IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

JANUARY SESSION, 1997

KENNETH L. CRUTCHER,	)	**C.C.A. NO. 01C01-9604-CR-00130**
	)	
Appellant,	)	
	)	
	)	**DAVIDSON COUNTY**
VS.	)	
	)	**HON. J. RANDALL WYATT**
STATE OF TENNESSEE,	)	**JUDGE**
	)	
Appellee.	)	(Post-Conviction)

ON APPEAL FROM THE JUDGMENT OF THE CRIMINAL COURT OF DAVIDSON COUNTY

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OPINION FILED _____

AFFIRMED

DAVID H. WELLES, JUDGE

OPINION

This is an appeal pursuant to Rule 3 of the Tennessee Rules of Appellate Procedure. In 1994, upon his pleas of guilty, the Defendant was convicted of five cocaine and marijuana felony drug offenses and received an effective sentence of eighteen years in the Department of Correction. He subsequently sought post-conviction relief on the grounds that his convictions violated his right to be free from double jeopardy because twenty thousand dollars ($20,000.00) of his cash had been taken from him in civil forfeiture proceedings. The trial court determined that the Defendant waived his claim of double jeopardy when he "voluntarily and intelligently entered his guilty pleas with the assistance of competent counsel." Because we do not believe that the Defendant's convictions violated his double jeopardy rights, the waiver argument is of no consequence. We therefore affirm the judgment of the trial court.

In 1994, the Defendant entered pleas of guilty to two counts of selling more than twenty-six grams of cocaine, one count of possession with intent to sell more than three hundred grams of cocaine, one count of conspiracy to possess with intent to sell more than three hundred grams of cocaine, and one count of felony possession of marijuana. The Defendant received an aggregate sentence of eighteen years.

As a result of the facts and circumstances leading to the Defendant's convictions, the police seized the Defendant's pickup truck and twenty thousand dollars ($20,000.00) in cash. The truck was eventually returned to the Defendant

but the twenty thousand dollars in cash was ordered to be forfeited. Apparently, the Defendant did not file a claim for the return of the cash, although this factual determination is not relevant to our determination of the double jeopardy issue.

The Defendant's underlying claim for post-conviction relief was based primarily upon the reasoning set forth in United States v. Ursery, 59 F.3d 568 (6th Cir. 1995), in which the Sixth Circuit Court of Appeals concluded that a civil forfeiture judgment against a Defendant followed by his criminal conviction for the same drug-related events constituted double jeopardy. However, during the pendency of the appeal in the present case, the United States Supreme Court reversed the appellate court in Ursery and held that the in rem civil forfeitures at issue were "neither 'punishment' nor criminal for purposes of the Double Jeopardy Clause." United States v. Ursery, 116 S.Ct. 2135, 2149, 135 L.Ed.2d 549 (1996).

Subsequently, this Court has concluded that Tennessee's in rem civil forfeiture laws are similar in purpose to the federal forfeiture laws at issue in Ursery and that the Double Jeopardy Clause of neither the state nor the federal constitution is implicated. See State v. Grapel Simpson and Linda Sue Simpson Horton, C.C.A. No. 02C01-9508-CC-00240, McNairy County (Tenn. Crim. App., Jackson, Sept. 30, 1996); see also State v. Charles David Wagner, C.C.A. No. 03C01-9511-CC-00346, Sullivan County (Tenn. Crim. App., Knoxville, Sept. 18, 1996); State v. Charles Don Vance, C.C.A. No. 03C01-9601-CC-00026, Sevier County (Tenn. Crim. App., Knoxville, Sept. 9, 1996), applic. filed (Tenn. Sept. 19, 1996); State v. James C. Bradley and Mickey Eller, C.C.A. No. 03C01-9510-CC-00318, Monroe County (Tenn. Crim. App., Knoxville, Sept. 4, 1996), applic. filed

as to Eller (Tenn. Nov. 4, 1996); State v. Grapel Simpson, C.C.A. No. 02C01-9508-CC-00239, McNairy County (Tenn. Crim. App., Jackson, Aug. 2, 1996),perm. to appeal granted (Feb. 10, 1996). We agree with the analyses set forth in these cases and conclude that the Double Jeopardy Clauses in the state and federal constitutions do not bar the Defendant's drug-related convictions after his property was subjected to in rem civil forfeiture.

As we have stated, the trial judge determined that the Defendant had waived his right to be protected from double jeopardy at the time he entered his guilty pleas. In arguing that the trial judge erred, the Defendant relies upon Menna v. New York, 423 U.S. 61, 96 S.Ct. 241, 46 L.Ed.2d 195 (1975) and United States v. Broce, 488 U.S. 563, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). Because we have determined that prosecution of the Defendant was not barred by double jeopardy protections, the Defendant's argument against a finding of waiver is of no consequence. See also John Wesley Goss v. State, C.C.A. No. 03C01-9508-CR-00222, Knox County (Tenn. Crim. App., Knoxville, Feb. 12, 1997).

For the reasons stated in this opinion, the judgment of the trial court is affirmed.

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DAVID H. WELLES, JUDGE

CONCUR:

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JERRY L. SMITH, JUDGE

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JOE G. RILEY, JUDGE