

Appendix A
Fifth Circuit Court of Appeals
Judgment and Opinion

United States Court of Appeals
for the Fifth Circuit

No. 23-10873
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
September 23, 2024

Lyle W. Cayce
Clerk

UNITED STATES OF AMERICA,

Plaintiff—Appellee,

versus

ANIDA GILOWSKI,

Defendant—Appellant.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 3:19-CR-451-20

Before WIENER, HIGGINSON, and HO, *Circuit Judges.*

PER CURIAM:*

Artur Gilowski (Artur) was convicted by a jury of conspiracy to commit interstate transportation of stolen property and conspiracy to commit mail fraud. At Artur's sentencing hearing, Anida Gilowski, Artur's wife, signed a document, in which she agreed not to contest the forfeiture of property, except for any interest in the property located on W. Wildwood in

* This opinion is not designated for publication. *See 5TH CIR. R. 47.5.*

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Barrington, Illinois (Wildwood property). Anida filed a petition for adjudication of her legal interest in the Wildwood property. After holding a hearing, the district court denied her petition and entered final orders of forfeiture. Anida appeals.

According to Anida, the district court erred in issuing the final order of forfeiture as to the Wildwood property. In evaluating a district court's disposition of a petition filed under 21 U.S.C. § 853(n), we review factual findings for clear error and legal conclusions de novo. *United States v. Holy Land Found. for Relief & Dev.*, 722 F.3d 677, 683 (5th Cir. 2013). Additionally, we review de novo a district court's interpretation and application of § 853. See *United States v. Gore*, 636 F.3d 728, 730 (5th Cir. 2011).

The district court did not err in denying Anida's petition as she did not show that she had an interest in the Wildwood property superior to Artur's interest at the time he committed the offenses under § 853(n)(6)(A). See *Holy Land Found. for Relief & Dev.*, 722 F.3d at 684-85. Although the parties agreed that the Wildwood property was marital property under Illinois law, federal forfeiture law governs whether the property is subject to forfeiture to the Government. See *United States v. Martinez*, 228 F.3d 587, 590 (5th Cir. 2000). The evidence established that Artur's offenses began in September 2014, and continued through September 2019. The Wildwood property was purchased in March 2017, with proceeds from Artur's criminal activity for which he was convicted. The proceeds and any property purchased with the proceeds from Artur's criminal activity vested in the Government at the time Artur committed his offenses. See 21 U.S.C. § 853(c); see also 18 U.S.C. § 981(f); see *Martinez*, 228 F.3d at 590. The district court did not err in finding that even if Anida contributed her legitimate earnings from her employment as a nurse, her contribution were commingled with Artur's criminal proceeds and could not be separated. Because the proceeds of Artur's criminal activity and any property purchased

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with those proceeds were subject to forfeiture and vested in the Government at the time of the offense, the property did not become martial property under state law. *See Martinez*, 228 F.3d at 590; *see also United States v. Hooper*, 229 F.3d 818, 820-22 (9th Cir. 2000). Therefore, Anida did not show that she had a superior interest in the Wildwood property in September 2014 when the interest in the criminal proceeds vested in the Government. *See* 21 U.S.C. § 853(n)(6)(A); *see also Holy Land Found. for Relief & Dev.*, 722 F.3d at 684-85.

For the first time on appeal, Anida argues that the document she signed in which she agreed not to contest the forfeiture of various properties except for the Wildwood property was unenforceable. As she concedes, we review the issue for plain error because she did not raise it in the district court. *See Puckett v. United States*, 556 U.S. 129, 135 (2009). Accordingly, she must demonstrate that the district court's application of this statute contained an (1) error, (2) that was clear or obvious, and (3) affected her substantial rights. *See id.* If she does so, this court has discretion to correct that error if it "seriously affect[s] the fairness, integrity or public reputation of judicial proceedings." *Id.* (internal quotation marks, citation, and alteration omitted).

The record indicates that she knowingly and voluntarily signed the agreement. She did not state that she needed more time to read the agreement, that she did not understand or had questions concerning the agreement, or that she was forced or threatened into signing the agreement by the Government or by her husband's counsel. The district court did not err in rejecting her argument that she thought by signing the document, the Wildwood property would not be subject to forfeiture because the agreement did not contain such a statement. Further, Anida did not file a petition asserting an interest in the remaining two real properties or bank accounts, and she has not shown on appeal that she had an interest in the properties

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and bank accounts that was superior to Artur's interest at the time he committed the instant offenses. Because she has not shown that she had a superior interest in these properties that she gave up when she signed the agreement, she has not shown that she was entitled to any consideration for signing the agreement. For these reasons, Anida has not shown that the agreement was unenforceable or that the district court plainly erred in entering a final order of forfeiture as to these properties and bank accounts based on the evidence presented at the trial and at the ancillary hearing. *See Puckett*, 556 U.S. at 135.

Finally, Anida argues that the forfeiture of the three real properties and the three bank accounts violated her rights under the Excessive Fines Clause of the Eighth Amendment. Her argument is foreclosed by this court's precedent in *United States v. Betancourt*, 422 F.3d 240, 249-51 (5th Cir. 2005), in which this court held that the Eighth Amendment had no application to the forfeiture of property acquired with criminal proceeds.

AFFIRMED.

United States Court of Appeals

FIFTH CIRCUIT
OFFICE OF THE CLERK

LYLE W. CAYCE
CLERK

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Suite 115
NEW ORLEANS, LA 70130

September 23, 2024

MEMORANDUM TO COUNSEL OR PARTIES LISTED BELOW

Regarding: Fifth Circuit Statement on Petitions for Rehearing
or Rehearing En Banc

No. 23-10873 USA v. Gilowski
USDC No. 3:19-CR-451-20

Enclosed is a copy of the court's decision. The court has entered judgment under Fed. R. App. P. 36. (However, the opinion may yet contain typographical or printing errors which are subject to correction.)

Fed. R. App. P. 39 through 41, and Fed. R. App. P. 35, 39, and 41 govern costs, rehearings, and mandates. **Fed. R. App. P. 35 and 40 require you to attach to your petition for panel rehearing or rehearing en banc an unmarked copy of the court's opinion or order.** Please read carefully the Internal Operating Procedures (IOP's) following Fed. R. App. P. 40 and Fed. R. App. P. 35 for a discussion of when a rehearing may be appropriate, the legal standards applied and sanctions which may be imposed if you make a nonmeritorious petition for rehearing en banc.

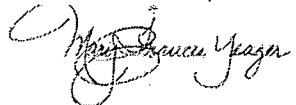
Direct Criminal Appeals. Fed. R. App. P. 41 provides that a motion for a stay of mandate under Fed. R. App. P. 41 will not be granted simply upon request. The petition must set forth good cause for a stay or clearly demonstrate that a substantial question will be presented to the Supreme Court. Otherwise, this court may deny the motion and issue the mandate immediately.

Pro Se Cases. If you were unsuccessful in the district court and/or on appeal, and are considering filing a petition for certiorari in the United States Supreme Court, you do not need to file a motion for stay of mandate under Fed. R. App. P. 41. The issuance of the mandate does not affect the time, or your right, to file with the Supreme Court.

Court Appointed Counsel. Court appointed counsel is responsible for filing petition(s) for rehearing(s) (panel and/or en banc) and writ(s) of certiorari to the U.S. Supreme Court, unless relieved of your obligation by court order. If it is your intention to file a motion to withdraw as counsel, you should notify your client promptly, **and advise them of the time limits for filing for rehearing and certiorari.** Additionally, you MUST confirm that this information was given to your client, within the body of your motion to withdraw as counsel.

Sincerely,

LYLE W. CAYCE, Clerk



By: Mary Frances Yeager, Deputy Clerk

Enclosure(s)

Ms. Gigi Gilbert
Mr. Stephen S. Gilstrap
Mr. Jonathan Penn

APPENDIX B

Preliminary Order of Forfeiture

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

UNITED STATES OF AMERICA

v.

NO. 3:19-CR-451-M

ARTUR GILOWSKI (20)

PRELIMINARY ORDER OF FORFEITURE

Based on the government's Motion for Preliminary Order of Forfeiture and good cause appearing, the Court GRANTS the motion, as to the specific property sought for forfeiture in it (the three accounts and three parcels of real property), finding the following:

The defendant, Artur Gilowski, was charged by Superseding Indictment with conspiracy to commit interstate transportation of stolen property (Count One) and conspiracy to commit mail fraud (Count Two). The forfeiture notice in the Superseding Indictment, as well as various other case pleadings, advised Gilowski that, upon his conviction for any offense in the Superseding Indictment, the Government would seek forfeiture, pursuant to Title 18, United States Code, Section 981(a)(1)(C) and Title 28, United States Code, Section 2461(c), of any property constituting, or derived from, proceeds that he obtained directly or indirectly as the result of that crime. The property noted as subject to forfeiture was the following ("the Property"):

- The real property located at 79 W. Wildwood Drive, Barrington, Illinois 60010.
- The real property located at 157 G Helm Road, Barrington, Illinois 60010.
- The real property located at 136 N. Norman Drive, Palatine, Illinois 60074.
- \$126,205.80 in funds seized on or about October 8, 2019 from a bank

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account in the name of Art Polmer, Inc. at Polish & Slavic Federal Credit Union.

- \$35,673.98 in funds seized on or about October 8, 2019 from a bank account in the name of Artur Gilowski at Polish & Slavic Federal Credit Union.
- \$48,966.05 in funds seized on or about October 7, 2019 from a bank account in the name of Creatomia Art, Inc. at JP Morgan Chase Bank.

Subsequently, a jury convicted Gilowski on the two offenses charged in the Superseding Indictment. The Government, through the evidence presented to the Court at trial and through pleadings, has established the requisite nexus between the Property and the offenses. Specifically, the Government has proven, by a preponderance of the evidence, that the property listed below ("the Subject Property") constitutes and was derived from proceeds traceable to the two offenses charged in the Superseding Indictment and for which Gilowski was convicted.

Accordingly, the Court ORDERS that Gilowski forfeit all right, title, and interest in the following ("the Subject Property"), pursuant to the convictions and 18 U.S.C. § 981(a)(1)(C) and 28 U.S.C. § 2461(c):

- Up to 433,000 in equity plus appreciation in Real property located at to \$433,000 in equity, plus appreciation, from the real property located at 79 W. Wildwood Drive, Barrington, Illinois 60010. 19-ICE-002670
- The real property located at 157 O Helm Road, Barrington, Illinois 60010, more specifically described as these two parcels:
Parcel 1: That part lying West of a line 556 feet (as measured on the North line thereof) East of and parallel to the West line of the East Half of the Southwest Quarter of Section 7, of the following described premises: That part of the South Half of Section 7, Township 42 North, Range 9, East of the Third Principal Meridian, described as follows: Beginning at the Northwest corner of the East Half of the Southwest Quarter of said Section 7, and running thence South 88 degrees 24 minutes East along the East and West Half Section line, 1704.34 feet to a point in the center line of the Chicago Road, as located prior to November 16, 1928; thence South 58 19-ICE-002671

degrees 02 minutes East along the center line 1094.6 feet more or less, to a point in the center line of Adams Road; thence South 00 degrees 02 minutes East along the said center line 435.5 feet; thence North 88 degrees 43 minutes West 1319 feet; thence South 00 degrees 33 minutes East, 334 feet; thence North 88 degrees 04 minutes West 1327.5 feet to the West line of the East Half of the Southwest Quarter of said Section 7; thence North along the West line of the East Half of the Southwest Quarter of Section 7, 1331.8 feet to the place of beginning; (excepting from said tract that part of the West 45.80 feet thereof lying South of the South line of the North Quarter of the North Half of the Southwest Quarter of Section 7; and also excepting therefrom, the North 501.04 feet of the West 450 feet of the Northeast Quarter of the Southwest Quarter of Section 7, in Cook County, Illinois.

Parcel 2: Basement for Ingress and Egress, over a 30 foot wide strip of land, the center line of which is described as follows: Beginning at a point in the East and West center line of Section 7, Township 42 North, Range 9, East of the Third Principal Meridian that is 556 feet East of the West line of the East Half of the Southwest Quarter of Section 7; thence Southerly parallel with said West line a distance of 1032 feet, all in Cook County, Illinois.

- Up to \$136,000 in equity, plus appreciation, from the real property located at 136 N. Norman Drive, Palatine, Illinois 60074, more specifically described as Lot 15 in Block 7 in Winston Park Northwest, Unit Number 1, being a Subdivision of Section 13, Township 42 North, Range 10 East of the Third Principal Meridian, according to the plat thereof recorded in the Recorder's Office on July 30, 1957 as Document Number 16972096, in Cook County, Illinois. 19-ICE-002672
- \$126,205.80 in funds seized on or about October 8, 2019 from a bank account in the name of Art Polmer, Inc. at Polish & Slavic Federal Credit Union. 20-ICE-000420
- \$35,673.98 in funds seized on or about October 8, 2019 from a bank account in the name of Artur Gilowski at Polish & Slavic Federal Credit Union. 20-ICE-000421
- \$48,966.05 in funds seized on or about October 7, 2019 from a bank account in the name of Creatornia Art, Inc. at JP Morgan Chase Bank. 20-ICE-000422

Under Fed. R. Crim. P. 32.2(b)(3), the Department of Homeland Security (or a

designee) is authorized to seize the Subject Property, conduct any discovery proper in identifying, locating, or disposing of the property subject to forfeiture, and commence an ancillary proceeding under 21 U.S.C. § 853(n) to account for potential third-party interests.

Under 21 U.S.C. § 853(n)(1), the United States shall publish notice of this Order on the government's internet website, www.forfeiture.gov. The United States may also, to the extent practicable, provide written notice to any person known to have an alleged interest in the Subject Property.

Under 21 U.S.C. § 853(n)(2), any person, other than Gilowski, asserting a legal interest in the Subject Property may, within thirty days of the final publication of notice or receipt of notice, whichever is earlier, petition the Court for a hearing without a jury to adjudicate the validity of his or her alleged interest in the Subject Property. Under 21 U.S.C. § 853(n)(3), any third-party petition shall be signed by the petitioner under penalty of perjury and shall set forth the nature and extent of the petitioner's right, title, or interest in the Subject Property, the time and circumstances of the petitioner's acquisition of the right, title, or interest in the Subject Property, any additional facts supporting the petitioner's claims, and the relief sought.

Under Fed. R. Crim. P. 32.2(c)(1)(B), after the disposition of any motion filed under Fed. R. Crim. P. 32.2(c)(1)(A), and before a hearing on the petition, discovery may be conducted in accordance with the Federal Rules of Civil Procedure upon a showing that such discovery is necessary or desirable to resolve factual issues.

Under 21 U.S.C. § 853(n)(7), the United States shall have clear title to the Subject

be signed by you under penalty of perjury; ii) identify the particular property in which you claim a legal right, title or interest; iii) identify the nature and extent of such right, title or interest in the forfeited property; iv) identify the time and circumstances of your acquisition of the right, title, and interest in the forfeited property; and v) provide any additional facts and documents supporting your claim and the relief sought. If you fail to timely file a judicial petition to assert your legal interest in the forfeited property, any right, title and interest you claim in this property shall be lost and forfeited to the Government.

As an alternative, or in addition to filing a judicial petition in the United States District Court, you may submit a petition for remission to the Attorney General concerning the forfeited property. A petition for remission presumes the validity of the forfeiture, but requests that the forfeited property nevertheless be released to you. The requirements for a petition for remission are found in 28 C.F.R. § 9. Through the petition, you may ask the Attorney General to return the forfeited property to you, or recognize your interest in the forfeited property. If you choose to submit a petition for remission concerning the forfeited property, you must submit it to the Attorney General, c/o U.S. Attorney's Office, Asset Forfeiture Section, 1100 Commerce Street, Suite 300, Dallas, Texas 75242, within 30 days of receiving this letter. Your petition for remission must (i) describe your interest in the property, (ii) be supported by documentation and any facts you believe justify the return of the property to you, and (iii) signed under penalty of perjury.

Please call me at 214.659.8600 with any questions or comments.

Very truly yours,

LEIGHA SIMONTON
UNITED STATES ATTORNEY

(s) John J. de la Garza III
By: John J. de la Garza III
Assistant United States Attorney

Enclosure