

ORIGINAL

No.

24-7146

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SUPREME COURT OF THE UNITED STATES

ANIDA GILOWSKI-Petitioner

Vs.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI
FROM THE FIFTH CIRCUIT COURT OF APPEALS

Anida Gilowski
79 Wildwood Drive
Barrington Illinois 60010

QUESTION PRESENTED

I . WHETHER THE PETITIONER'S FIFTH AMENDMENT
RIGHT TO DUE PROCESS AND HER SIXTH AMENDMENT
RIGHT TO A FAIR TRIAL OR PROCEEDINGS WERE
VIOLATED WHEN THE LOWER COURTS GRANTED
FORFEITURE OF HER REAL PROPERTIES THAT SHE HAS
PROVED WAS PURCHASED THE HER LITIGETMENT
INCOME AND WAS NOT PART OF HER HUSBANDS
RETAIL FRAUD CONVICTION

(i)

LIST OF PARTIES

All parties do not appear in the caption of this case on the cover page. a list of all parties to the proceedings in this court whose judgment is a 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

From the unpublished opinion of the United States court of Appeals for the fifth circuit decided on September 23rd 2024.
see appendix attached to this brief

JURISDICTION

The date on which the United States Court of Appeals for the Fifth Circuit decided the instant case was on September 23rd 2024 case number 23-10873. The District Court decided this case on April 12th 2024 case number 3:19-cr-451-M-20.

The jurisdiction of this court is invoked under 28 USC §1254(1)

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

Mrs Gilowski had her due process rights violated by the government when the US attorney requested her to sign an agreement to Forfeit her real property that she had a vested interest in. The reason for the forfeiture was based on her husband's conviction for retail fraud out of the 5th circuit out of the 5th and 7th circuits

More importantly here Mrs Gilowski was coerced by the US Attorney and was not allowed to have counsel review the documents before she was forced to sign them at her husband's sentencing. This clearly violated her right to due process and the right to a fair proceedings protected by the United States Constitution under the 5th and 6th amendments

Furthermore Mrs Gilowski is an actual innocence based on the forfeiture statute because she presented uncontested evidence that the majority of the funds used to purchase this real property came from two bank accounts one was hers and the other was her daughters. And that her husband had very little financial interest in this property.

Therefore conditioner Now Praise that this court will grant Certiorari in order to correct the Constitutional violations that Mrs Gilowski's has suffered.

SUMMARY OF ISSUE PRESENTED

Whether the District Court and the Circuit Court both erred in determining that petitioner was an actual innocent owner of legitimate Financial claim to the property that the government sought to Forfeit due to her husband's criminal conviction for fraud as provided in *United States V. Daugerdas* 892 F.3D 545, 548-52 (2nd Cir. 2018).

Weather the lower courts erred in finding that the petitioner had a legal vested interest in the family's real properties, based on documentation that was uncontested in court
That the property was purchased through legitimate funds through her and her daughter's bank accounts.Which certainly violated her constitutional right to due process.

Whether the Petitioner's right to a fair and just proceedings was violated when she was forced and/or coerced into sign over forfeiture documents at her husband sentencing hearing,

provided by the US attorney without first being allowed to obtain counsel to review the d proffered documents. That allowed the government to illegally seize and take possession of the Petitioner's legitimate property In violation of her sixth amendment right provided in the United States Constitution.

Statement of case

Petitioner, Anida Gilowski husband was convicted by a jury trial of a conspiracy to steal retail products from brick and mortar stores and then resell these stolen products using online sales platforms. Specifically the government allege that petitioner's husband organized and executed a scam to steal goods from retail stores around the country such as Best Buy Staples OfficeMax Home Depot Walmart and Lowes and then resell these stolen goods online. However representatives

from these major retail stores testified during her husband's trial that they did not recognize or they could not prove that any of these products were stolen from their stores or businesses.

The government further alleged the proceeds from Mr Gilowski's illegal business resulted in profits over 11 million dollars. However this was just speculation by the government because they never actually proved an accurate and correct loss amount in the criminal case.

The government further alleged that after receiving proceeds from these criminal activities Mr. Gilowski used the proceeds to fund various bank accounts, and to fund construction costs on his houses and to pay off existing mortgages on his other properties and certain vehicles which the government seized the majority of his assets. However what the government failed to admit or even take into

consideration was that several years prior to the time period of Mr. Gilowski's criminal activity he had been running Several Legitimate businesses and during that time he had amassed a very substantial amount of wealth between him and his wife occupation as a nurse practitioner. Essentially, the government has refused to recognize these facts nor credit the petitioner with any of the actual legitimate wealth that was procured between her and her husband through the years through 20 years of marriage. This income provided the majority of financial means used to purchase the real property that the government sought to Forfeit.

More importantly here, the government has failed to even recognize the fact that Miss Gilowski had a legitimate income as a nurse practitioner for almost 20 years and provided a substantial amount of income in which these properties were purchased.

A. Signing of the Forfeiture Documents

In the district court Mr Gilowski argued extensively that she was under duress when the US Attorney claimed she was obligated to sign the agreement to the forfeiture for all the properties that the government seeks to Forfeit. It was basically her understanding that the property that she lived in was not one of the properties that the government sought to forfeit. Though she didn't have a chance to read these documents. This took place on the day of her husband's sentencing when she was only in court for moral support for her husband. She was not allowed to read or inspect these documents, nor was she allowed to hire an attorney to review the doctors before she was coerced into signing them.

The District Court erroneously determined and the Circuit Court agreed that the Petitioner was not coerced into signing these papers, nor was there any due process rights violated consequently granting the government's order of forfeiture.

B. Petitioners Legitimate Legal Interest in the Property.

There was uncontested evidence presented during the District Court's ancillary hearing that proved one of the properties (the Wildwood property) was purchased for \$451,481.50 which the majority of the funds for that property came from two separate bank accounts one belonging to Mr. Gilowski yourself the other belonging to her daughter Isabella Dolba. Specifically \$140,000 of those funds came from a Wells Fargo bank account belonging to the petitioner. and additional \$293,000 came from the second Wells Fargo account belonging jointly to the Petitioner and her daughter Miss Dolba. The above uncontested evidence proved that

over \$433,000 was invested in the property and the Wildwood property was not part of any profits from stolen merchandise sold through her husband's alleged criminal Enterprise. But was actually proceeds from legitimate funds secured by the petitioner herself.

It was also uncontested that the petitioner's annual salary as a nurse practitioner was on the average of \$150,000. To \$170,000. per year which she gave entirely to her husband to manage the family income. However the lower courts both completely ignore these fact clearly shown that there was over \$433,000 of legitimate income invested in the Wildwood property that the government sought to Forfeit

Other factors that the district and circuit court completely ignored was that under Illinois state law the Petitioner would obtain 50% of the total income that her and her husband generated through the course of their over 20-year

marriage. This would clearly give the Petitioner a legitimate vested interest in all the purchase of these properties through the course of their marriage and the fact that she provided a substantial amount of legitimate income in the purchase these properties.

Therefore this court should Grant the petitioner's request Writ of Cretorari in order to determine whether the Petitioner's constitutional rights were violated by the lower courts when they unlawfully determined that her property was subjected to the United States forfeiture laws.

REASONS FOR GRANTING THE PETITION

The reason the Supreme Court should grant certiorari in this case is because it presents a unique perspective of overreaching by the government to seize the legitimate property of one of the citizens of the United States of America.

As presented in this motion, the issues of law have really never been approached by the high court and is certainly needed to take an independent look to correct an injustice of a hard-working American citizen who was unlawfully targeting by the government who is trying to seize the hard-earned property that she has worked for all our life. All because of her husband's criminal conduct.

As laid out in the statement of case the facts are clearly unique as how the petitioner was deprived of a right to due process and her right to a fair proceedings the way the US attorney coerced in signing any documents concerning the property that she had purchased with her husband through 20 years of marriage. This case also brings in the perspective the innocent owner exception to the United States forfeiture laws which it is clearly time for this court to take a second look at so

several other Americans don't unlawfully lose their hard-earned property that they work for all their lives. Legal grounds on which the petitioner will pursue this case are as follows.

LEGAL ARGUMENTS

A. Petitioner was Deprived of Her Fifth Amendment Right to Due Process and Her Sixth Amendment Right to a Fair Trial or Proceedings

The properties and the bank accounts that the government sought to Forfeit were under the criminal forces statute pursuant to title 21 USC § 853. Petitioner, Mrs Gilowski, had a

legal vested interest in all the properties subject to the criminal forfeiture that the government initiated as part of the criminal prosecution of her husband for retail fraud.

Title 21 USC § 853(n)(6)(A), which states in pertinent parts;

(A)The petitioner has a legal right, title, or vested interest in the property in such right, title or interest renders the the order of forfeiture invalid in whole or in part because of the right, title, or interest was vested in the positioner's rather than the defendant or was superior to the right,title or interest or the defendant at the time of the commission of the act which gave rise to the forfeiture of the property under the section.

*Id.*at § 853 (n)(6)(A).

In the instant case, the government failed to give the Petitioner official notice that she would be required to sign any documents while attending her husband's sentencing. Further once the US Attorney produced the documents for the petitioner to sign, the US Attorney never informed her that she had a legal right to have an attorney review

these documents before she made the decision as to whether to sign the documents. Of course any attorney who would have represented the Petitioner, would have certainly advised her not to sign these documents.

More importantly here, it was a Petitioner's understanding that the consent to forfeiture that her husband previously had to come to an agreement with the US Attorney's office, did not cover the Wildwood property, which is the residence of Mrs Gilowski.¹ Clearly if the petitioner had been represented by an attorney during this outlandish stunt by the US Attorney, she would have never signed the documents to consent forfeiting the house which she had purchased through her own bank accounts belonging to her and her daughter.

¹ The petitioners original country of origin is Poland and, is not fluent in reading the English language. Therefore she did not fully understand exactly what She was agreeing to written within those documents.

Because the properties in question here that the government sought to Forfeit were under a criminal forfeiture statute. It stands to reason that the petitioner's Sixth Amendment right under the right to counsel was violated when the government coerced her into signing the consent to forfeiture papers without first being advised of her basic right of legal representation.

It is well established law, that a criminal forfeiture is an in Personam action in which only the defendants interest in the property may be forfeited see *United States v. Daugerdas* 892 F.3d 545,548-52, (2nd Cri.2018). "Which granted in motion to dismiss, and remand the case to allow a third party claimant an opportunity to file an amended petition after the wife asserted that her husband's forfeiture funds were irreversibly commingled with the law firm's non-tainted earnings"*Id.*at 543. In other

words the ancillary proceedings is a forum for determining the extent of the defendant's forfeitable interest in the property Fed. R. Crim. P. 32.2(b).

In the instant case, Mrs. Gilowski's husband only had a marital interest in the Woodward property which was titled solely in Anida Gilowski name. Furthermore this property was purchased from two bank accounts held by her and her daughter. More importantly here, the government has failed to prove that any tainted funds were ever deposited in these two bank accounts that were used to purchase the Wildwood property. Clearly, the District Court along with the Circuit Court clearly erred when they failed to take into consideration any of these factors that were presented to the courts in the initial ancillary hearing and by the reviewing appeals Court. Therefore the lower courts clearly erred when granting the government request the

forfeit the properties, which clearly violated the Petitioners constitutional rights one to be represented by an attorney to violated her due process rights and three violated a fair trial or process rights.

An important factor that this court should decide in this case, is whether there are differences between a civil and criminal forfeiture that would provide an innocent owner claimant protections under the United States Constitution. More accurately what difference that might bear on one circumstances in which due process requirements appear as held in the fifth Circuit Court of Appeals in *United States v. Melrace East Subdivision* 357 F.3d 493 (5th Cir. 2004). Which held that" in a criminal case all parties involved should be offered due process" which was clearly denied to the Petitioner in the instant case. Simply put, the Petitioner should have been advised of her rights

to have an attorney present when reviewing the consent to forfeiture document before she was coerced into signing them. This would have cured any due process claims that have now arised, Which is now the subject of this Court's discussion in the instant case.

In summary the final order of forfeiture granted by the District Court, and affirmed by the Circuit Court, Clearly in flagrantly violated the petitioners Fifth Amendment right to due process and her six Amendment right to right of counsel, when these courts failed to consider the factors set forth above. Therefore this court should take up this case to review the facts and the law in order to secure the Constitutional violations that the petitioner has now suffered through these audacious acts by the US attorney and her husband's own defense attorney who so claim

that she had to sign these papers during her husband's sentencing.

B. Petitioner Further Has a Marital Interest in Property

Other factors that was not taken into consideration by the lower courts, is in the state of Illinois, marital property are equitable distributed which means that the property is divided fairly but not necessarily equal between the spouses. Even those the Petitioner and her husband are not legally divorced or legally separated, still her husband is now serving a 15-year prison sentence in the federal prison. Therefore the majority of their accumulated property should go to the wife [the petitioner] since her husband cannot Legally control the families finances since he is incarcerated at this time.

Furthermore the court should consider when dividing material property in a way that is just unfair should always take into account various factors such as the contributions each spouse made to the acquisition preservation or increase in the value of the marital property. The economic circumstances of each spouse at the time of the property division, the age, health and occupation of each spouse. And the needs of each spouse and any other Factor that the court deems relevant.

It is undisputed that the petitioner was one of the main contributors of the financial resources used to buy the family's Wildwood property. As a nurse practitioner her annual salary is normally between \$150,000, to \$170,000 each year. Though it may be true that she allowed her husband to manage the finances income she is still

entitled to the money that she invested in their marriage of over 20 years. Indeed it's a petitioner or her husband or the divorce today under Illinois state law she would be entitled to at least half if not more of the equity division of the marital properties based on her contribution to the family's income. To reiterate the petitioner share of the family income that was generated through over 20 years of marriage would include legitimate business ownerships and real property and even the three bank accounts that the government had seized.

Something put Mrs. Gilowski legitimate investment over \$3 million into the purchase of the family properties and business and other marital items over the past 20 years of marriage clearly entitled her to the property that the government seeking to Forfeit against her husband's

conviction for a federal Criminal retail fraud crime that she played no part whatsoever in

Therefore petitioner now prays that this honorable Court will grant certiorari in order to come to a legal conclusion as to whether her constitutional rights have been violated and the seizing of her legitimate property was clearly a travesty of Justice.

C.The District Court Erred in Dismissing Petitioners Challenge to the Final Order of Forfeiture that with Initiated Within 30 Days after Receiving Public Notification

Under the criminal forfeit statute a third party May petition for a hearing to adjudicate its interest in a property that is subject to forfeiture. *United States v. Grossman* 501 F.3d 846, 848 (7th Cir. 2007) (citing 21 U.S.C. § 853(n)(2)). Under this rule when a third party files a petition asserting an interest in a property to be

forfeited the court must conduct an ancillary proceedings pursuant to Fed. R. Crim. P. 32.2(c)(1), Which closely resembles a civil action. *Grossman* 501 F.3d at 848.

Beginning with the statutory language under 21 USC § 853(n)(1), the government shall publish notice of the [forfeiture] order and of its intent to dispose of the property following the entry of the forfeiture order. With respect to third parties, “[a]ny person, other than the defendant, asserting a legal interest in property which has been ordered forfeited to the United States pursuant to this section may, within 30 days... petition the court for a hearing to adjudicate the validity of his or her alleged interest in the property,” *Id. at* § 853(n)(2). Such a hearing “shall be held before the court alone without a jury” *Id. at* §853(n)(3). “The hearing on the petition shall, to the extent practical and consistent with the interest of Justice,

be held within 30 days of the following of the petition.” *Id.* at 853 (n)(4). “The provisions of this section shall be liberally construed to effectuate its remedial purpose” *Id* at § 853(o).

In the instant case, the Petitioner received a notification of the District Court’s final order for forfeiture and the government’s intent to dispose of the property through a letter she received addressed to Art Palmer Incorporated.

The letter was dated February 12th 2024. This letter clearly indicated that the petitioner had a legal right to challenge the Court’s order of forfeiture before the property was disposed of by the government. The letter further indicated that any petition from a third party claim had to be filed within 30 days of receipt of this letter.

It is uncontested that the Petitioner complied with this letter and filed a claim within the 30-day time period to the

District Court's notification. However, the District Court denied the petitioner claim to the property without holding and ancillary hearing, depriving her of a right to due process.

As far as legal standards regarding ancillary proceedings outlined in § 853(n) involves questions of both state and federal law. "State law- or more accurately, the law of the jurisdiction that creates the property interest being asserted- determines what interests the claimant has in the forfeited property; Federal law- in particular 21 USC 853 determines whether that interest is significant to establish standing Stefan D. Cassella, *Criminal Forester Proceedings in 2013*; Legal ownership in a property is determined by reference to state law but whether the that legal interest qualifies for an exemption is evaluated by the terms of the federal statute; Dee

R. Edgeworth, *Asset Furniture practice and procedures in state and federal courts* 216 (3rd edition 2014)(citations omitted); *United States v. 5s 351 Tuthill Rd. Naperville IL*. 233 F.3d 1017, 1021 (7th Cir. 2000), (“State law defines and classifies property interest for purposes of the forfeiture statute while, federal law determines the effect of the property interest on the claimants standing.”)

As previously stated, the Petitioner, has a legitimate vested interest in all the properties that the District Court entered in the forfeiture order. First ,she was and still is the exclusive owner of the Wildwood property which is clearly proven through the title transfer papers and legal deed which is solely under her name and hers alone.

More importantly here, it is further uncontested that the Wildwood property was purchased from two bank accounts, One was under the Petitioner's name for the

amount of \$140,000 the second account was under her daughter's name Isabnella Dolba Which was in the amount of \$293,000. That the Petitioner had complete control of both of these bank accounts.

Second, the petitioner has a vested interest in all the Family Properties, and bank accounts, under Illinois state law, which clearly explains the division of property between spouses. In other words, the property has to be divided up fairly with several considerations to be reviewed before the district court can just hand over the property to the government. Without the lower courts taking these factors into consideration, clearly deprived the petitioner of her Fifth Amendment right to due process and her Sixth Amendment right to a fair trial.

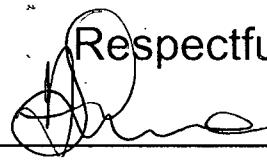
CONCLUSION

This case represents big government taking advantage of legitimate property owners by seizing real property that she has a legal claim to, and worked for all her adult life. There is clearly a travesty of Justice being perpetrated within this case.

More importantly here the petitioner has been deprived over 6 Amendment right to a fair trial and proceedings and her Fifth Amendment right to due process throughout this entire legal proceedings which gives ample grounds for this Court to grant certiorari in order to correct the miscarriage of Justice the Petitioner has suffered throughout these entire proceedings.

Therefore, for the reasons given above the Petitioner prays that this Court will grant her petition and allow her case to be heard in order to correct the travesty of Justice she has incurred by the loss of her legitimate property.

Respectfully Submitted



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