No. 29999 – Pamela Jean Games-Neely, Prosecuting Attorney of Berkeley County, West Virginia, on behalf of the West Virginia State Police v. Real Property, including a brick ranch house and garage, commonly known as 1175 Sam Mason Road located in Mill Creek District of Berkeley County, WV Map 13, Parcel 32, Libre 237, Folio and Book 635

FILED
July 3, 2002
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SUPREME COURT OF APPEALS
OF WEST VIRGINIA

RELEASED
July 5, 2002
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OF WEST VIRGINIA

Starcher, Justice, concurring:

As the majority opinion makes clear, forfeiture, in any form, is "a harsh, even dreadful, remedy" that courts greatly disfavor. *State v. Cheney*, 45 W.Va. 478, 480, 31 S.E. 920, 921 (1898). This includes the forfeiture of real or personal property under the Contraband Forfeiture Act.

The Forfeiture Act is to be strictly construed against the State because the act of taking property from an individual, particularly one who has not been adjudged guilty of a crime, is beyond a doubt draconian. The appellant, Hattie Sowers, was not charged, let alone convicted of a crime, yet the State filed the instant action to take her home because people living in the home possessed and sold marijuana and used some of that money to pay the phone or cable bill, or the food bill, or some other household expense. Carol Lee Aquino, who was never served by the State with the forfeiture petition, was simply a joint owner of the home with Ms. Sowers, and yet she faced having her ownership interest in the property impaired through the actions of the State. The State also put in jeopardy the rights of Option One Mortgage Corporation to use the property as security for a $45,000 loan.

In sum, had this Court allowed the default judgment to stand, individuals would have lost their ownership interests in the real estate without the State making any showing that those individuals were in any way connected to the drug dealing, let alone guilty of a crime. Ms. Sower's interest in the property is tied to that of Ms. Aquino and Option One Mortgage Corporation – and all of the interests must be considered by the Court together.

When the State chooses to wield such a powerful, destructive instrument as the Forfeiture Act, this Court has made clear that it must dot every "i" and cross every "t." As we recently made clear in a case from Mingo County, before this Court will sustain a forfeiture of property, the record must contain adequate and substantial evidence that the disputed "property represented the fruits of illegal drug dealing." *State v. Burgraff*, 208 W.Va. 746, 748, 542 S.E.2d 909, 911 (2000) (*per curiam*). The State failed to do so in this instance.

The State has a duty to maintain "public confidence in the criminal justice system . . . by assuring that it operates in a fair and impartial manner." *Nicholas v. Sammons*, 178 W.Va. 631, 632, 363 S.E.2d 516, 518 (1987). The State cannot, should not, rely upon procedural technicalities such as the default provisions of the Forfeiture Act to take property because to do so undermines public confidence in the system. Every individual with an interest in property that is being considered for forfeiture must receive notice of the forfeiture proceeding, and each must be given an opportunity to respond. And in the end, the State must prove with substantial evidence that the property represents the fruits of illegal drug dealing.

I therefore respectfully concur.