

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

In the Matter of Forfeiture:

NIKOLAS KYLE JESTER WILLIAMS,

Respondent,

v.

SKAMANIA COUNTY SHERIFF'S OFFICE,

Appellant.

No. 41077-0-II

UNPUBLISHED OPINION

Johanson, J. — The Skamania County Sheriff's Office (Sheriff) appeals from a superior court order vacating an administrative order forfeiting personal property seized from Nikolas Williams and awarding Williams attorney fees. Williams cross appeals from the amount of attorney fees awarded. We affirm the vacation of the forfeiture order but remand for reconsideration of the amount of attorney fees.¹

On February 25, 2009, the Sheriff searched Williams's residence and seized \$370 in cash. It served Williams with a notice of seizure and intended forfeiture of that cash. Williams requested a hearing on the intended forfeiture, which was held on June 17, 2009. After the

¹ A commissioner of this court initially considered this matter as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

hearing, the hearings examiner found the cash was subject to forfeiture and forfeited it to the Sheriff.

On July 15, 2009, Williams petitioned the superior court for review of the forfeiture order. In his brief, filed on June 14, 2010,² he argued that: (1) as a juvenile, the forfeiture act did not apply to him; (2) the search warrant lacked probable cause; and (3) there was insufficient evidence that the cash was tied to illegal drug sales. He also requested his reasonable attorney fees. At the beginning of the hearing in superior court on July 29, 2010, the Sheriff informed the court that the hearings officer had not administered an oath to any of the witnesses at the forfeiture hearing. It asked the court to remand the forfeiture order back to the hearings officer for a new forfeiture hearing. Instead, the court ordered that “the \$370 needs to be returned” and that “\$500 should be sufficient for attorney fees.” CD Proceedings (July 29, 2010) at 4.

On July 30, 2010, Williams filed a motion for clarification of the amount of attorney fees, contending that under RCW 69.50.505(6), where a claimant substantially prevails in a forfeiture proceeding, he is “entitled to reasonable attorneys’ fees reasonably incurred.” Clerk’s Papers at 32. He contended his reasonable attorney fees were \$3,450 and asked the court to reconsider the amount of attorney fees awarded. After a hearing that day, the court awarded Williams \$750 in attorney fees, based on 10 hours at \$75 per hour. The court then entered an order vacating the forfeiture order, ordering the return of the cash to Williams, and awarding Williams \$750 in attorney fees.

First, the Sheriff argues that in ordering the cash be returned to Williams, rather than

² The filing of the brief was delayed while a transcription of the forfeiture hearing, for which Williams had to pay, was prepared.

remanding for a new forfeiture hearing, the superior court abused its discretion by admitting into evidence the unsworn testimony of witnesses from the forfeiture hearing. *City of Auburn v. Hedlund*, 165 Wn.2d 645, 654, 201 P.3d 315 (2009). The Sheriff contends that remand is “[t]he only remedy available to the parties.” Br. of Appellant at 5.

But it does not appear that the superior court admitted anything into evidence during its review of the forfeiture hearing. Rather, it appears that the court was fashioning a remedy following the Sheriff’s admitted error in conducting the forfeiture hearing without swearing in the witnesses. And nothing in the Administrative Procedures Act, chapter 34.05 RCW, requires the court to remand for a new forfeiture hearing. RCW 34.05.574(1)(b) allows the superior court to set aside an agency action such as the forfeiture order. To require Williams to go through another forfeiture hearing, and incur additional attorney fees, because of the Sheriff’s error, would be unfair. It would also result in “unnecessary delay,” which further supports the court’s refusal to remand for another forfeiture hearing. RCW 34.05.574(1). We affirm the vacation of the forfeiture order as being within the superior court’s discretion.

Second, Williams argues that the superior court failed to follow RCW 69.50.505(6) in determining the amount of attorney fees. There is nothing in the record supporting the superior court’s decision that \$75 per hour was a reasonable attorney fee rate or that 10 hours was a reasonable amount of attorney time. We remand the attorney fee award to the superior court for further consideration, specifically to address Williams’s contention that \$3,450 was the attorney fee he reasonably incurred.

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We affirm in part and remand in part, as directed above. Williams's requests for attorney fees on appeal under RAP 18.1 or 18.9 are denied.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Johanson, J.

We concur:

Armstrong, P.J.

Van Deren, J.