

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

NOVEMBER 1996 SESSION

<p>FILED</p> <p>December 4, 1996</p> <p>Cecil Crowson, Jr. Appellate Court Clerk</p>

<p>STATE OF TENNESSEE,</p> <p style="padding-left: 40px;">Appellee,</p> <p>V.</p> <p>RALPH NELMS,</p> <p style="padding-left: 40px;">Appellant.</p>	<p>)</p> <p>) C.C.A. No. 03C01-9511-CC-00342</p> <p>)</p> <p>) Sullivan County</p> <p>)</p> <p>) Honorable R. Jerry Beck, Judge</p> <p>)</p> <p>) (Rule 10)</p> <p>)</p> <p>)</p>
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OPINION FILED: _____

AFFIRMED

PAUL G. SUMMERS,
 Judge

OPINION

The appellant, Ralph Nelms, was indicted for multiple counts of selling cocaine, possession of cocaine, possession of marijuana, and possession of drug paraphernalia. Following a summary administrative forfeiture, he moved the trial court to dismiss his criminal charges. He argued that the double jeopardy clause prohibited further criminal prosecution. The trial judge denied the motion. The appellant's request for an interlocutory appeal was denied. The case is before us on extraordinary appeal.

FACTS

The police confiscated the appellant's automobile, more than two thousand dollars in cash, and other personal property. The appellant was served with a notice of seizure. The notice advised him that he had 30 days within which to file a claim if he intended to contest forfeiture of his property. The appellant, however, chose not to file a claim. The property was accordingly subjected to administrative forfeiture.

ANALYSIS

After being notified of the proceedings, appellant elected to neither file a claim nor enter an appearance to contest the forfeiture. Accordingly, we must decide whether a nontrial administrative forfeiture constitutes punishment which would operate to bar subsequent criminal sanctions.

A party asserting double jeopardy must have been a party to a prior proceeding. United States v. Schinnell, 80 F.3d 1064, 1068 (5th Cir. 1996); United States v. Torres, 28 F.3d 1463, 1465 (7th Cir 1994). To attain party

status in a civil forfeiture, one must, at the very least, file a claim in response to the notice of seizure. See United States v. Walsh, 873 F.Supp 334, 336-37 (D. Ariz. 1994) (citing Torres for proposition that jeopardy did not attach to forfeiture proceeding where defendant did not make any claim in civil forfeiture proceeding).

The appellant elected not to file a claim. Having made this election, he was neither a party to nor was punished by the nontrial forfeiture.¹ Albeit a legal fiction, unclaimed property is technically abandoned or unowned. Forfeiture of unowned or abandoned property punishes no one. United States v. Schinnell, 80 F.3d 1064, 1068 (5th Cir. 1996). Jeopardy cannot attach in the absence of either a party or a punishment. The trial court's order dismissing the appellant's case is, therefore, affirmed.

PAUL G. SUMMERS, Judge

CONCUR:

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This is not to say that had the appellant filed a proper claim, the state would have been barred from bringing subsequent criminal prosecution. See U.S. v. Ursery, 116 U.S. 2135 (1996) (holding in rem civil forfeitures not punishment for purposes of double jeopardy). We merely hold that in the absence of standing, we do not reach the substantive issue.

JOE B. JONES, Presiding Judge

JOHN K. BYERS, Senior Judge