

IN THE COURT OF APPEALS OF IOWA

No. 0-898 / 09-1283
Filed December 22, 2010

**IN THE MATTER OF THE PROPERTY
SEIZED FOR FORFEITURE FROM
LUIS A. GUZMAN-PEREZ,**

LUIS A. GUZMAN-PEREZ,
Defendant-Appellant.

Appeal from the Iowa District Court for Tama County, Sean W. McPartland, Judge.

Luis Guzman-Perez appeals an in rem forfeiture order. **AFFIRMED.**

Luis A. Guzman-Perez, Anamosa, pro se.

Thomas J. Miller, Attorney General, Kyle Hanson, Assistant Attorney General, Brent D. Heeren, County Attorney, and Michael Marquess, Assistant County Attorney, for appellee State.

Considered by Doyle, P.J., and Mansfield and Danilson, JJ. Tabor, J., takes no part.

MANSFIELD, J.

Luis Guzman-Perez appeals a district court civil in rem forfeiture order under Iowa Code chapter 809A (2005). Guzman-Perez contends: (1) he should have been appointed a guardian ad litem, (2) his due process rights were violated because he was not properly served, (3) the forfeiture proceedings violated the Double Jeopardy Clause, and (4) the forfeiture constitutes an excessive fine. We affirm.

I. Background Facts and Proceedings

In October 2006, a 1998 Ford Expedition and two handguns were seized by the Tama County Sheriff's Department in relation to a murder investigation. The vehicle was registered to Luis Guzman-Perez, who would ultimately be convicted of a felony causing the death of another person.¹

On December 21, 2006, a notice of seizure for forfeiture was personally served on Guzman-Perez. On January 2, 2007, an in rem forfeiture complaint was filed against the seized property and listed Guzman-Perez as the owner. The following day, Guzman-Perez was personally served notice of the complaint at the Tama County Jail. Guzman-Perez did not file a claim or an answer with the court after service of the notice or the complaint. On July 30, 2009, the State applied for a forfeiture order under Iowa Code section 809A.16(3). The district court subsequently granted the order. On August 19, 2009, Guzman-Perez filed

¹ The State, without citing to the record, asserts that Guzman-Perez was convicted of second-degree murder. Guzman-Perez concedes that he was convicted of a crime, that he is currently incarcerated, and that his restitution obligation includes "funeral costs" and a \$150,000 restitution fee. Based on the foregoing, we can safely assume Guzman-Perez was convicted of a felony causing the death of another person, see Iowa Code § 910.3B, whether that felony was second-degree murder or not.

a document captioned “notice of appeal,” claiming he had not been properly served with the forfeiture complaint and the order should be set aside. This document was treated as an effort to appeal the district court’s forfeiture order.² The appeal was transferred to our court.

II. Standard of Review

We review forfeiture proceedings for correction of errors at law, but to the extent any constitutional issues are raised, our review is de novo. *In re Property Seized from Young*, 780 N.W.2d 726, 727 (Iowa 2010).

III. Analysis

A. Appointment of A Guardian Ad Litem

Guzman-Perez first argues he was denied proper representation for the in rem proceeding because he was incarcerated and should have been appointed a guardian ad litem. He cites Iowa Rule of Civil Procedure 1.211 which states: “No judgment without a defense shall be entered against a party then . . . confined in a penitentiary Such defense shall be by guardian ad litem.” However, by its clear terms, rule 1.211 is limited to judgments “against a party.” In an in rem forfeiture proceeding, the judgment is entered against “the property sought to be forfeited, not its owner.” *In re Property Seized from Hickman*, 533 N.W.2d 567, 568 (Iowa 1995). Since Guzman-Perez was not a party against whom a judgment could be rendered, he was not entitled to an appointed guardian ad litem at the in rem forfeiture proceeding. *See id.*

² In addition to being captioned a “notice of appeal,” Guzman’ Perez’s filing said in the first sentence, “Notice is hereby given that Luis A. Guzman-Perez . . . appeals the Forfeiture Order dated July 30, 2009.” In the prayer for relief, though, the “notice” asked the district court to “set aside its order of forfeiture.”

B. Notice

Guzman-Perez additionally claims his due process rights were violated because he was never served with the notice of pending forfeiture or the in rem complaint. Notice of pending forfeiture and service of an in rem complaint may be given in a number of ways, including personal service. Iowa Code § 809A.8(2)(a)(1). Here, Guzman-Perez was personally served the notice of forfeiture on December 21, 2006, and was personally served the forfeiture complaint on January 3, 2007. Personal service is confirmed by two signed return of service forms by two different law enforcement officers from the sheriff's office. Our courts have repeatedly stated that the officer's return of service is presumptively valid, and the burden is on the person challenging the return to prove its falsity by clear and convincing proof. *Gutierrez v. Wal-Mart Stores, Inc.*, 638 N.W.2d 702, 705 (Iowa 2002); *Ruth & Clark, Inc. v. Emery*, 233 Iowa 1234, 1242, 11 N.W.2d 397, 402 (1943); *Chader v. Wilkins*, 226 Iowa 417, 420, 284 N.W. 183, 185 (1939); *Heater v. Bagan*, 206 Iowa 1301, 1306-07, 221 N.W. 932, 934 (1928); *Strong v. Jarvis*, 524 N.W.2d 675, 677 (Iowa Ct. App. 1994). Guzman-Perez has not made a sufficient showing to impeach the returns of service in this case.³

C. Double Jeopardy

Guzman-Perez also argues the civil forfeiture proceeding subsequent to his criminal conviction violates the Double Jeopardy Clause. This argument was

³ The State argues that we need not reach Guzman-Perez's notice arguments because he did not file a motion below to set aside the forfeiture order. However, as noted, Guzman's self-styled "notice of appeal" did ask the district court to set aside the order based on a claimed lack of notice. Out of an abundance of caution, we will assume for purposes of this appeal that Guzman-Perez preserved his notice arguments.

not raised below and therefore is waived. *State v. Halliburton*, 539 N.W.2d 339, 343 (Iowa 1995). In any event, the supreme court has already concluded “Iowa’s civil in rem forfeiture statute is neither ‘punishment’ nor criminal for purposes of the Federal Double Jeopardy Clause.” *State v. Predka*, 555 N.W.2d 202, 212-13 (Iowa 1996); accord *United States v. Ursery*, 518 U.S. 267, 277-78, 116 S. Ct. 2135, 2141-42, 135 L. Ed. 2d 549, 561 (1996). Accordingly, Guzman-Perez was not subject to multiple prosecutions or multiple punishments when the State instituted the civil forfeiture action, and his Double Jeopardy claim fails.

D. Excessive Fine

Finally, Guzman-Perez claims the forfeiture of his vehicle is an excessive fine under the Eighth Amendment. Guzman-Perez further alleges that the vehicle had no connection to the crime and proceeds from the sale of the vehicle should be applied to his restitution obligation. All of these arguments are waived because they were not raised below. *Halliburton*, 539 N.W.2d at 343. To the extent Guzman-Perez believed he had a defense in the forfeiture proceeding, he should have asserted it after being served with the notice and the complaint. See generally *Young*, 780 N.W.2d at 726.

In any event, to establish an excessive fine, Guzman-Perez has the burden of making a prima facie showing of “gross disproportionality” of the forfeiture; one which is “so excessive that in justice the punishment is more criminal than the crime.” *In re Property Seized from Terrell*, 639 N.W.2d 18, 21 (Iowa 2002).

To determine whether the facts indicate gross disproportionality, the district court must consider multiple factors, including the extent and duration of the criminal conduct, the gravity of the offense

weighed against the severity of the criminal sanction, and the value of the property forfeited Other helpful inquiries might include an assessment of the personal benefit reaped by the defendant, the defendant's motive and culpability and, of course, the extent that the defendant's interest and the enterprise itself are tainted by criminal conduct.

Id. (quotations omitted).

Guzman-Perez was convicted of a felony resulting in the death of a person. Even according to Guzman-Perez, the vehicle he lost was worth no more than \$10,000. In weighing the gravity of Guzman-Perez's offense and the value of the vehicle, one would be hard-pressed to characterize the forfeiture as an excessive fine. *Cf. State v. Izzolena*, 609 N.W.2d 541, 551 (Iowa 2000) (holding the minimum restitution award of \$150,000 required under Iowa Code section 910.3B for felonies resulting in death to another person to not violate the constitutional prohibition against excessive fines when considering the nature of the offense and resulting harm).

IV. Conclusion

We find Guzman-Perez was not entitled to a guardian ad litem and the forfeiture proceedings did not violate his due process rights. In addition, his Double Jeopardy and Excessive Fines Clause arguments were not properly preserved, and even so are without merit. We therefore affirm.

AFFIRMED.