

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

United States of America

v.

Case No. 20-cr-26-SM-3
Opinion No. 2026 DNH 005

Jonathan Cruz-Marte,
Defendant

O R D E R

In May of 2021, law enforcement agents searched the residence of the defendant, Jonathan Cruz-Marte. Among other things, agents discovered and seized a significant amount of cash and a Honda automobile registered to Cruz-Marte. See 21 U.S.C. § 881. Shortly thereafter, Cruz-Marte was indicted by a federal grand jury and charged with conspiracy to distribute sizable quantities of fentanyl, cocaine, and crack cocaine. The indictment notified Cruz-Marte that should he be convicted of the crime charged, he would "forfeit to the United States any property constituting, or derived from, any proceeds the defendant obtained, directly or indirectly, as the result of the charged violations of Title 21." Superseding Indictment (document no. 27). Both the cash and vehicle seized from Cruz-Marte were specifically listed as being subject to forfeiture. Cruz-Marte subsequently pled guilty and was sentenced to serve ninety-six months in prison.

Meanwhile, the government began the process of administratively forfeiting the cash and automobile. At all relevant times, Cruz-Marte was being held in pretrial detention at the Strafford County House of Corrections. In July of 2021, the government sent notices of the planned forfeitures by certified mail to: "Jonathan Cruz-Marte, Strafford County Jail, 266 County Farm Road, Dover, N.H. 03820-6003." A staff member at the jail's guard desk signed for that mail, evidencing its delivery. Eleven months later, in June of 2022, out of an abundance of caution, the government sent a second round of notices to Cruz-Marte at the same address. Those, too, were received and signed for by a staff member at the jail.¹

Despite evidence that both the July, 2021, mailings and the June, 2022, mailings were properly addressed to Cruz-Marte and

¹ Parenthetically, the court notes that, although not required, the government also sent copies of the July, 2021 notices of the planned forfeitures to Cruz-Marte's (former) counsel, Attorney Michael Iacopino. But, when it discovered that Attorney Iacopino had withdrawn as counsel, it then sent a second round of notices to both Cruz-Marte and Attorney Eduardo Masferrer (the June, 2022 notices). But, As Cruz-Marte points out, approximately two months earlier, Attorney Masferrer had himself withdrawn as counsel to Cruz-Marte. As a consequence, counsel that was then-currently representing Cruz-Marte did not receive the forfeiture notices in either the 2021 or the 2022 mailings. It is unclear whether either of Cruz-Marte's former attorneys notified him (or his then-current counsel) of the government's forfeiture notices. Cruz-Marte says they did not.

received at the county jail, Cruz-Marté says he received neither of them. And, because he claims not to have received "actual notice" of the forfeiture proceedings, he says those proceedings were procedurally flawed. See Motion to Set Aside Declaration of Forfeiture (document no. 161) and Reply to Government Objection (document no. 163). Additionally, Cruz-Marté argues that the underlying search of his residence during which agents seized the assets in question failed to comply with the requirements of the Fourth Amendment. Necessarily then, he says, the forfeiture of those assets violated his constitutional rights and must be set aside. See Supplemental Reply to Government's Objection (document no. 167). Neither argument is persuasive.

Discussion

A. This Scope of this Court's Review is Limited.

When, as here, the United States has completed an administrative forfeiture of property, "the district court lacks jurisdiction to review the forfeiture except for failure to comply with procedural requirements or to comport with due process. This lack of jurisdiction extends even to constitutional challenges to the search and seizure leading to forfeiture." Reddick v. U.S. Dep't of Just., No. 05-CV-256 SM, 2006 WL 2077500, at *2 (D.N.H. July 24, 2006) (citations and

internal punctuation omitted). As the United States District Court for the Southern District of New York has explained,

This statutory and regulatory scheme affords the claimant sufficient notice and opportunity to test the legality of the seizure in the forfeiture proceeding. However, an administrative forfeiture removes the res from the district court. As a result, once the administrative process has begun, a federal district court generally lacks subject matter jurisdiction to review the merits of an administrative forfeiture decision, including constitutional challenges to the search and seizure.

Dawson v. Drug Enf't Admin., 927 F. Supp. 748, 752 (S.D.N.Y. 1996) (emphasis supplied; citations omitted). See also United States v. Simon, 609 F. App'x 1002, 1005 (11th Cir. 2015) ("Our review is limited to the government's compliance with the applicable procedural safeguards. Thus, although Mr. Simon argues that his Fourth Amendment rights were violated because the government failed to establish probable cause and obtain a warrant to seize the currency, we, like the district court, lack jurisdiction to consider these arguments because they go to the underlying merits of the administrative forfeiture."); Williams v. Drug Enf't Admin., 620 F. App'x 72, 74-75 (3d Cir. 2015) ("Williams does not dispute that he received proper notice from the DEA and that he declined to file a judicial claim. Rather, he argues that the BMW should be returned because his Fourth Amendment rights were violated at the time of its seizure.

However, because Williams's arguments go to the underlying merits of the administrative forfeiture, the District Court lacked jurisdiction to consider them. Summary judgment in favor of the DEA was therefore appropriate."); Curry v. United States, No. 22-2594, 2023 WL 6890082, at *2 (3d Cir. Oct. 19, 2023) (rejecting petitioner's Eighth Amendment challenge to a forfeiture on grounds that the court lacked jurisdiction to resolve such a claim).

The time for Cruz-Marte to challenge the constitutionality of the original seizure of the property at issue was during the course of his criminal proceeding or perhaps even in a post-conviction habeas petition. Alternatively, of course, he could have challenged the seizure in the context of the administrative forfeiture itself. That forfeiture process has, however, been completed and this court lacks jurisdiction to address Cruz-Marte's claim that the original seizure failed to comply with the requirements of the Fourth Amendment.

B. The Notice Provide to Cruz-Marte was Sufficient.

Section 983 of Title 18, entitled "General Rules for Civil Forfeiture Proceedings," governs Cruz-Marte's challenge to the government's forfeiture of the cash and automobile at issue. Indeed, that statute provides that, "A motion filed under this

subsection shall be the exclusive remedy for seeking to set aside a declaration of forfeiture under a civil forfeiture statute." 18 U.S.C. § 983(e) (5).

Before commencing any nonjudicial civil forfeiture proceeding, the government must "send written notice to interested parties . . . in a manner to achieve proper notice as soon as practicable." 18 U.S.C. § 983(a) (1) (A) (i). The "proper notice" referenced in that section - that is, notice consistent with the requirements of the Due Process Clause - has been interpreted to mean, "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Finally, Section 983 also provides that any person entitled to written notice of a nonjudicial forfeiture proceeding under a civil forfeiture statute who does not receive such notice may:

file a motion to set aside a declaration of forfeiture with respect to that person's interest in the property, which motion shall be granted if -

(A) the Government knew, or reasonably should have known, of the moving party's interest and failed to take reasonable steps to provide such party with notice; and

(B) the moving party did not know or have reason to know of the seizure within sufficient time to file a timely claim.

18 U.S.C. § 983(e)(1) (emphasis supplied). Consequently, the only issue presented by Cruz-Marté's motion is "whether certified mail notice, sent to the prisoner at the proper address, affords due process in a civil forfeiture case."

Whiting v. United States, 231 F.3d 70, 76 (2000). In resolving that question, the Whiting court held:

Due process requires the government to afford an owner "notice and an opportunity to be heard" before civilly forfeiting his property, but actual receipt of notice by the defendant is not automatically required. [citing Mullane, supra]. Rather, Mullane said that due process requires the provision of 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' 'Reasonably calculated' means likelihood, not certainty.

If the Supreme Court's language is taken literally, then the Mullane test is satisfied here. The government sent a certified letter to Whiting at the prison facility in which Whiting was actually being held. The mail is a well-recognized means of communicating important information, and certified mail has further safeguards (i.e., signature of recipient upon delivery and return of the signed receipt card).

Absent proof to the contrary, it is a fair assumption that properly addressed certified letters to prisoners are ordinarily delivered.

Id. at 76 (citations omitted). See also Mesa Valderrama v. United States, 417 F.3d 1189, 1197 (11th Cir. 2005) (“Reasonable notice, however, requires only that the government attempt to provide actual notice; it does not require that the government demonstrate that it was successful in providing actual notice.”) (citing Dusenbery v. United States, 534 U.S. 161, 170 (2002)).

The Whiting court then noted that the nature of the service required will depend upon the circumstances presented:

Needless to say, the government must show, if the issue is contested, that the notice was mailed to the prison in which the claimant was in fact being held. Similarly, if the government knew that mail delivery in a particular prison was unreliable but sent the notice by this means without any other precaution, mail delivery would not satisfy due process.

Whiting, 231 F.3d at 77 (citations omitted). Finally, the court concluded by observing that:

Here, there are no allegations of this kind nor of any other special circumstance that might warrant a departure from Mullane’s general rule.

It is well to be realistic about the situation: given the incentives, inmate denials that mailed notice was actually received are doubtless much more common than misdelivery, and knowledge is probably widespread among defendants in drug cases that the government does look to harvest assets from drug dealers incident to criminal cases.

Id. (emphasis supplied).

In support of his claim that he did not receive constitutionally-adequate, "proper notice" of the government's intention to forfeit the cash and automobile, Cruz-Marte says he never received either the July 2021 mailings or the June 2022 mailings directed to him at the jail. Nevertheless, he does not deny that the government - not once but twice - sent him notice of the administrative forfeiture proceedings, by certified mail, properly addressed to him at the Strafford County Jail. Nor does he deny that those notices were properly delivered to the jail and signed for by jail personnel. He does not claim that there was any pattern of delayed or failed mail deliveries at the jail, or that the government knew (or should have known) of mail delivery problems there. Nor does he allege that he personally experienced problems with mail deliveries while he was being detained at the jail. He simply denies receipt of those particular articles of certified mail. As in Whiting, then, "there are no allegations of . . . any special circumstance that might warrant a departure from Mullane's general rule." Id. at 77.

Given the facts and allegations presented, Cruz-Marte's claim not to have received actual notice of the administrative forfeiture proceedings is, standing alone, insufficient to

invalidate those proceedings. See generally 18 U.S.C. § 983(e). Cruz-Marté has not shown that the government failed to comply with the notice requirements of section 983, nor has he shown that the government's efforts to serve him with notice of the administrative forfeiture of his property were otherwise constitutionally deficient.

Conclusion

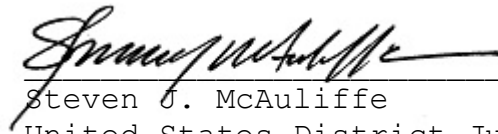
The scope of this court's jurisdiction is limited to determining whether the government complied with procedural requirements attendant to a non-judicial administrative forfeiture. That includes the statutory (and constitutionally-mandated) requirement that the government provide Cruz-Marté with "proper notice" of those proceedings. However, the court lacks jurisdiction to address Cruz-Marté's claim that the original seizure of the cash and automobile was inconsistent with the requirements of the Fourth Amendment.

Consequently, the sole question before the court is whether, by twice sending, by certified mail, notices of the planned forfeiture proceedings to Cruz-Marté at his known (and actual) address at the jail, the government's efforts were "reasonably calculated under all the circumstances to apprise [him] of the pendency of the [forfeiture] action and afford

[him] an opportunity to present [his] objections." Mullane, 339 U.S. at 314. They were. And, under the circumstances presented, neither the Constitution nor the governing statute, 18 U.S.C. § 983, required anything more.

For the forgoing reasons, as well as those set out in the government's legal memorandum (document no. 162), Cruz-Marte's "Motion to Set Aside Declaration of Forfeiture" (**document no. 161, as amended by documents no. 163 and 167**) is necessarily denied.

SO ORDERED.



Steven J. McAuliffe
United States District Judge

January 14, 2026

cc: John J. Kennedy, AUSA
Jonathan Cruz-Marte
U.S. Marshal
U.S. Probation