

9/25/2024

24-5775

No. _____

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES

Mr. Allan Leslie Sinanan Jr. (Pro-Se) — PETITIONER
(Your Name)

vs.

Commonwealth of Pennsylvania — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

THE COMMONWEALTH COURT OF PENNSYLVANIA

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

MR. ALLAN LESLIE SINANAN JR. #QA - 9625

(Your Name)
S.C.I. @ ALBION
10745 ROUTE 18

(Address)

ALBION, PA 16475-0001

(City, State, Zip Code)

N/A

(Phone Number)

QUESTION(S) PRESENTED

Pages:

[I]. WHETHER THE COMMONWEALTH COURT ABUSED ITS DISCRETION OR COMMITTED AN ERROR OF LAW, BECAUSE APPLYING Pa.R.A.P. 302(a) TO CONCLUDE WAIVER OF APPELLANT'S "ONLY CLAIM" IS IN CONFLICT WITH Pa.R.A.P. 1925, WHERE THE TRIAL COURT DID NOT ORDER A 1925(b) STATEMENT AND THE APPELLANT DID NOT FILE ONE?

SUGGESTED ANSWER IS: YES.....5

[II]. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION OR COMMITTED AN ERROR OF LAW, BECAUSE THE COURT FAILED TO CONSIDER THAT IN REM FORFEITURE WOULD VIOLATE THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT, IN CONFLICT WITH SUPREME COURT HOLDING IN Commonwealth v. 1997 Chevrolet, 639 Pa. 239, 160 A.3d 153 (Pa. 2017)?

SUGGESTED ANSWER IS: YES.....6

LIST OF PARTIES

All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the _____ court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was 9/10/2024.
A copy of that decision appears at Appendix B.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. ___A_____.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution provides:

The Eighth Amendment states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishment inflicted."

The Fourteenth Amendment states: "Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

The Pennsylvania Constitution provides:

Article 1, Section 13 states: "Excessive bail shall not be required, nor excessive fines imposed, nor cruel punishments inflicted."

STATEMENT OF THE CASE

In particular, the Trial Court did not order the filing of a Rule 1925(b) statement, therefore, the appellant was under no obligation to file one. So, the requirements of Rule 302(a) the Commonwealth Court applied to find appellant's claim waived, was not adequate under these circumstances to support the judgment. See, Kindler V. Horn, 642 F.3d 398, 401 (3d Cir. 2011).

In addition, the Trial Court failed to examine the constitutional limitations on civil in rem forfeiture under the Excessive Fines Clause of the Eighth Amendment. Where the Supreme Court of Pennsylvania established the proper constitutional construct in determining whether an in rem forfeiture violated the Excessive Fines Clause, which was decided 10 months prior to the appellant's forfeiture hearing on March 13, 2018. See, Com. V. 1997 Chevrolet, 160 A.3d 153 (Pa. 2017).

REASONS FOR GRANTING THE PETITION

[I]. WHETHER THE COMMONWEALTH COURT ABUSED ITS DISCRETION OR COMMITTED AN ERROR OF LAW, BECAUSE APPLYING Pa.R.A.P. 302(a) TO CONCLUDE WAIVER OF APPELLANT'S "ONLY CLAIM" IS IN CONFLICT WITH Pa.R.A.P. 1925, WHERE THE TRIAL COURT DID NOT ORDER A 1925(b) STATEMENT AND THE APPELLANT DID NOT FILE ONE?

It is true, "Issues not raised in the trial court are waived and cannot be raised for the first time on appeal." See, Pa.R.A.P. 302(a).

However, it is well settled that where a trial court does not order a 1925(b) statement and an appellant does not file one, the appellant's claims will not be waived pursuant to Rule 1925(b). See, Com. V. Hess, 810 A.2d 1249, 1252 (Pa. 2002).

In the instant case, the trial court did not order the filing of a Rule 1925(b) statement, therefore, the appellant was under no obligation to file one. Also, the Commonwealth Court does not brief or argue the issue of a 1925 waiver, when waiver under Rule 1925 is automatic. See, Com. V. Butler, 812 A.2d 631 (Pa. 2002).

In Commonwealth V. Lord, 719 A.2d 306, 309 (Pa. 1998), this Court concluded that "in order to preserve their claims for appellate review, appellants must comply whenever the trial court orders them to file a Statement of Matters Complained of on Appeal pursuant to Rule 1925" and that "any issues not raised in a 1925(b) statement will be deemed waived." Explaining the reasoning behind this strict waiver rule, we emphasized in Lord that "the absence of a trial court opinion poses a substantial impediment to meaningful and effective appellate review." Id. 719 A.2d at 308. We noted that Rule 1925 is intended to aid trial judges in focusing on the issues that a party plans to raise on appeal, and therefore, a 1925(b) statement is "a crucial component of the appellate process." Id.

Equally important, no post-hearing brief was ordered or filed in this case, to reflect that the appellant failed to raise the issue, as concluded in the Commonwealth Court's opinion. See, (Appendix A, Opinion 03/07/2024, at page 8). Furthermore, the appellant only raised one issue for appellate review on appeal, which was: "Is the determination by the lower court to grant a civil in rem forfeiture pursuant to 42 Pa. Cons. Stat. § 6801, in conflict with the Excessive Fines Clause and gross disproportionality test under the Eighth Amendment and Article 1, Section 13 of the Pennsylvania Constitution; where the forfeited property is not significantly related to the criminal activity, is constitutionally excessive, and culpability is not established?"

This discrepancy calls into question whether the Rule the Commonwealth Court applied to find appellant's claim waived—that the requirements of Rule 302(a) apply to an appellant under no obligation to file a 1925(b) statement was "adequate" to support the judgment. See, Kindler V. Horn, 642 F.3d 398, 401 (3d Cir. 2011).

[II]. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION OR COMMITTED AN ERROR OF LAW, BECAUSE THE COURT FAILED TO CONSIDER THAT IN REM FORFEITURE WOULD VIOLATE THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT, IN CONFLICT WITH SUPREME COURT HOLDING IN Commonwealth V. 1997 Chevrolet, 639 Pa. 239, 160 A.3d 153 (Pa. 2017)?

The Eighth Amendment to the United States Constitution guarantees citizens protections against the government by limiting its power to punish. Stating, excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted. U.S. Const. amend. VIII. The Eighth Amendment is made applicable to the states through the Fourteenth Amendment. Also, the Pa. Const. art. 1, § 13 is coextensive with the Eighth

Amendment. Also, Fourth and Fifth Amendment protections are applicable to civil forfeiture proceedings. See, Com. V. 1997 Chevrolet, 160 A.3d 153 (Pa. 2017).

In, Commonwealth V. 1997 Chevrolet, the Supreme Court of Pennsylvania examined the constitutional limitations on civil *in rem* forfeiture under the Excessive Fines Clause of the Eighth Amendment. Holding, the proper constitution construct in determining whether a civil *in rem* forfeiture violated the Excessive Fines Clause required an initial determination regarding the relationship between the forfeited property and the underlying offense - the instrumentality prong. Stating, if the property sought to be forfeited was an instrumentality of the underlying offense, a court was then to examine proportionality. And, if the amount of the civil *in rem* forfeiture was grossly disproportional to the gravity of the offense, it was unconstitutional. *Id.*

In particular, the Supreme Court of Pennsylvania set forth that courts must engage in a threshold instrumentality analysis. Stating, to be an instrumentality, the property itself is required to be "significantly utilized in the commission" of the offense. Acknowledging, there may be property that is connected to a crime, but is not significantly used in the crime. *Id.*

Considerations regarding this "significant utilization" assessment include: (1) whether the property was integral to the commission of the offense - i.e., uniquely important to the success of the illegal activity; (2) whether the use of the property was deliberate and planned or was merely incidental and fortuitous to the illegal enterprize; (3) whether the illegal use of the property was an isolated event, or repeated; (4) whether the purpose of acquiring, maintaining or using the property was to carry out the offense; (5) whether the illegal use of the property was extensive spatially

and/or temporally; and (6) whether the property is divisible with respect to the subject of forfeiture, allowing forfeiture of only that discrete property which has a significant relationship to the underlying offense. *Id.* at 191.

It follows, if the property is an instrumentality, the inquiry continues to the proportionality prong and an assessment of whether the value of the property sought to be forfeited is grossly disproportional. To be considered in assessing the value of the property are: (1) the fair market value of the property; (2) the subjective value of the property taking into account whether the property is a family residence or if the property is essential to the owner's livelihood; (3) the harm forfeiture would bring to the owner or innocent third parties; and (4) whether the forfeiture would deprive the property owner of his or her livelihood. *Id.* at 191.

Lastly, the factors to be considered in gauging the gravity of the offense include: (1) the nature of the underlying offense; (2) the relation of the violation of the offense to any other illegal activity and whether the offender fit into the class of persons for whom the offense was designed should be considered; (3) the maximum authorized penalty as compared to the actual penalty imposed upon the criminal offender; (4) the regularity of the criminal conduct - whether the illegal acts were isolated or frequent, constituting a pattern of misbehavior; (5) the actual harm resulting from the crime charged, beyond a generalized harm to society; and (6) the culpability of the property owner. *Id.* at 192.

In the instant case, we consider *inter alia*, the constitutional limitations on civil *in rem* forfeiture in Pennsylvania under the Excessive Fines Clause of the Eighth Amendment and Article 1, Section 13, where the government seized through forfeiture: (1) Two Hundred and Four Dollars (\$204.00) U.S. Currency; (2) 1971 (Blue) Ford Thunderbird (custom), VIN#

1Y84N128980; and (3) 2004 (Black) Ford Explorer (custom), VIN# 1FMDU74W44UB96807. This seizure is based upon the alleged illegal conduct of the property owner. For the reasons that follow, the affirmation of the Commonwealth Court, to the above property should be vacated and the property returned to the owner. Here is why:

A forfeiture hearing was held on March 13, 2018. At this hearing Detective Brent Lear was the only officer present to testify to the evidence for forfeiture. Det. Lear testified that three (3) controlled buys took place in the month of August 2016, utilizing a confidential source who is labeled as a CS. Det. Lear testified that no officer witnessed a transaction nor recovered any buy money or stopped the appellant or obtained any criminal activity on video or phone and never strip searched the CS before or after the alleged buys. See, (Appendix C, Forfeiture Hearing Transcript (FH), 3/13/18 at pages 26-59).

Det. Lear testified the first alleged buy between appellant and the CS took place inside of a K-Mart, specifically, in the middle of the store. Which he testified was observed by him. However, when asked if he seen a transaction he testified he only observed a meet not a transaction. (FH, 3/13/18 at page 8: 12-22). Also, Det. Lear testified that appellant purchased items at the K-Mart before leaving the store (shopping). (FH, at page 10: 10-13).

Det. Lear testified the second alleged buy between appellant and the CS was at a shopping center across the way from appellant's residence. Det. Lear testified appellant walked to the meet and got into the CS's vehicle, who then drove the appellant to a bank before dropping the appellant off. (FH, at pages 11-12).

Det. Lear testified the last alleged buy between appellant and the CS took place inside the K-Mart. (FH, at page 15: 12-17).

Det. Lear testified that there was three (3) alleged controlled purchases in total, for a total of six grams of cocaine, totaling \$600.00 in prerecorded buy money. (FH, at page 16: 18-25).

Det. Lear testified that, based on these controlled purchases from the month of August 2016, a search warrant was sought more than two months later on November 4, 2016, which is in conflict with Com. V. Easer, 312 A.2d 398 (Pa. 1973) ("The presence of evidence of criminal activity at some prior time would not support a finding of probable cause as of the date the warrant was issued unless it also had shown that the criminal activity continued up to or about that time."). This search warrant was for appellant's residence and off-site garage units. (FH, at page 17: 1-18).

Noteworthy, at this forfeiture hearing the Court did not allow the Commonwealth the admission of a department of labor and industry query, because the Court stated it was aware from the criminal trial that appellant worked dealing in cars and the restoration of cars for income. (FH, at page 24: 3-21).

In an attempt to take the Thunderbird from the residence. Det. Lear testified that a black jacket was placed in the trunk of the Thunderbird by appellant, who simultaneously, then took it out and threw it towards the residence. (FH, at page 18: 1-12). However, on cross-examination Det. Lear testified that he did not actually see this, which in turn made Det. Lear's testimony hearsay. (FH, at pages 27-28). Also, there is no allegation of this happening in any of the affidavits filed post-arrest on November 4, 2016, this allegation was raised 57 days later on December 27, 2016, in an affidavit filed outside the four corners to establish probable cause.

9/25/2024

In following the constitutional construct held in 1997 Chevrolet, by the Supreme Court of Pennsylvania pursuant to the Excessive Fines Clause and gross disproportionality test under the Eighth Amendment, the Commonwealth failed to establish that this property was legally forfeited.

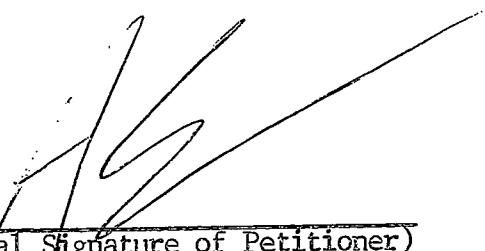
Moreover, the Commonwealth failed to consider how the \$204.00; the Thunderbird; and the Explorer was significantly utilized in the commission of any offense and whether the value is grossly disproportional.

CONCLUSION

For the reasons set forth in this petition, a Writ of Certiorari should be GRANTED.

Respectfully submitted,

Mr. Allan Leslie Sinanan Jr. (Petitioner)



(Original Signature of Petitioner)

Date: September 25, 2024