

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

JOHN V. HYLAND,

Defendant-Appellant.

UNPUBLISHED

February 6, 1998

No. 194541

Otsego Circuit Court

LC No. 93-005517-CZ

Before: Hoekstra, P.J., and Wahls and Gribbs, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's order granting summary disposition to plaintiff. Plaintiff brought this action under the State Correctional Facility Reimbursement Act (SCFRA), MCL 800.401 *et seq.*; MSA 28.1701, *et seq.*, to assess ninety percent of defendant's assets as recovery for the costs of incarcerating defendant, who was a prisoner at Riverside Correctional Facility in Ionia. We affirm.

Defendant first argues that by denying his motion to adjourn, the court prevented him from conducting further discovery regarding the costs the state would incur in incarcerating him. Plaintiff's motion for summary disposition clearly addressed the issue of costs. Defendant neither challenged plaintiff's computation of costs nor attempted to conduct further discovery regarding costs, although he could have done so during the two months that elapsed between the date that plaintiff filed this motion and the date of the hearing. Thus, by denying plaintiff's motion to adjourn, the court did not prevent defendant from conducting discovery or from challenging or presenting evidence regarding plaintiff's calculation of costs. Moreover, although the court did not adjourn the proceedings, the court stayed the execution of the judgment pending the outcome of defendant's appeals as of right from his criminal conviction. Defendant indicated below that he brought the motion to postpone the state's assessment of his home until he had exhausted his appeals by right. By staying the enforcement of the judgment pending the outcome of defendant's appeals, the court gave defendant the relief he requested without staying the proceedings. Thus, because defendant was not prejudiced by the court's denial of his motion, reversal is not warranted. *Lansing v Hartsuff*, 213 Mich App 338, 350-351; 539 NW2d 781 (1995).

Defendant also incorrectly contends that SCFRA violates the constitution's prohibition against double jeopardy and its equal protection clause. *In rem* forfeiture is not considered punishment for double jeopardy purposes; rather, it is a separate civil sanction that is remedial in nature. *United States v. User*, 518 US ____; 116 S Ct 2135, 2142, 2145, 2149; 135 L Ed 2d 549 (1996). We also reject defendant's equal protection argument. The fact that the state cannot recover the costs of incarceration from indigent prisoners does not prevent it from enforcing the statute against any other prisoners.

Finally, defendant argues that this case must be remanded for an evidentiary hearing to establish fraud and misrepresentation on the part of the state. A case may be remanded for an evidentiary hearing if the defendant raises a disputed fact that would advance his position or if the defendant points to an "area in which further elucidation of the facts might advance his position." *People v. McMillan*, 213 Mich App 134, 142; 539 NW2d 553 (1995). Defendant had the opportunity to present evidence supporting this argument at the hearing on this motion but did not do so. Defendant has presented no evidence on appeal indicating that there is a disputed fact which, if elucidated, would advance his position. Thus, we decline to remand this case for an evidentiary hearing.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Myron H. Wahls

/s/ Roman S. Gibbs