NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2011 IL App (4th) 100894-U

Filed 8/29/11

NO. 4–10–0894

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Forfeiture of SEVENTEEN THOUSAND FIVE HUNDRED THIRTY-TWO DOLLARS ($17,532) IN UNITED STATES CURRENCY,	)	Appeal from Circuit Court of Macon County No. 06MR306
THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CASSIAN COLEMAN, Defendant-Appellant.	)	Honorable Katherine M. McCarthy, Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held:* Where the State sent notice to defendant of the pending forfeiture proceedings via certified mail to his last known address, the State satisfied procedural due-process requirements, regardless that the notice was undelivered.

¶ 2 The State declared a nonjudicial forfeiture of property pursuant to section 6 of the Drug Asset Forfeiture Procedure Act (Drug Forfeiture Act) (725 ILCS 150/6 (West 2008)). Defendant, Cassian Coleman, the property's owner, petitioned to vacate the forfeiture, alleging he did not receive adequate notice of the proceeding. The circuit court denied defendant's petition, holding that his due-process rights had been satisfied. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 26, 2006, the State's Attorney mailed to defendant a notice of forfeiture of property in the form of United States currency in the estimated total amount of $17,532. This

property had been seized by police in March 2006 during the execution of a search warrant. The State mailed the notice to defendant at 7441 West 64th Street, Summit, Illinois. According to defendant, this was the wrong address and the State knew or should have known the correct address.

¶ 5 On June 8, 2006, the State's attorney filed a declaration of forfeiture, asserting that it had mailed notice to defendant via certified mail of the pending forfeiture, and defendant had failed to file a verified claim for the return of the property within 45 days. The property was thereby declared forfeited.

¶ 6 On November 19, 2009, defendant filed a *pro se* motion to vacate the forfeiture, claiming he had not received proper notice. In his motion, he asserted that on October 6, 2008, in his underlying criminal case, Macon County case No. 06–CF–448, he had filed a *pro se* "motion for prove-up and return of currency and property." Yet, on October 28, 2006, the circuit court entered an order declining to rule on defendant's motion for a lack of jurisdiction. Apparently, defendant's direct appeal in his criminal case was pending at the time and this court had not yet issued a mandate.

¶ 7 Defendant alleged the State made the following errors in properly notifying him of the forfeiture proceeding. First, he claims, at the time he was arrested, the police seized from him a check addressed to him at 7430 West 63rd Place, Summit, Illinois, his correct address. Second, when the notice was returned undeliverable, the State should have made further attempts to locate him. Finally, the State's Attorney knew or should have known that defendant was immediately sent to prison upon his arrest, as his arrest constituted a parole violation. Based on these facts, defendant claims, the State violated his procedural due-process rights.

¶ 8 On June 23, 2010, the circuit court entered an order denying defendant's motion to vacate the forfeiture on grounds that defendant did not file a claim within the statutory 45-day period.

The court noted that defendant admitted he had been released from prison on or about May 2, 2006, within the 45-day period. Because he was not in custody throughout the entire claim period, his case was distinguishable from *People v. Smith*, 275 Ill. App. 3d 844, 850 (1995), where the Second District held that the defendant's due-process rights had been violated when he remained incarcerated on the underlying criminal offense during the entire claim period, and the State knew he was in jail. Here, according to the circuit court, defendant had the opportunity to file a claim for the return of his property, but failed to do so within the statutory period.

¶ 9 On July 12, 2010, defendant filed a *pro se* motion to reconsider. He admitted he had been released from prison during the claim period; however, he continued to rely on the fact that he had not received the notice.

¶ 10 On August 4, 2010, Jay Scott, a Macon County Assistant State's Attorney, filed an affidavit as directed by the circuit court in response to defendant's motion to reconsider. According to his affidavit, Scott personally prosecuted defendant in the underlying criminal case. After his arrest, defendant was released without charges being filed pending analysis of the seized material by the Illinois State Police crime lab. Scott mailed to defendant, via certified mail, the notice of forfeiture at the address indicated on the evidence inventory sheet. Scott acknowledged that the receipt was returned undelivered. However, he claimed the address listed for defendant's address matched that on the police report of the incident. He also claimed that, pursuant to section 4(A)(1) of the Drug Forfeiture Act (725 ILCS 150/4(A)(1) (West 2008)), the arrestee's address that is provided to the arresting agency at the time "shall be deemed to be that person's known address." The address to which the notice was mailed was the address provided by defendant.

¶ 11 In his affidavit, Scott asserted that defendant was arrested on July 27, 2006, in case

No. 06–CF–448. Section 4(A)(1) of the Drug Forfeiture Act also provides that the burden of providing the correct address for the purpose of notification is on the owner of the property, not the seizing agency. See 725 ILCS 150/4(A)(1) (West 2008). During the trial court proceedings, defendant did not notify Scott of a change of address. When defendant was booked into the county jail in June 2007, defendant provided, as his home address, the same address that appeared on the notice. Scott stated: "Given the fact that [defendant] provided the same address at the time of his arrest on March 22, 2006[,] as he did on June 29, 2007, more than one year after the Declaration of Forfeiture in this case, I believe that his true address during the pendency of this proceeding was 7441 West 64th Street, Summit, Illinois."

¶ 12 Attached to Scott's affidavit was the affidavit of David Dailey, a detective with the Decatur police department. Daily stated he was the case agent involved in the execution of the search warrant in March 2006. At the time of his arrest, defendant personally "stated to [Dailey] that his address was 7441 West 64th Street, Summit, Illinois."

¶ 13 On September 20, 2010, in response to Dailey's affidavit, defendant filed an answer, claiming he never spoke with Dailey regarding his address. Defendant further claimed the State knew the following: (1) he was incarcerated, and not at his home address, at the time it mailed the notice of the pending forfeiture proceedings, (2) the address was incorrect as evidenced by the receipt of certified mail, which was returned as undelivered, and (3) the correct address, 7340 West 63rd Place, Summit, Illinois, as the same was indicated on State Farm Insurance papers seized as evidence during the execution of the search warrant.

¶ 14 On September 21, 2010, Scott filed an amended affidavit, in which he asserted the following additional information:

> "That at no time either before or during the pendency of this case or the criminal prosecution in [case No.] 06–CF–448, which did not conclude as to [defendant] until October 24, 2007, more than 1-1/2 years after the declaration of forfeiture herein, did I have any knowledge that the defendant resided at an address other than 7441 West 64th Street, Summit, Illinois. Had I received information that the claimant resided at another address[,] I would have caused notice to be given to him at that address."

¶ 15 On October 5, 2010, the circuit court entered an order denying defendant's motion to reconsider, finding: (1) defendant admitted he was released from prison on or about May 2, 2006, and thus he was not in custody during the entire 45-day claim period; (2) defendant apparently had two addresses, as one or the other of the two Summit addresses in question appeared on different documents at the same time; (3) Scott mailed the notice to defendant at the address given to him by Dailey, which was personally given to him by defendant, and was the same address listed on the police report; (4) defendant never advised Scott that he resided at any other address; and (5) upon defendant's subsequent arrest, he provided "once again" the address at 7441 West 64th Street, Summit, Illinois. The court held the notice of forfeiture had been sent to defendant's last known address in compliance with defendant's right to procedural due process and with the provisions of the Drug Forfeiture Act.

¶ 16 On October 14, 2010, defendant filed a second motion to reconsider, citing several cases supporting his position that notice of forfeiture was not properly effectuated so as to satisfy due process. On November 1, 2010, the circuit court denied defendant's second motion to reconsider.

This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 As an initial matter, we note that the Illinois Attorney General has sent a letter of "noninvolvement" in this case, and we have no response in this appeal to defendant's challenge to the circuit court's judgment. Though we lack a response brief, we nonetheless address the issue defendant raises here. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976) ("[I]f the record is simple and the claimed errors are such that the court can easily decide them without the aid of an appellee's brief, the court of review should decide the merits of the appeal.")

¶ 19 In this *pro se* appeal, defendant claims the circuit court erred in denying his motion to vacate the forfeiture. Whether defendant received adequate notice of the forfeiture proceedings in accordance with due process is itself a question of law and is reviewed *de novo*. *In re Forfeiture of $2,354.00 United States Currency*, 326 Ill. App. 3d 9, 13 (2001). When personal property with a value of less than $20,000 is seized, as is the case here, the State must provide notice of the pending forfeiture to the owner of the property pursuant to section 4(A)(1) of the Drug Forfeiture Act (725 ILCS 150/4(A)(1) (West 2008)). Section 4(A)(1) provides as follows:

> "(1) If the owner's or interest holder's name and current address are known, then by either personal service or mailing a copy of the notice by certified mail, return receipt requested, to that address. For purposes of notice under this Section, if a person has been arrested for the conduct giving rise to the forfeiture, then the address provided to the arresting agency at the time of arrest shall be

> deemed to be that person's known address. Provided, however, if an owner or interest holder's address changes prior to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the seizing agency of the change in address or, if the owner or interest holder's address changes subsequent to the effective date of the notice of pending forfeiture, the owner or interest holder shall promptly notify the State's Attorney of the change in address[.]" 725 ILCS 150/4(A)(1) (West 2008).

Further, the Drug Forfeiture Act provides when notice is effective as follows:

> "(B) Notice served under this Act is effective upon personal service, the last date of publication, or the mailing of written notice, whichever is earlier." 725 ILCS 150/4(B) (West 2008).

¶ 20 Pre-2002 case law suggested that the "return receipt requested" language indicated that the legislature intended that service by certified mail was not complete until the notice was received by the addressee. *Forfeiture of $2,354.00 United States Currency*, 326 Ill. App. 3d at 13. See also *Garcia v. Meza*, 235 F.3d 287, 291 (7th Cir. 2000) (the court held the government had not acted reasonably after the notice of forfeiture was returned undelivered); *Montgomery v. Scott*, 802 F. Supp. 930, 936 (W.D.N.Y. 1992) (the government could not reasonably rely on a notice that it knew was unsuccessful, which was no different than deliberately mailing the notice to the wrong address at the outset). According to these cases, the State's failure to receive proof of delivery rendered an attempted notice incomplete and invalid. *Forfeiture of $2,354.00 United States Currency*, 326 Ill. App. 3d at 13.

¶ 21 However, in 2002, our supreme court resolved the issue of what is required by the State to provide a claimant with proper notice of forfeiture proceedings. See *People ex rel. Devine v. $30,700.00 United States Currency*, 199 Ill. 2d 142 (2002). In that case, the State initiated forfeiture proceedings under the Drug Forfeiture Act. *Devine*, 199 Ill. 2d at 144. The State served notice pursuant to section 4 upon the claimant by certified mail, with return receipt requested to his last known address. *Devine*, 199 Ill. 2d at 144; 725 ILCS 150/4(A)(1) (West 2008). The State did not receive a return receipt from the mailing and the claimant did not appear at the proceeding. *Devine*, 199 Ill. 2d at 147. The circuit court entered a default order of forfeiture, but the appellate court reversed, finding service was not complete or accomplished until the State received a return receipt signed by the addressee. *Devine*, 199 Ill. 2d at 147-48.

¶ 22 The supreme court reversed the appellate court, holding that section 4(B) of the Drug Forfeiture Act (725 ILCS 150/4(B) (West 2008)) clearly contemplates that service of notice by mailing is perfected when the notice is deposited in the mail. *Devine*, 199 Ill. 2d at 151. The court held: "The Act does not condition the effectiveness of notice upon receipt of the return receipt signed by the addressee, and this court will not rewrite the Act to create this requirement." *Devine*, 199 Ill. 2d at 151. The court noted that, because the legislature expressly conditioned service upon receipt of the signed return receipt in other enactments, it "must construe the omission of the return receipt requirement from section 4(B) as intentional." *Devine*, 199 Ill. 2d at 152. According to the court:

> "[t]he statute provides for mailing of notice to the last known address of the owner or interest holder. It does not condition this mailing upon the State's investigation into the accuracy of this information.

> In fact, it expresses the contrary: the owner or interest holder is obligated to notify the seizing agency of his or her change in address occurring prior to the mailing of notice. 735 ILCS 150/4(A)(1) (West 2000). The appellate court's holding renders this obligation superfluous." *Devine*, 199 Ill. 2d at 154-55.

The court further held that notice given pursuant to section 4 satisfied procedural due process because there was no evidence that the State knew or should have known that service was likely to be ineffective, *i.e.,* that the defendant resided in jail or elsewhere. *Devine*, 199 Ill. 2d at 161 (where the claimant was in custody on charges unrelated to the seizure of currency at the time the notice was mailed, the State was not charged with knowledge that the claimant was in custody).

¶ 23 The record here shows that defendant provided the arresting agency the address of 7441 West 64th Street in Summit as his "last known address." If this was the wrong address, defendant did not notify the State of any change. See 725 ILCS 150/4(A)(1) (West 2008). Instead, it is apparent from the record that defendant indeed resided at this address some time before the 45-day claim period, after this period, and/or both. This address was provided to Detective Dailey by defendant at the time of his initial arrest in March 2006, and when he was booked into jail following his subsequent arrest in the underlying criminal case in June 2007. Based on these facts, we hold the State acted appropriately, and in accordance with due process, by sending defendant notice of the pending forfeiture to his last known address given by defendant via certified mail.

¶ 24 III. CONCLUSION

¶ 25 For the foregoing reasons, we affirm the circuit court's judgment.

¶ 26 Affirmed.