

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR SUSSEX COUNTY

DANA L. COLLICK, : C.A. No. 03M-10-008  
Petitioner, :  
v. :  
STATE OF DELAWARE, :  
Respondent. :

MEMORANDUM OPINION

Petition Dismissed for Failure to Comply with Court Rules

DATE SUBMITTED: March 12, 2004

DATE DECIDED: April 20, 2004

Darryl K. Fountain, Esquire, First Floor, 715 King Street, Wilmington, DE 19801, attorney for  
Petitioner Dana Collick

James A. Rambo, Esquire, Department of Justice, 820 N. French Street, Wilmington, DE 19801,  
attorney for respondent State of Delaware

James E. Liguori, Esquire, 46 The Green, Dover, DE 19901, attorney for James Boyer

Graves, J.

Pending before the Court is a motion for summary judgment which respondent State of Delaware (“the State”) has filed in this action whereby petitioner Dana Collick (“petitioner”) seeks the return of, or the fair value of, a 1999 Yukon Denali (“the vehicle”) which was seized when she and three others were arrested on drug-related charges. I dismiss the petition, not because of the grounds advanced by the State, but because petitioner did not comply with the rules of this Court in filing the petition.

#### FACTS<sup>1</sup>

On June 3, 2002, the Delaware State Police, upon executing a search warrant, seized the vehicle and other items.

On or about June 5, 2002, petitioner was arrested on the following charges: possession of a firearm during the commission of a felony, possession with intent to deliver a non-narcotic Schedule I controlled substance, maintaining a dwelling for keeping controlled substances, conspiracy in the second degree, possession of drug paraphernalia, and possession of a non-narcotic Schedule I controlled substance. Petitioner ultimately was indicted on numerous charges along with James Boyer, James Boyer, Jr., and Stella Boyer. The charges on which she was indicted were possession of a firearm during the commission of a felony, possession with intent to deliver marijuana, maintaining a dwelling for keeping a controlled substances, conspiracy in the second degree, possession of drug paraphernalia, possession of marijuana, racketeering, and failing to file taxes.

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<sup>1</sup>I take judicial notice of, and employ, information obtained from the files in Sussex County Superior Court in the following matters: State v. Collick, Del. Super., Def. ID# 0206001284 and In Re: Approximately \$74,252 U.S. Currency, et al., Del. Super., C.A. No. 02M-09-005. Delaware Rules of Evidence, Rule 202(d)(1)(B).

Petitioner's physical residence was 48 West Springside Drive, Milton, Delaware. At the time of her arrest, she notified the Justice of the Peace Court that her mailing address was P.O. Box 274, Nassau, DE 19969. That is the address where the Court sent notice throughout the pendency of the criminal proceedings. The affidavit of probable cause attached to the arrest warrant sets forth P.O. Box 274, Nassau, DE 19969, as petitioner's home address. However, there is no information in the file or provided by the parties on this summary judgment motion indicating what post office address she might have given the police or what post office address was in the police report.

On December 4, 2002, petitioner pled guilty to the charges of maintaining a dwelling for keeping and delivering a controlled substance, possession with intent to distribute marijuana, and conspiracy in the second degree. She was sentenced on those charges on that date.

The information contained in this paragraph is not properly authenticated but its consideration is not detrimental to petitioner on this summary judgment motion. By letter dated July 25, 2002, the State sent petitioner a notice of forfeiture of the vehicle by certified letter. The letter was addressed to her at 48 W. Springside Drive, Milton, DE 19968. It was returned with the notation: "No such number". The State also published a notice of forfeiture in the Delaware State News on July 26, 2002.

On September 9, 2002, James Boyer filed with this Court a petition for return of property seeking the return of the vehicle as well as other items. In Re: Approximately \$74,252 U.S. Currency, et al., Del. Super., C.A. No. 02M-09-005. He maintained that the vehicle was purchased with proceeds from his and his wife's business and the vehicle belonged to him. By a stipulated order and dismissal dated June 17, 2003, James Boyer, through his attorney James E.

Liguori, Esquire, and the State, through James A. Rambo, Esquire, agreed in pertinent part as follows. James Boyer withdrew his petition for the return of the property. The State returned \$30,000.00 of seized United States currency to James Boyer. The vehicle “shall be forfeited to the State of Delaware”. On June 17, 2003, the Court entered an order mandating the terms of the settlement. In re: Approximately \$74,252 U.S. Currency, et al., Del. Super., C.A. No. 02M-09-005, Stokes, J. (June 17, 2003).

Another unverified fact is that the check for \$30,000.00 was to be made out to Dana Collick in care of Mr. Liguori. The State, without any verified support, asserts petitioner participated in this settlement regarding the forfeiture of the vehicle.

On October 9, 2003, petitioner filed her petition in this matter. Therein, she alleges as follows:

1. Petitioner ... and James Boyer, are the co-owners of the herein specified seized property.
2. Petitioner’s address is P.O. Box 274, Nassau, Delaware, 19969.
3. On 6/3/02, a 1999 Yukon Denali belonging to the Petitioner was seized incident to Mr. Boyer’s arrest for illegal drug activities.<sup>2</sup>
4. Title between the joint owners was “and/or”. Upon information and belief, James Boyer was provided written notice of said forfeiture claim by the State, but the Petitioner was not given notification of the seizure pursuant to Superior Court Civil Rule 71.3, despite complaints and inquiries being issued by her then legal representation.
5. Petitioner never received a forfeiture claim form.
6. Petitioner is of the understanding that the State paid the existing lien and is actively making use of said vehicle, with the Petitioner **who was not a suspect in**

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<sup>2</sup>Petitioner omits the fact that it was seized incident to her arrest, also.

**any illegality**, remaining uncompensated. [Emphasis added.]<sup>3</sup>

7. Under the innocent co-owner defense of 16 Del. C. 4784, the trial court can either allow the State to retain the vehicle but order the State to pay the co-owner fair consideration, or order the State to return the vehicle and require the co-owner to pay the fair value of the forfeited interest.

She requests the return of the vehicle or the fair value of her interest in the vehicle.

On February 3, 2004, the State filed a motion to dismiss the petition on the ground it was not filed timely. The State alternatively argues that petitioner has waived any claims to the vehicle by accepting the \$30,000.00 check which resolved the action James Boyer filed.

Petitioner argues that the State's position is not supported by affidavits and consequently, the State is not entitled to summary judgment.

#### DISCUSSION

I dismiss the petition for reasons other than those the State advanced. This petition does not comply with Superior Court Civil Rule 71.3 because it is not signed under oath.<sup>4</sup> A review of the petition and petitioner's criminal file shows why petitioner did not submit the petition under

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<sup>3</sup>This allegation completely misstates the facts. As a review of the file of State v. Collick, Del. Super., Def. ID# 0206001284, shows, not only was petitioner a suspect in illegalities, specifically, illegal drug-related activities, but she pled guilty to committing drug-related crimes.

<sup>4</sup>In Super. Ct. Civ. R. 71.3, it is provided in pertinent part:

(c) *Petition for the return of property.* An owner or interest holder may seek the return of property seized by the State pursuant to 16 Del. C. § 4784 by filing, costs prepaid, a civil petition, with the Superior Court sitting in the County in which the property was seized no later than 45 days after the date of the notice required by 16 Del. C., § 4784(j) measured from the date of mailing or the date of publication whichever shall be later. Such petition which must be signed by the owner or interest holder, under oath, and which must be served on the Attorney General, shall set forth the following:

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oath. She cannot swear that she was not involved in illegal drug activities at the time of the seizure of the vehicle because she has admitted otherwise by way of her guilty plea. She also has admitted to conspiring with James Boyer, the co-owner of the vehicle, in committing the crime of maintaining a dwelling, an admission which is a great hurdle to an “innocent co-owner” defense. Because the facts prohibit her from swearing that she was not involved in drug-related crimes with James Boyer, no reason exists to provide petitioner the opportunity to submit, under oath, an amended petition.

For the foregoing reasons, I dismiss the petition with prejudice.

IT IS SO ORDERED.