

IN THE SUPREME COURT OF FLORIDA

IN RE FORFEITURE OF:  
ONE 1988 LINCOLN TOWN CAR,  
VIN 1LNBM81F8JY612959 AND  
ONE 1986 LINCOLN TOWN CAR,  
VIN 1LNBP96F7GY660841

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JOSEPH T. DEGREGORIO,  
  
Petitioner,

vs.

CASE NO: SC02-1161  
LT NO: 2D01-1249

WILLIAM F. BALKWILL, ETC.,

Respondent.

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PETITIONER'S REPLY BRIEF ON THE MERITS

ON REVIEW FROM THE DISTRICT COURT OF APPEAL  
OF FLORIDA, SECOND DISTRICT

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**INTRODUCTION**

This Reply Brief is submitted on behalf of the Petitioner, JOSEPH T. DEGREGORIO. For the sake of brevity, the Petitioner will be referred to as either Petitioner or DEGREGORIO. The Respondent will be referred to as the SHERIFF, or as he stands before this Court. References to the Record on Appeal will be as (R.) followed by a page number. Fla. Stat. Secs. 932.701 - 932.707 (1999) will be referred to as the Florida Contraband Forfeiture Act, unless specific sections therein are referenced. References to the Answer Brief of Respondent will be as (RAB.) followed by a page number. Unless otherwise indicated, all emphasis has been supplied by counsel.

**ARGUMENT**

THE FLORIDA CONTRABAND FORFEITURE  
ACT BARS A FORFEITURE PROCEEDING  
IF THE SEIZING AGENCY FAILS TO  
FILE ITS COMPLAINT WITHIN 45 DAYS  
OF THE DATE OF SEIZURE.

The Respondent does not present any argument disputing the Court's jurisdiction over this appeal based upon express and direct conflict with In re Forfeiture of One 1994 Honda Prelude, 730 So.2d 334 (Fla. 5th DCA 1999).

**Strict Construction of Forfeiture Statute Required**

Petitioner's argument that forfeiture statutes are harsh exactions and disfavored in either law or equity is

addressed by Respondent in Point III as redesignated in Respondent's Answer Brief. (RAB 22-26). The SHERIFF points out various cases interpreting the Florida Contraband Forfeiture Act to demonstrate non-uniform application of the Act by Florida courts. (RAB. 23-24). [See e.g., State Department of Highway Safety and Motor Vehicles v. Metiver, 684 So.2d 204 (Fla. 4th DCA 1996); Cochran v. Harris, 654 So.2d 969 (Fla. 4th DCA 1995)]. This non-uniform application of the Act underscores the need for final review by this Court. None of the cases cited in this section by Respondent deal with the 45 day "prompt proceeding" requirement.

Respondent relies upon Clark v. Lake City Police Department, 723 So.2d 901 (Fla. 1st DCA 1999) in support of his position that reasons for a delay in filing a forfeiture proceeding should be considered by the court before a dismissal for untimely filing is mandated. However, a close review of the Clark case reveals that insufficient facts in the opinion make it impossible to determine whether the case actually supports the SHERIFF's position. The facts reveal that a forfeiture action was filed on September 25, 1996; the date of the actual

seizure of the vehicle was not disclosed. Therefore, it is entirely possible that the proceedings fell within the good cause exception provided by Sec. 932.703(3), which expressly permits the court to extend the time for filing a forfeiture from 45 to 60 days **if good cause is shown**. In the absence of the necessary facts to determine if the 60 day exception to untimely filing applies, the case is not helpful to the SHERIFF's position. Additionally, it is important to point out that the SHERIFF never invoked the 60 day exception in the trial court and never sought leave to show good cause to extend the filing period from 45 to 60 days. Perhaps this is because the 60 days had long past when the proceedings were initiated. Further, the emphasis of the Clark decision was on the Defendant's discovery violations and whether the Court imposed too great a sanction for his failure to timely respond to discovery by striking his pleadings and entering a default judgment against him.

Respondent then looks to other situations outside the forfeiture arena which permit Courts to exercise discretion to extend mandatory filing deadlines. Specifically, he looks to Fla. R. Civ. P. 1.090(b) to



support his argument that the trial court had authority to extend the filing deadline. Rule 1.090(b) gives the Court discretion to enlarge a time period for the filing of a document required by court order or rules of procedure upon appropriate request and showing of excusable neglect. This argument ignores the fact that the Court in that situation has already obtained jurisdiction of the cause and may extend the time for filing of pleadings subsequent to the commencement of the action. It certainly does not allow the court to extend jurisdictional deadlines, or allow an initial filing after a statute of limitations has run, as noted in the rule itself, which refuses to allow extensions of time for the making of a motion for new trial or for taking an appeal.

Point IB of the SHERIFF's brief addresses the due process protections of the amended Forfeiture Act. (RAB. 14-16). The Legislature apparently did weigh due process considerations in enacting the statute and concluded that a delay of 45 days between the seizure of property and the commencement of a forfeiture action is not enough to deprive the property owner of due process rights. 45 days must also have been considered to be a reasonable enough

time for the State to adequately investigate. Due process requires a reasonably prompt filing of a forfeiture action after seizure. The Legislature has determined that 45 days is reasonably prompt and enough time to investigate.

The SHERIFF has failed to provide any dispositive case law (besides the Second District's opinion in this case) which would provide trial courts the authority to waive the statutory deadline for initiating a forfeiture proceeding. Looking to the express language of the statute, the strict construction analysis simply dictates that 45 days means 45 days. In the absence of seeking an extension of an additional 15 days on a showing of good cause, an initial filing beyond 45 days is untimely and subject to dismissal. Petitioner is not seeking an extension of the law in his favor; rather, he is seeking that it be applied as written.

The SHERIFF concludes his argument by stating that if the SHERIFF misses the 45 day deadline, Sec. 932.703(3) provides a direct consequence, that being the claimant's ability to recover the property through a replevin action. A strict reading of that section does not lead to this

conclusion. The replevin language of Sec. 932.703(3) merely allows a replevin or other action to recover any interest in seized property by interested parties if a forfeiture proceeding is not initiated by the seizing agency within 45 days after the date of seizure. By its very language, this section does not have any effect on the mandatory duty of the seizing agency to timely file a forfeiture complaint. As stated by Respondent, the 1983 version of the Act in Sec. 932.702, discussed in Lamar v. Universal Supply Company, Inc., 479 So.2d 109 (Fla. 1985), specifically provided that neither replevin nor any other action to recover any interest in such property could be maintained in any court, except as provided in the Act. (RAB. 9). As a practical matter, the version of the Act which applies to the present action may simply have responded to the prior statute which completely prohibited replevin actions. It does not excuse the SHERIFF from promptly proceeding in forfeiture actions. The recent version of the Act avoids the troublesome exercise the courts previously had to go through to determine what period of delay is unreasonable as to violate due process or the legislative mandate of promptness. The Act now

tells us that 45 days is the lodestar.

### **Plain Meaning of Statute Prevails**

Petitioner's argument that ambiguity is a prerequisite to judicial construction, and in the absence of ambiguity the plain meaning of the statute prevails, appears to be addressed in Point IA as redesignated in Respondent's Answer Brief. (RAB. 8-13). This section of his brief engages in an analysis of the legislative history of the Forfeiture Act, and concludes that the language of the statute does not bar untimely claims. The argument does not specifically respond to Petitioner's assertion that the statutory language requiring a seizing agency to promptly proceed, as well as the definition of "promptly proceed", is unambiguous, and the plain meaning of the statute must prevail. To interpret the statutory language as meaning anything other than barring a forfeiture action if a complaint isn't filed within 45 days of seizure would render the statute meaningless.

Fla. Stat. Sec. 932.704(4) requires that the seizing agency **"shall"** promptly proceed against the contraband article by filing a complaint. This language is considered mandatory by nature.

**Under the Plain Language of the Florida  
Contraband  
Forfeiture Act, a Forfeiture Proceeding is Barred  
if  
the Seizing Agency Fails to File its Complaint  
Within 45 Days of the Seizure.**

Strict construction of the Florida Contraband Forfeiture Act means strict adherence to every material requirement of the Act. In Point IIA of Respondent's Brief, he argues that the trial court had the power and authority to hear this class of case and therefore concludes that the trial court had subject matter jurisdiction over the subject forfeiture action. (RAB. 16-18). Petitioner doesn't dispute that circuit courts in the judicial circuit where the property seized is located is the proper court to file a forfeiture action in. However, even though the subject matter of forfeitures is within the jurisdiction of the circuit court, the court must nonetheless exercise that jurisdiction only when actions are timely filed. The trial court had the right to decide the issues that arose in the cause, based upon the state of the facts, including the issue of the right of the SHERIFF to the remedy of forfeiture in the absence of a timely filing of the proceeding. It had the power to

decide that issue when it was raised by DEGREGORIO and it decided the issue correctly. While failure to raise the issue of untimeliness may result in a failure to dismiss for untimeliness, as occurred in Ingersoll v. Hoffman, 589 So.2d 223 (Fla. 1991), waiver does not apply to the facts of this case, since DEGREGORIO asserted the issue of untimeliness, and the SHERIFF did not suggest to the trial court that DEGREGORIO waived his right to assert the issue. The SHERIFF's only dispute had to do with the issue of DEGREGORIO's standing as a claimant to object to the forfeiture.

In Point IIB of Respondent's brief, he argues that the cases cited by Petitioner from other jurisdictions are not persuasive in that the mandatory nature of the filing provision does not affect subject matter jurisdiction. (RAB. 19-20). To the contrary, the out-of-state cases are persuasive because the statutory language being interpreted all dealt with the timeliness issue. This issue was looked at in the same atmosphere towards forfeiture actions as the Florida cases, that being that forfeitures are harsh exactions and are not favored in the law.

The SHERIFF also relies on the argument that a replevin action is an available remedy. The language in Sec. 932.703(3) merely allows a replevin or other action to recover any interest in seized property by interested parties if a forfeiture proceeding is not initiated by the seizing agency within 45 days after the date of seizure. It does not have any effect on the mandatory duty of the seizing agency to timely file a forfeiture complaint. The replevin language appears only in Sec. 932.703(3). It does not appear in Sec. 932.704(4) which contains the mandatory term "shall" in requiring the seizing agency to promptly proceed; nor does it appear in Sec. 932.701(2)(c) defines "promptly proceed" as filing a complaint within 45 days after seizure.

### CONCLUSION

The Second District's opinion expressly and directly conflicts with the Fifth District's opinion in Honda Prelude. Based upon the foregoing arguments and citations of authority, this Court must find that the Fifth District was correct in its interpretation of the Florida Contraband Forfeiture Act. The forfeiture proceeding is barred by the failure of the SHERIFF to file its Complaint within 45 days of the date of the seizure of the subject vehicle. The trial court is without jurisdiction to proceed except to return the vehicle to the Petitioner.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by United States Mail, postage prepaid, to Sarah E. Warren, Esq., 100 Wallace Avenue, Suite 380, Sarasota, Florida 34237, on this \_\_\_\_\_ day of September, 2002.

**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the undersigned has complied with Fla. F. App. P. 9.210(a) by submitting this Brief in Courier New 12-point font.

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