

IN THE  
**ARIZONA COURT OF APPEALS**  
DIVISION TWO

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IN RE REAL PROPERTY KNOWN AS 4149 E. FLOWER ST, TUCSON, AZ LOCATED  
IN, TUCSON ARIZONA, PIMA COUNTY AND ADDITIONALLY KNOWN AS PIMA  
COUNTY ASSESSOR PARCEL NO: 110-07-3150 (DESCRIBED AS BONITA VISTA  
E72.14' LOT 25), INCLUDING ALL BUILDINGS, FIXTURES, STRUCTURES AND  
APPURTENANCES THERETO

No. 2 CA-CV 2020-0100  
Filed April 14, 2021

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THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND  
MAY NOT BE CITED EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
NOT FOR PUBLICATION  
*See Ariz. R. Sup. Ct. 111(c)(1); Ariz. R. Civ. App. P. 28(a)(1), (f).*

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Appeal from the Superior Court in Pima County  
No. C20195949  
The Honorable Brenden J. Griffin, Judge

**AFFIRMED**

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COUNSEL

Walter Johnson, Tucson  
*In Propria Persona*

Laura Conover, Pima County Attorney  
By Kevin S. Krejci, Deputy County Attorney, Tucson  
*Counsel for Appellee*

**MEMORANDUM DECISION**

Vice Chief Judge Staring authored the decision of the Court, in which Presiding Judge Espinosa and Judge Eckerstrom concurred.

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STARING, Vice Chief Judge:

¶1 Walter Johnson appeals from the trial court’s denial of his motion for relief from judgment forfeiting his interest in the real property known as 4149 E. Flower Street. He contends this case “should be remanded . . . [and] the [j]udgment of [f]orfeiture should be vacated.” For the following reasons, we affirm.

**Factual and Procedural Background**

¶2 In 2019, the state seized and initiated forfeiture proceedings against the property at 4149 E. Flower Street – Johnson’s home – alleging it housed an illegal marijuana grow operation. Johnson failed to file an answer pursuant to A.R.S. § 13-4311(G), and the trial court ordered the property forfeited. Citing Rule 60(b)(1), Ariz. R. Civ. P., Johnson filed a “motion to vacate,” requesting that the court set aside its judgment based on his “excusable neglect” in failing to file an answer in the forfeiture proceeding. The court denied the motion, concluding Johnson could not “satisfy the set-aside grounds” and noting he had “pled guilty to crimes that support the forfeiture of the property at issue.” This appeal followed. We have jurisdiction pursuant to A.R.S. §§ 12-120.21(A)(1) and 12-2101(A)(1).

**Discussion**

¶3 Johnson asserts that the trial court erred in denying his motion to vacate the forfeiture judgment despite his failure to file an answer and that the forfeiture of his home constituted an excessive fine in violation of the Eighth Amendment. We review a denial of a Rule 60 motion for an abuse of discretion. *See Ruffino v. Lokosky*, 245 Ariz. 165, ¶ 9 (App. 2018). Constitutional issues, however, are reviewed de novo. *Chaurasia v. Gen. Motors Corp.*, 212 Ariz. 18, ¶ 35 (App. 2006).

¶4 Rule 60(b)(1) provides that a trial court “may relieve a party or its legal representative from a final judgment, order, or proceeding” based on “mistake, inadvertence, surprise, or excusable neglect.” To

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warrant setting aside a judgment for excusable neglect, a party must demonstrate both “a failure to answer because of excusable neglect, and . . . that there was a meritorious defense.” *Gillette v. Lanier*, 2 Ariz. App. 66, 68 (1965).

¶5 Further, “[a] punitive civil forfeiture violates the Eighth Amendment if it is ‘grossly disproportional to the gravity of a defendant’s offense.’” *In re 3567 E. Alvord Road*, 249 Ariz. 568, ¶ 12 (App. 2020) (quoting *In re 319 E. Fairgrounds Dr.*, 205 Ariz. 403, ¶ 20 (App. 2003)). The determination of proportionality is based on “the nature and extent of the defendant’s crime, the surrounding circumstances and relationship to other illegal activities, the harm caused, and the maximum sentence and fine under the appropriate sentencing guidelines.” *Id.* ¶ 13 (quoting *319 E. Fairgrounds Dr.*, 205 Ariz. 403, ¶ 21). Specifically, “we ‘consider the amount of injury to the state, which is broadly defined as the expenditure of public monies, the amount of money or value of other property that would “foreseeably be exchanged” for prohibited drugs, and the acquisition or gain of proceeds from any racketeering offense included in [A.R.S.] § 13-2301(D)(4).’” *Id.* (quoting *319 E. Fairgrounds Dr.*, 205 Ariz. 403, ¶ 6). A strong presumption of the forfeiture’s constitutionality arises when the property’s value is within the statutory fine for the underlying offense. *Id.*

¶6 As noted, Johnson challenged the trial court’s order forfeiting the Flower Street property through Rule 60(b)(1). He claimed that although he had met a “retired lawyer” who “agreed to look over [this] case and provide what help he could,” the lawyer was “hospitalized for a month, during which time the forfeiture was handed down.” Johnson further argued that because the forfeiture was the equivalent of a default judgment, the court should have been inclined to rule in his favor. He also asserted “‘drug money’ had no part in the purchase of the property” and the forfeiture violated the Eighth Amendment. The court disagreed, finding Johnson could not demonstrate both excusable neglect and a meritorious forfeiture defense.

¶7 On appeal, relying on *Gonzalez v. Nguyen*, Johnson claims the judgment of forfeiture was entered in default and, thus, the trial court should have ruled in his favor if it had “doubt about whether to vacate [the] default judgment.” 243 Ariz. 531, ¶ 11 (2018) (quoting *Daou v. Harris*, 139 Ariz. 353, 359 (1984)). Johnson also argues, relying on *Timbs v. Indiana*, \_\_\_ U.S. \_\_\_, 139 S. Ct. 682 (2019), that because the state did not claim he “made so much as \$1” from the illegal activity in his home, the forfeiture

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violated the Eighth Amendment.<sup>1</sup> In response, the state primarily contends Johnson has failed to provide adequate legal and factual bases for both the proposition that his failure to answer should have been excused and that he would have had a meritorious forfeiture defense. And, relying on the property's purported value and the potential "illicit profit" that could have been garnered therefrom, the state also asserts the forfeiture did not violate the Eighth Amendment.

¶8 Foremost, we conclude Johnson has waived any argument challenging the denial of his motion to vacate. Rule 13(a)(7)(A), Ariz. R. Civ. App. P., requires an opening brief to include "supporting reasons for each contention." Johnson contends the judgment should have been set aside if the trial court had any doubt as to whether it should have been vacated. He does not, however, explain what might have led to the court's "doubt," let alone address its conclusion that he had not shown excusable neglect and a meritorious defense. It is not incumbent on this court to develop arguments for a party. *See Ace Auto. Prods., Inc. v. Van Duyne*, 156 Ariz. 140, 143 (App. 1987). Therefore, although Johnson is self-represented, we do not address this argument. *See Higgins v. Higgins*, 194 Ariz. 266, ¶ 12 (App. 1999) ("One who represents herself in civil litigation is given the same consideration on appeal as one who has been represented by counsel" and "is held to the same familiarity with court procedures and the same notice of statutes, rules, and legal principles as is expected of a lawyer."); *Ritchie v. Krasner*, 221 Ariz. 288, ¶ 62 (App. 2009) (failure to comply with Rule 13(a)(7) may constitute abandonment and waiver of claim).

¶9 Johnson's arguments regarding the Eighth Amendment are also unpersuasive. Assuming he "was . . . entitled to a determination of whether the forfeiture of his house was unconstitutionally excessive," 319 E. Fairgrounds Dr., 205 Ariz. 403, ¶ 19, Johnson nonetheless has not rebutted the strong presumption of the forfeiture's constitutionality, *see* 3567 E. Alvord Road, 249 Ariz. 568, ¶ 13. Below, Johnson filed a "claim," asserting he had purchased his home for \$136,000 in November 2018, and he also stated in an affidavit attached to his motion to vacate that he had purchased

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<sup>1</sup>In the caption of his opening brief, Johnson states "Oral Argument Requested." This is an improper request for oral argument in this court. *See* Ariz. R. Civ. App. P. 18(a) ("The Court of Appeals may schedule a case for oral argument if a party files a *separate* request for oral argument . . . ." (emphasis added)). In any event, oral argument would not be helpful in this case; thus, we deny Johnson's request. *See* Ariz. R. Civ. App. P. 18(b)(3).

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it “in approximately December of 2018, for somewhat over \$130,000.”<sup>2</sup> As the state points out, Johnson pled guilty to attempted production of at least four pounds of marijuana,<sup>3</sup> which is a class four felony carrying a maximum fine of \$150,000. A.R.S. §§ 13-3405(A)(3), (B)(9), 13-1001(C)(3), 13-801(A).

¶10 Johnson only makes the bare allegation that he has not “made so much as \$1 from his . . . cultivation of marijuana in his home” in support of his argument that the forfeiture was excessive. But this addresses only one factor listed in *3567 E. Alvord Road*, 249 Ariz. 568, ¶ 13, and nonetheless does not negate the state’s allegations that “[t]he [quarterly] production potential for the marijuana plants being grown . . . in [Johnson’s] residence was approximately 48-72 pounds, which is consistent with produc[tion] . . . for sale” with a potential annual profit of \$107,520 to \$161,280. Further, Johnson’s reliance on *Timbs* – the United States Supreme Court case extending the Eighth Amendment’s excessive fines clause to action by the states through the Fourteenth Amendment – is immaterial. 139 S. Ct. at 689. Arizona courts analyzed forfeitures by the state under the Eighth Amendment well before that decision. *See, e.g., 319 E. Fairgrounds Dr.*, 205 Ariz. 403, ¶¶ 1, 12, 19. Given this, we find no error.

**Disposition**

¶11 For the foregoing reasons, we affirm.

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<sup>2</sup>In reply, Johnson provides what appears to be an estimate from an online real estate marketplace valuing the property at approximately \$160,000. He claims the figures cited above reflect his home’s value “prior to the current booming real estate market.” Nonetheless, we only consider matters included in the record on appeal. *See In re 6757 S. Burcham Ave.*, 204 Ariz. 401, ¶ 11 (App. 2003).

<sup>3</sup>The state also asserts Johnson pled guilty to possessing a deadly weapon during a felony drug offense.