

**STATE OF WEST VIRGINIA
SUPREME COURT OF APPEALS**

**Mark Allen Blair,
Petitioner**

vs.) No. 11-0390 (Jackson Co. 09-P-9)

**Daniel B. Dotson, III, Assistant
Prosecuting Attorney of Jackson County,
West Virginia, on behalf of the Jackson
County Sheriff's Department,
Respondent**

FILED

**October 21, 2011
RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA**

MEMORANDUM DECISION

Petitioner Mark Allen Blair seeks reversal of a circuit court order ordering forfeiture of his personal property seized under the West Virginia Contraband Forfeiture Act, West Virginia Code §§ 60A-7-701 to -707. The central question in this appeal is whether the State established, by a preponderance of the evidence, that there was a substantial connection between the property seized and an illegal drug transaction.

This Court has considered the parties' briefs and the record on appeal. Pursuant to Rule 1(d) of the Revised Rules of Appellate Procedure, this Court is of the opinion that this case is appropriate for consideration under the Revised Rules. The facts and legal arguments are adequately presented in the parties' written briefs and the record on appeal, and the decisional process would not be significantly aided by oral argument. Upon consideration of the standard of review, the briefs, and the record presented, the Court finds no substantial question of law and no prejudicial error. For these reasons, a memorandum decision is appropriate under Rule 21 of the Revised Rules.

On February 5, 2009, a sheriff's deputy arrived at petitioner's apartment pursuant to a complaint of a "suicidal male." Petitioner emerged from a back bedroom with a kitchen knife in hand. Petitioner surrendered the knife at the deputy's request and said he had been fighting with his roommate about "dealing drugs." In response to the deputy's question as to whether there were any drugs in the residence, petitioner said "yes" and led the deputy to a tote that contained two bags of marijuana.

In preparation to take petitioner to his mental hygiene proceeding, the deputy allowed petitioner to put on a coat. The deputy patted down the coat and found \$1,055 in cash. When the deputy asked petitioner about the money, petitioner replied, "I told you, I sell drugs."

Later that day, the Sheriff's Department executed a search warrant on petitioner's residence. The search revealed two small scales, plastic bags, \$52,055 in cash, a checking

account statement in Petitioner's name showing a balance of \$509.62, assorted gold jewelry and watches, and a phone containing three recorded messages related to drug sales.

Petitioner was subsequently charged with Possession of Marijuana with the Intent to Deliver. The instant appeal, however, centers on the petition seeking forfeiture of certain cash, jewelry, and other property owned by petitioner under the West Virginia Contraband Forfeiture Act.

After a hearing held before the circuit court during which both sides presented evidence, including the testimony of several witnesses, the circuit court entered an order, dated October 20, 2010, that petitioner's property – described in the style of this action – be forfeited. The circuit court noted that there must be a "common sense evaluation of the facts" to determine if the property could be forfeited. After reviewing all of the evidence together, the circuit court ruled that the State had proved by a preponderance of the evidence that the seized property was the result of illegal drug transactions. Petitioner now appeals the circuit court's decision.

When reviewing a circuit court's judgment reached following a bench trial, this Court has previously held that:

In reviewing challenges to the findings and conclusions of the circuit court made after a bench trial, a two-pronged deferential standard of review is applied. The final order and the ultimate disposition are reviewed under an abuse of discretion standard, and the circuit court's underlying factual findings are reviewed under a clearly erroneous standard. Questions of law are subject to a *de novo* review.

Syl. Pt. 1, *Public Citizen, Inc. v. First Nat'l Bank in Fairmont*, 198 W. Va. 329, 480 S.E.2d 538 (1996).

In Syllabus Point 4 of *State v. Forty-Three Thousand Dollars and No Cents (\$43,000.00) in Cashier's Checks*, 214 W.Va. 650, 591 S.E.2d 208 (2003), we determined, in part, that the State must meet the following standard of proof in a forfeiture case:

Under W.Va.Code, § 60A-7-703(a)(6) (1988), the State, in forfeiting property, is required to demonstrate by a preponderance of the evidence that there is a substantial connection between the property seized and the illegal drug transaction. This finding is in addition to the initial finding of probable cause that an illegal act under the drug law has occurred.

Petitioner argues that the circuit court erred because there is no evidence, let alone a preponderance of evidence, showing that petitioner was involved in any drug transaction or that petitioner's property was traceable to any drug transaction. Petitioner asserts that all of his seized personal property can be traced to legal sources.

After reviewing the record presented on appeal, we believe that the circuit court's decision is supported by the evidence. The State introduced evidence of probable cause that an illegal act under the drug laws had occurred. Petitioner was in possession of marijuana and admitted to the deputy that he had been arguing with his roommate about "selling drugs" and stated, "I told you, I sell drugs." Moreover, petitioner had the trappings of a drug dealer: marijuana, sandwich bags, scales, and large sums of cash and jewelry. Petitioner received income of \$637.00 per month in government benefits, and the circuit court did not find it credible that petitioner amassed more than \$52,000 in cash merely by living modestly. Additionally, there were telephone messages related to drug sales on petitioner's phone, petitioner had a prior conviction for marijuana distribution, and the items seized from petitioner's residence are those contemplated by the Contraband Forfeiture Act, West Virginia Code § 60A-7-703 (*e.g.*, items used to contain, dispense, and convey controlled substances and money or things of value given in exchange for a controlled substance). The circuit court applied the correct legal standard to the evidence, and we cannot say that the circuit court erred or abused its discretion.

For the foregoing reasons, we affirm.

Affirmed.

ISSUED: October 21, 2011

CONCURRED IN BY:

Chief Justice Margaret L. Workman
Justice Robin Jean Davis
Justice Brent D. Benjamin
Justice Menis E. Ketchum

DISQUALIFIED:

Justice Thomas E. McHugh