

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28865-0-III

Respondent,

)

)

) **Division Three**

v.

)

)

CHRISTOPHER PAUL SMITH,

) **UNPUBLISHED OPINION**

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Appellant.

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)

Kulik, C.J. — Christopher Paul Smith appeals the denial of his request for return of cash seized following his arrest for possession of a controlled substance, cocaine, with intent to deliver. The charge was dismissed. Mr. Smith contends the State failed to provide sufficient notice that the cash would be forfeited. We conclude the notice was sufficient and affirm.

FACTS

On June 6, 2007, police arrested Mr. Smith and his friend, Michael Plybon for possession of cocaine with intent to deliver. Mr. Smith's charge was subsequently dismissed because he was serving a federal sentence on another case.

At the time of the arrest, officers found \$4,944 in cash; \$1,004 belonged to Mr. Plybon and \$3,940 belonged to Mr. Smith. On June 7, “Detective Justice” submitted a notice of seizure and forfeiture to both men at the jail. Clerk’s Papers (CP) at 4, 21. The notice states that it was served, “IN PERSON.” CP at 21. It also states that Mr. Smith had 45 days to respond and that if he failed to respond, the seized cash would be forfeited.

Over two years after his arrest, Mr. Smith requested return of the cash. The trial court denied his request, finding “Mr. Smith was given notice[;] he did not respond within the statutory time period.” Report of Proceedings (RP) at 9. Mr. Smith appeals.

ANALYSIS

Mr. Smith contends he did not receive proper notice of the forfeiture proceedings; therefore, the money seized should be returned to him.

While the denial of a motion for return of seized property is discretionary, this court reviews questions of law, including the adequacy of notice, *de novo*. *Rosander v. Nightrunners Transp., Ltd.*, 147 Wn. App. 392, 399, 196 P.3d 711 (2008).

Under RCW 69.50.505(1)(g), money is subject to seizure if it is exchanged, or intended to be exchanged, for a controlled substance. Following seizure, “[t]he law enforcement agency under whose authority the seizure was made shall cause notice to be

served within fifteen days following the seizure on the owner of the property seized.”

RCW 69.50.505(3). “Service of notice of seizure of *real property* shall be made according to the rules of civil procedure.” RCW 69.50.505(3) (emphasis added). The statute goes on to provide, “The notice of seizure in other cases may be served by any method authorized by law or court rule.” RCW 69.50.505(3). If within 45 days of service of the notice no person notifies the seizing law enforcement agency in writing of the person’s claim of ownership, the seized item is forfeited. RCW 69.50.505(4).

“RCW 69.50.505 provides the exclusive mechanism for forfeiting property used in the commission of drug crimes.” *Bruett v. Real Property Known as 18328 11th Ave. N.E.*, 93 Wn. App. 290, 297, 968 P.2d 913 (1998).

Here, officers seized the drug-related money on June 6, 2007. The next day, Detective Justice submitted a notice of seizure and forfeiture to both men at the jail. The notice states that it was served, “IN PERSON.” CP at 21. It also advised Mr. Smith that he had 45 days to respond and that if he failed to respond, the seized cash would be forfeited. RCW 69.50.505(3) provides that “any method” of service authorized by law is sufficient. Only service of notice of the seizure of real property requires compliance with the rules of civil procedure. RCW 69.50.505(3). In-person service is clearly a method of service authorized by law. *See* RCW 4.28.080(15) (delivering a copy of a summons in

person to the defendant constitutes adequate service); *Diehl v. W. Wash. Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 219, 103 P.3d 193 (2004) (“[Administrative Procedure Act, chapter 34.05 RCW] service requirements are met when parties are served in person.”).

Accordingly, Mr. Smith was provided adequate notice of the seizure of the money. The State needed only to comply with the service requirements of RCW 69.50.505, not the more rigorous requirements of the civil rules. Because Mr. Smith did not respond within the required 45-day period, the money was properly forfeited. The trial court did not err by denying Mr. Smith’s motion for return of seized property.

We affirm.

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

Kulik, C.J.

WE CONCUR:

Sweeney, J.

Brown, J.