-year period for forfeitures made *pursuant to § 11470*. Even in the new legislation § 11488.2 continues to provide a 15-day statute of limitations for those forfeitures made pursuant to authority *other than § 11470*. Section 11488.2 therefore states the general 15-day rule for filing a petition, to which § 11488.4 is now an exception.

C. The one-year period of Code of Civil Procedure § 340(2) does not apply to forfeitures under Health and Safety Code § 11470 et seq.

The Court of Appeal mistakenly concluded that the applicable limitations period should not be the 15-day period set forth in Health and Safety Code § 11488.2, but rather the general period for forfeiture actions set forth in Code of Civil Procedure § 340(2). But as Witkin states, the one-year period of Code of Civil Procedure § 340 applies only when the statute under which forfeiture is sought does not prescribe a different period. *People v. Grant* (1942) 52 Cal. App. 2d 794, 799, 127 P.2d 281 (“Where . . . the statute itself prescribes the period within which the procedural steps must be taken certainly . . . sec. 340 of the Code of Civil Procedure would have no application.”); 3 Witkin, CAL. PROCEDURE (3d ed.) “Actions” § 341. Here, the Health and Safety Code without doubt prescribes such a different period.

The legislature could not possibly have intended that Code of Civil Procedure § 340(2) apply to forfeiture under the Health & Safety Code because § 340(2) is obviously inconsistent with other provisions of the Health & Safety Code. The District Attorney has misconstrued the limitation period established by Code of Civil Procedure § 340(2), claiming that § 340(2) prescribes that a petition of forfeiture must be filed within one year of the property’s *seizure*. On the contrary, in those forfeiture actions to which it applies, § 340(2) requires a petition of forfeiture to be filed within one year *of the commission of the unlawful act giving rise to forfeiture*. A cause of action for statutory forfeiture accrues at the commission of the wrongful act giving rise to forfeiture. *Arcata v. Arcata & M.R.R. Co.* (1892) 92 Cal. 639, 645-46, 28 P. 676; see also Health & Saf. Code

§ 11470(h). Under the Code of Civil Procedure a limitation period begins to run once the cause of action accrues. See Code Civ. Proc. § 312; 3 Witkin, CALIFORNIA PROCEDURE (3d ed.) “Actions” § 351.

Therefore, if Code of Civil Procedure § 340(2) applied to forfeitures under the Health & Safety Code, it would require a petition of forfeiture to be filed within one year of the commission of the unlawful act giving rise to forfeiture. But note that Health & Safety Code § 11470(f) authorizes police to seize property for up to *five* years after the exchange, violation, or other conduct that is the basis for forfeiture. Thus the legislature could not have intended Code of Civil Procedure § 340(2) to govern forfeitures under the Health & Safety Code, because the result is absurd—the government would have authority to seize property for up to five years after the commission of the crime, but would be unable to petition for forfeiture for more than one year. There would be a four-year period during which the state could seize the property but could not seek its forfeiture, and would be required under § 11488.2 to return it within 15 days. (For similar reasons, the four-year limitation period of Code of Civil Procedure § 343, governing actions not otherwise provided for, also cannot be applied to forfeiture under the Health & Safety Code.)

The Court of Appeal failed to address the absurdity entailed by applying Code of Civil Procedure § 340(2) to forfeitures under the Health & Safety Code. The 15-day limitation period of Health & Safety Code § 11488.2 is therefore the only possible limitation period that could be applied to the District Attorney’s petition for forfeiture.

D. The court of appeal failed to address petitioners’ argument that the government waived its right to pursue forfeiture by keeping the funds for more than 15 days.

As an alternative to the argument that § 11488.2 establishes a 15-day limitation period for filing of forfeiture, petitioners argued in the Court of Appeal that the government waived its right to pursue forfeiture by failing to comply with the procedures governing forfeiture. The Court of Appeal failed to address this alternative ground on which the lower court’s order should be upheld.

Where a statute prescribes the steps that the state must take if it is to pursue forfeiture, “the procedure prescribed by statute is in general exclusive and in a sense jurisdictional.” 37 C.J.S. “Forfeitures” at 11. Federal and state courts have applied this rule in a variety of contexts to preclude the government’s pursuing forfeiture when it has failed to abide by the statutory framework. See, e.g., *State v. Rosario* (Cir. Ct. Conn. 1963) 199 A.2d 575, 580 (forfeiture precluded where government failed to follow the warrant procedure established by forfeiture statute); *State v. Kaufman* (S.Ct. Iowa 1972) 201 N.W.2d 723, 724 (forfeiture precluded where government failed to follow statutory notice requirements even though claimant had actual notice of forfeiture); *United States v. Eight Rhodesian Stone Statues* (C.D. Cal. 1978) 449 F.Supp. 193, 202-206 (forfeiture precluded where government did not follow statutory notice requirements even though prejudice to claimant not shown).

Regardless of whether § 11488.2 also establishes a 15-day period of limitations for filing for forfeiture, § 11488.2 clearly and unambiguously mandates that property be returned to its owners within 15 days of the seizure once the government fails to initiate forfeiture proceedings. The

record in this case establishes that the government held the Jacksons' property for more than 96 days after the seizure without returning the property and without filing for forfeiture. By failing to observe the statutory framework, the government waived its right to pursue forfeiture.

As a general rule, officers of the same government are bound by each others' actions and omissions. See e.g. *Sunshine Anthracite Coal Co. v. Adkins* (1940) 310 U.S. 381, 60 S.Ct. 907 (litigation by one agency is binding on other agencies of the same government); *Miranda v. Arizona* (1966) 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694, (exclusionary rule based in policy that officers of the same government should not profit as a result of wrongdoing by any of them.) Therefore, even if the county sheriff's department was at fault in failing expeditiously to return the Jacksons' property, it is entirely proper that the sheriff's department's omission should bind the District Attorney. Furthermore, if the government's failure to return the property in 15 days without filing for forfeiture were not held to result in a waiver of the right to file for forfeiture, the sheriff would be able to hold seized property for as long as he likes with impunity—as happened in this case. The legislature was clearly concerned that the government act quickly in returning the property to its owners.

The state therefore must be held to have waived its right to forfeiture by its failure to return the Jacksons' property within 15 days of the seizure without having filed for forfeiture.

2. The court of appeal failed to address petitioners' argument that the people's petition for forfeiture should have been filed in criminal court.

Where, as in this case, the state alleges that property is forfeitable pursuant to Health & Safety Code § 11470(f), the state must obtain the defendant's conviction in the underlying criminal action. Health & Saf. Code § 11488.4(i)(3). The petition for forfeiture in such a case must be filed in the superior court of the county in which the defendant has been charged with the underlying criminal offense. Health & Saf. Code § 11488.4(a). The petition for forfeiture must be tried in conjunction with the criminal case, and before the same jury (or before the same court if trial by jury has been waived). Health & Saf. Code § 11488.4(i)(3), (5).

The People's petition of forfeiture should have been filed in the criminal court in which Mr. Jackson was charged in the underlying criminal action, instead of in the civil court in which it was filed. The superior court's order striking the People's petition was therefore proper because the petition was filed in the wrong court.

This is an issue of serious concern to many members of the criminal bar who find themselves forced to fight a forfeiture proceeding on two fronts—criminal and civil courts—often, as in this case, in two physically distinct arenas. As happened in this case, a defendant may petition in the criminal division of the municipal court for release of forfeited funds, and the criminal court may properly order release of the seized funds, only to have that release order stayed—and in effect nullified—pending the disposition of a forfeiture petition filed by the People in civil court, possibly one year later under the new law. The legislature did not intend that a criminal defendant whose assets have been seized should have to wage two

separate wars to gain the release of funds. This Court should clarify this aspect of the Health and Safety Code forfeiture procedures to provide guidance for the criminal bar in future cases.

CONCLUSION

The superior court correctly concluded that the People's petition for forfeiture is time-barred. The Health and Safety Code's forfeiture provisions establish complete proceedings. The State must not be allowed to pursue a forfeiture unless the statute unambiguously gives the State the right to do so. Section 11488.2 without doubt requires the State to initiate forfeiture proceedings within 15 days of the property's seizure. Section 11488.2 must therefore be strictly construed against the State and in favor of claimants. Furthermore, the 15-day limitation period of § 11488.2 is the only limitation period that could conceivably apply. The one-year limitation period of Code of Civil Procedure § 340(2), suggested by Petitioner, is inapplicable because it is inconsistent with other provisions of the Health and Safety Code.

Even if Health and Safety Code § 11488.2 did not establish a statute of limitations, the State would still be precluded from pursuing forfeiture in this case because it failed to comply with the Health and Safety Code procedures governing forfeiture. Where a statute prescribes the procedures the state must follow to pursue forfeiture, the State must strictly comply with these procedures, or waive its right to pursue forfeiture. In this case the State failed to comply with § 11488.2 by retaining the Jacksons' property for more than 15 days without initiating forfeiture proceedings. The State thereby waived its right to pursue a forfeiture.

This case presents serious issues of law important to criminal

defendants. This honorable Court should grant this petition for review and set this cause for argument.

Dated:

Respectfully submitted,

Attorney for Respondents