

11-0283

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, WEST VIRGINIA

STATE OF WEST VIRGINIA
JEFFERSON COUNTY SHERIFF'S DEPARTMENT

Petitioners

VS

PETITION NO. 10-P-31

JEFFERSON COUNTY RESIDENCE LOCATED AT 64 WHITE TAIL LANE,
KEARNEYSVILLE WV
DEED BOOK-1023 PAGE 594, MAP NO.21/LOT 10.1 MD DISTRICT (07)
PLAT DATED 1/16/1983 AND RECORDED IN PLAT BOOK 6 AT PAGE 46
Respondent

TRICIA DEAN
64 White Tail Lane
Kearneysville WV 25430

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JAN 13 2011

JEFFERSON COUNTY
CIRCUIT COURT

AC

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY JUDGMENT

On this the 13th day of January, 2010, came the Petitioner by and through counsel, Assistant Prosecuting Attorney Hassan S. Rasheed and the Respondent Tricia Dean by and through counsel, Ruth McQuade, Esq, upon the Petitioner's "Motion for Summary Judgment" and the reply of the Respondent.

Having carefully reviewed the record the Court makes the following FINDINGS of FACT:

1. On February 25, 2010, a confidential informant working with the Jefferson County Sheriff's Department made a monitored telephone call to Tricia Dean and arranged for the purchase by the informant of \$700 worth of crack cocaine. Ms. Dean informed the confidential informant that she had to wait until "her girl" arrived at the residence before she could complete the deal.

2. At approximately 3:45 on that day Ms. Dean contacted the confidential informant and informed the confidential informant that "her girl" had arrived at the house. The confidential informant then drove to Ms. Dean's home, 64 White Tail Lane, Kearneysville, Jefferson County, West Virginia. She was followed by members of the Jefferson County Sheriff's Department.
3. While at the 64 White Tail Lane residence the confidential informant purchased \$500 worth of crack cocaine. This transaction was facilitated by Mr. Caviness and Ms. Dean. Ms. Dean requested from the confidential informant \$100 for facilitating the transaction.
4. On the same date at 64 White Tail Lane the confidential informant asked Mr. Caviness for another gram of crack cocaine. Mr. Caviness provided the confidential informant with an additional gram of crack cocaine for \$100.
5. That Tricia Dean is the sole owner of the residence located at 64 White Tail Lane.
6. That on the 20th day of April, 2010, the Petitioner filed its Petition for the Forfeiture of the property located at 64 White Tail Lane, Kearneysville, Jefferson County, West Virginia based upon the provisions of West Virginia Code §60A-7-701, et seq.
7. Ms. Dean was indicted by a grand jury for the United States District Court for the Northern District of West Virginia on four counts of Distribution of Cocaine and one count of Conspiracy to Distribute Cocaine. See State's Exhibit #1.
8. Count 5 of the aforementioned indictment charges Ms. Dean with distributing 4.8 grams of cocaine on the 25th day of February, 2010 at approximately 4:00 p.m. This conviction is based on the facts as referenced in paragraphs 1-4 of this motion and as alleged in paragraphs 5-7 of the State's "Petition for Forfeiture".

9. Pursuant to a plea agreement with the United States Government on July 15, 2010, Ms. Dean pled guilty to Count 5 of aforementioned indictment in the United States District Court of the Northern District of West Virginia. See State's Exhibits #2 and #3.
10. Claimant Dean was the driving force behind the sale of crack cocaine in her residence. At her own insistence she reaped a 20% profit by the sale of a highly dangerous and addictive drug.

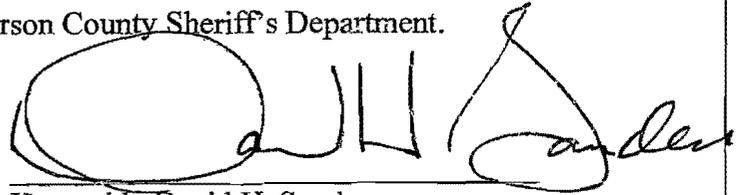
Whereupon, the Court makes the following CONCLUSIONS of LAW:

1. That West Virginia Code §60A-7-703(a) lists the items subject to forfeiture. This includes "all real property, including any right, title and interest in any lot or tract of land and any appurtenances or improvements, which are used, or have been used, or are intended to be used, in any manner or part, to commit or to facilitate the violation of [the Controlled Substances Act] punishable by more than one year imprisonment." West Virginia Code §60A-7-703(a)(8).
2. A motion for summary judgment should be granted only when it is clear that there is no genuine issue of fact to be tried and inquiry concerning the facts is not desirable to clarify the application of the law." Syl. Pt. 2, *Kidd v. Mull*, 215, W.Va. 151, 595 S.E.2d 308 quoting Syl. Pt. 3, *Aetna Casualty & Surety Co. v. Federal Ins. Co. of New York*, 148 W.Va. 160, 133 S.E.2d 770 (1963).
3. "Collateral estoppel is designed to foreclose relitigation of issues in a second suit which have actually been litigated in the earlier suit even though there may be a difference in the cause of action between the parties of the first and second suit." Syl. Pt. 2, *Baber v. Fortner v. State Farm Mutual Automobile Insurance Co.*, 186 W.Va. 413, 412 S.E.2d 814 (1991).

4. By pleading guilty to Count 5 of the federal indictment Ms. Dean has admitted to that she facilitated the sale of controlled substances to a confidential informant on February 25, 2010, in her home located at 136 Maple Avenue. These facts legally sufficient to require the forfeiture of Ms. Dean's interest in the property pursuant to West Virginia Code §60A-7-703.
5. That the seizure of Ms. Dean's property does not constitute an "excessive fine" in violation of Article III, Section 6 of the West Virginia Constitution or of the Eight Amendment to United States Constitution. Ms. Dean was a knowing and willful participant in the felonious sale of a highly addictive and dangerous drug. Furthermore, she purposefully used the property which is the subject matter of this proceeding to facilitate this transaction. In light of her culpability the seizure of this property by the State of West Virginia is not so excessive as to render it unconstitutional.

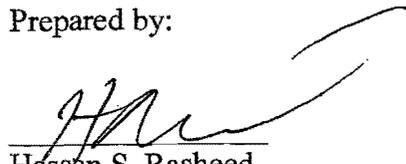
Based on the foregoing, the Court is of the opinion that there exist no genuine issues of material fact to be tried in this matter. Thus, Petitioner's "Motion for Summary Judgment" should be granted.

ACCORDINGLY, the Court GRANTS the Petitioner's Summary Judgment in favor of the Petitioner. The Court ORDERS that any right, or title of interest to the aforementioned property located at 64 White Tail Lane, Deed Book-1023, Page 594, Map. No. 21/Lot 10.1 MD District (07) located in Kearneysville, Jefferson County, West Virginia is now vested with the Jefferson County Sheriff's Department.



Honorable David H. Sanders
Judge, 23rd Judicial Circuit

Prepared by:



Hassan S. Rasheed
Counsel for Petitioner
P.O. Box 729
Charles Town WV
Bar #6655

3CC
R. McQuade
H. Rasheed
JCSD
11/4/11
GAC

A TRUE COPY
ATTEST:

LAURA E. RATTENNI
CLERK, CIRCUIT COURT
JEFFERSON COUNTY, W.VA

BY 
DEPUTY CLERK

IN THE MAGISTRATE COURT OF JEFFERSON COUNTY, WEST VIRGINIA

RECEIVED

SCANNED DATE

STATE OF WEST VIRGINIA
VS.

Magistrate Court Case No:

10F-211/213

Tricia Okey
Defendant

ORDER

On the 2 day of March, 2010, came the Clerk of the Circuit Court and presented to the Court the Affidavit of the Defendant requesting the appointment of an attorney. And it appearing to the Court that the Defendant has been charged with:

conspiracy to dist. crack cocaine x3

which is a felony/misdemeanor; and it further appearing to the Court as checked below:

- That the Defendant is eligible for court appointed counsel under WVPLS Council guidelines;
- That the Defendant is not eligible for court appointed counsel under WVPLS Council guidelines;
- That the case is not an eligible case for court appointed counsel under Code 29-21-1, et seq.;
- That the defendant appears to be financially able to employ counsel, but is incarcerated and is unable to arrange for counsel quickly enough to have adequate representation to protect his/her rights at the preliminary hearing;
- The application is incomplete;

IT IS ACCORDINGLY ORDERED AND ADJUDGED, as checked below:

- The court hereby appoints **Public Defender** as counsel for the defendant
- The court hereby appoints _____ as counsel for Defendant;
- The court hereby appoints _____ for the limited purpose of representing the Defendant at the preliminary hearing; thereafter said counsel shall forthwith bring this matter on for a status hearing to determine the Defendant's eligibility for continued court appointed representation;
- The Defendant's/Applicant's request for court appointed counsel is **DENIED**.

The Magistrate Court Clerk will transmit a copy of this Order ~~FILED~~ **FILED FELONY CASES ONLY** to the Clerk of the Circuit Court for recordation. The Magistrate Court Clerk will notify the Defendant and, if applicable, the appointed attorney, and the Prosecuting Attorney, of the contents of this Order. The Clerk is to tax the attorney fees as costs.

Alan E. Newberry
Magistrate