

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

MAY 18 2012

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

SHIRLEY COLLETTI,

Defendant - Appellant.

No. 09-10279

D.C. No. 3:95-cr-00049-HDM-
NA-5

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada
Howard D. McKibben, Senior District Judge, Presiding

Argued and Submitted April 19, 2012
San Francisco, California

Before: SCHROEDER, THOMAS, and GRABER, Circuit Judges.

Shirley Colletti was convicted in 1999 for wire fraud and RICO offenses in connection with a scheme to hide taxable income from a Nevada brothel. In 2001, a \$220,000 forfeiture order was entered against her for those crimes. In 2008, the district court allowed the government to substitute Colletti's newly acquired

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

money in satisfaction of the forfeiture. Colletti appeals that substitution, and we affirm.

The government diligently asserted its rights, filing its motion to substitute within two years after Colletti's acquisition of the money. The government was not guilty of laches. *See Huseman v. Icicle Seafoods, Inc.*, 471 F.3d 1116, 1126 (9th Cir. 2006).

Colletti also argues that the substitution of her newly acquired money unconstitutionally deprives her of her livelihood in violation of the Eighth Amendment. The authority on which she relies, *United States v. Levesque*, 546 F.3d 78 (1st Cir. 2008), involved the amount of the original forfeiture order. Colletti offers no authority to support her position that a change of circumstances can affect the constitutional validity of a forfeiture that was not excessive at the time it was ordered. Assuming it could, however, the district court provided adequate protection by ensuring that the substitution order did not touch her social security or pension.

The order of the district court is **AFFIRMED**.