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Constitutional Law - United States v. James Daniel Good Property: Government Obligations and Due Process Requirements in Civil Forfeiture Proceedings

Kevin T. Hunsaker

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CONSTITUTIONAL LAW

SUMMARY

UNITED STATES v. JAMES DANIEL GOOD PROPERTY: GOVERNMENT OBLIGATIONS AND DUE PROCESS REQUIREMENTS IN CIVIL FORFEITURE PROCEEDINGS

I. INTRODUCTION

In *United States v. James Daniel Good Property*,¹ the United States Court of Appeals for the Ninth Circuit held that an action for civil forfeiture under the Controlled Substances Act² can still be untimely even if brought within the five year statute of limitations.³ The court set this new precedent by interpreting the federal statutes governing forfeiture procedures⁴ as imposing separate reporting and notification requirements upon various government agents and officials.⁵ Under the court's interpretation, if the government fails to meet these additional and separate requirements, the action will be dismissed as un-

1. *United States v. James Daniel Good Property*, 971 F.2d 1376 (9th Cir. 1992) (per Goodwin, J., with whom Aldisert, J., joined; Noonan, J., concurring in part, dissenting in part).

2. 21 U.S.C. § 881(a)(7) (1988) provides that all real property which is used or intended to be used in any manner to commit, or to facilitate the commission of a drug related violation, is subject to forfeiture to the U.S. government and no property rights shall exist in the property.

3. *Good*, 971 F.2d at 1378.

4. 19 U.S.C. §§ 1602-04 (1988).

5. *Good*, 971 F.2d at 1379-81.

timely, even if brought within five years of the underlying predicate acts.⁶

The court also held that due process requires notice and an opportunity to be heard *before* a person's home can be taken pursuant to the Controlled Substances Act.⁷ Since defendant Good did not receive notice or a pre-seizure hearing, the statute, as applied, was a violation of his due process rights.⁸ The court's decision is consistent with the analysis used in an earlier Second Circuit case⁹ and contradicts the conclusion reached by an earlier Eleventh Circuit court.¹⁰ Both earlier cases deal with the seizure of a house.

II. FACTS

On January 31, 1985, Hawaii state police officers searched Good's house pursuant to a valid search warrant.¹¹ The officers uncovered almost 90 pounds of marijuana, various drug paraphernalia, and \$3,187 in cash.¹² Good pled guilty to drug charges on July 3, 1985, surrendered the cash, and served one year in jail.¹³

On August 8, 1989, over four years after the search of Good's home, the United States brought this action seeking to forfeit Good's home and property pursuant to 21 U.S.C. § 881(a)(7).¹⁴ The warrant authorizing seizure of Good's home, issued on August 21, 1989, was based upon the sworn affidavit of a Drug Enforcement Agency (DEA) special agent.¹⁵ The affidavit relied exclusively upon evidence obtained during the January 31, 1985 search.¹⁶ Good neither received prior notice of the seizure,

6. *Id.* at 1381.

7. *Id.* The applicable statute is 21 U.S.C. § 881(a)(7).

8. *Good*, 971 F.2d at 1384.

9. *United States v. 4492 S. Livonia Rd.*, 889 F.2d 1258 (2nd Cir. 1989).

10. *United States v. A Single Family Residence*, 803 F.2d 625 (11th Cir. 1986).

11. *United States v. James Daniel Good Property*, 971 F.2d 1376, 1378 (9th Cir. 1992).

12. *Id.*

13. *Id.*

14. *Id.* 21 U.S.C. § 881(a)(7) is the provision of the Controlled Substances Act that authorizes the forfeiture of real property.

15. *Good*, 971 F.2d at 1378.

16. *Id.*

nor was he given an opportunity to be heard prior to the seizure.¹⁷

Good filed a timely claim for the property and later filed a motion for summary judgment and requested rents on the property.¹⁸ The government also filed a motion for summary judgment, which the district court granted.¹⁹ Good then appealed the district court's decision.²⁰

III. BACKGROUND

The United States brought this action pursuant to the Controlled Substances Act which permits the forfeiture of real property.²¹ The Act does not, however, establish procedures that govern civil forfeiture. Instead, the Act incorporates the procedures provided by the customs laws.²²

Section 1621 of the customs laws sets forth the statute of limitations and states that no action for forfeiture can be brought unless commenced within five years after the alleged offense was discovered.²³

Sections 1602, 1603 and 1604 of the customs laws set forth the following reporting and notification obligations of the government: (1) Section 1602 requires any agent or officer authorized by law to make seizures to immediately report every seizure *and* every violation to the appropriate official;²⁴ (2) Section 1603 requires a customs officer to report seizures *or* violations of the customs laws when discovered to the United States attorney for the district in which the violation or seizure occurred;²⁵ (3) Section 1604 requires the Attorney General to immediately inquire

17. *Good*, 971 F.2d at 1382.

18. *Id.* at 1378.

19. *Id.*

20. *Good*, 971 F.2d at 1378.

21. 21 U.S.C. § 881(a)(7).

22. 21 U.S.C. § 881(d) (1988). The statute provides that "[t]he provisions of the law relating to seizure, summary and judicial forfeiture . . . for violation of the customs laws . . . shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under any of the provisions of this subchapter. . . ."

23. 19 U.S.C. § 1621 (1988).

24. 19 U.S.C. § 1602.

25. 19 U.S.C. § 1603(b).

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into the facts of cases reported by customs officers and to “forthwith” commence proceedings for forfeiture if he determines they are necessary.²⁶ The *Good* court found no cases which interpret the five year statute of limitations set forth in section 1621 in light of the obligations set forth in sections 1602-1604.²⁷

In addition, the Controlled Substances Act does not provide for notice or a hearing prior to a seizure of the owner’s property.²⁸

IV. COURT’S ANALYSIS

A. STATUTE OF LIMITATIONS INTERPRETATION

1. *The Majority Opinion*

Initially, the majority recognized that two issues of first impression were presented: (1) the proper scope of the government’s obligations under sections 1602-1604 when there has not been a seizure prior to the commencement of the action; and (2) the relationship between these sections and section 1621’s statute of limitations.²⁹

To determine if sections 1602-1604 apply only when there has been a seizure prior to the forfeiture action, the majority began its analysis by interpreting the statutory language of each section.³⁰ The court noted that all three sections refer not only to seizures, but also to violations or cases reported.³¹ Section 1602 provides that an agent must immediately report “every violation” of the laws.³² Section 1603 provides that the officer owes a duty whenever a “violation” is discovered.³³ Section 1604 provides that the Attorney General must inquire into the facts of

26. 19 U.S.C. § 1604.

27. *United States v. James Daniel Good Property*, 971 F.2d 1376, 1379-80 (9th Cir. 1992).

28. *Id.* at 1382. 21 U.S.C. § 881.

29. *United States v. James Daniel Good Property*, 971 F.2d 1376, 1378-81 (9th Cir. 1992).

30. *Id.*

31. *Id.*

32. *See* 19 U.S.C. § 1602; *Good*, 971 F.2d at 1381.

33. *See* 19 U.S.C. § 1603; *Good*, 971 F.2d at 1381.

“cases reported to him.”³⁴ The court concluded that this language cannot be read to limit the application of the sections only when a seizure has occurred prior to the commencement of a forfeiture action.³⁵ The court therefore held that the sections apply to the government both when seizures have taken place *and* whenever violations are discovered, regardless of when the action is commenced.³⁶ Based on this holding, the court concluded that the sections applied to the case at hand.³⁷

The majority next examined the relationship between sections 1602-1604 and the section 1621 statute of limitations.³⁸ The majority scrutinized the language of section 1621, focusing primarily on the fact that the section is phrased in the negative.³⁹ In particular, the majority emphasized that the language of section 1621 provides that no suit can be brought “unless . . . commenced within five years after the time when the alleged offense was discovered.”⁴⁰ The majority interpreted this language to mean only that the government cannot bring an action after a five year lapse, *not* that the government can bring a suit any time within five years of discovering the offense.⁴¹ The majority concluded that this interpretation is consistent with the statutory language and retains a reasonable meaning when sections 1602-1604 are viewed as imposing a separate reporting and notification burden on the government.⁴²

The majority further noted that section 1621 and sections 1602-1604 use different standards for determining when the obligations are triggered.⁴³ The mandates of section 1621 are triggered when the government knew or should have known of the offense while sections 1602-1604 are triggered only by actual knowledge.⁴⁴ This distinction, as well as the more narrow tailoring of sections 1602-1604 which apply only to certain federal of-

34. See 19 U.S.C. § 1604; *Good*, 971 F.2d at 1380.

35. *Good*, 971 F.2d at 1381.

36. *Id.*

37. *Id.*

38. *Good*, 971 F.2d at 1381-82.

39. *Id.*

40. 19 U.S.C. § 1621.

41. *Good*, 971 F.2d at 1381 (citing *United States v. 2 Burditt St.*, 924 F.2d 383, 385 (1st Cir. 1991)).

42. *Id.* at 1381-82.

43. *Id.* at 1381.

44. *Id.*

ficers,⁴⁵ provided further support for the majority's conclusion that sections 1602-1604 impose a separate and independent obligation of reporting and notification upon the government.⁴⁶

The majority then remanded the case to develop the factual record in order to determine exactly when the mandates of the sections were triggered in Good's case.⁴⁷

2. *Dissenting Opinion*

Judge Noonan dissented only as to the part of the majority decision which interpreted the statute of limitations. Judge Noonan stated that the majority had converted a set of "house-keeping" rules into a statutory protection for drug offenders.⁴⁸ He was convinced that the only restriction should be the five year statute of limitations, and that the majority had given a new construction to a statute that has been in effect and applied for nearly 70 years.⁴⁹

B. DUE PROCESS ANALYSIS

The court began its unanimous due process analysis by finding that Good did not receive prior notice or an opportunity to be heard before his home was seized, and that the Controlled Substances Act does not provide for such a hearing.⁵⁰ The court then distinguished the many Ninth Circuit cases cited by the government for the proposition that property may be seized without a prior hearing.⁵¹ Finally, the court analyzed the United States Supreme Court's decisions in cases considering whether there has been a due process violation.⁵²

45. *Good*, 971 F.2d at 1382. The court held that because all FBI and DEA agents are authorized to seize property, they are subject to the mandates of §§ 1602-1604.

46. *Id.* at 1381.

47. *Id.* at 1384.

48. *Id.*

49. *Id.*

50. *Good*, 971 F.2d at 1382.

51. *Id.* at 1382-83. The court stated that all but one of these cases involve property that can be easily removed from the jurisdiction. The court further stated that the one case involving real property is an eighth amendment case and not a due process case. Therefore, none of the cases cited by the government disposed of the due process claim in *Good*.

52. *Id.* at 1382-84.

The court first examined the rule set forth in *Fuentes v. Shevin*.⁵³ The court noted that *Fuentes* requires notice and an opportunity to be heard prior to the deprivation of a property interest except in extraordinary situations.⁵⁴ The court found that an extraordinary situation exists when there is a need for "very prompt action."⁵⁵ The court then stated that land cannot be easily moved, so there is no special need for prompt action, and the *Fuentes* exception does not apply when land is involved.⁵⁶

The court next looked at the factors to be balanced as set forth by the Supreme Court in *Mathews v. Eldridge*.⁵⁷ The factors are: (1) the significance of the property interest; (2) the risk of erroneous deprivation under current procedures; (3) the value of additional procedures; and (4) the government's interest in a pre-notice seizure.⁵⁸ After the court held that people have very strong interests in their homes, that the government's interest in a pre-notice seizure is minimal, and that the government's interest can easily be protected by other means,⁵⁹ the court concluded that the *Mathews v. Eldridge* analysis favors a pre-seizure hearing.⁶⁰

The court did not, however, use the preceding analysis to find the statute invalid on its face. The court instead applied the *Mathews* factors to the facts of this particular case. The court found that Good's interest in his home was substantial, that the house was not moveable, and that the government could protect itself by other means less restrictive than a seizure.⁶¹ Given these findings, the court held that the statute, *as applied*, violated Good's due process rights.⁶²

Finally, without elaborating, the court held that the due

53. 407 U.S. 67 (1972).

54. *Good*, 971 F.2d at 1383 (citing *Fuentes*, 407 U.S. at 80-82).

55. *Id.*

56. *Id.*

57. *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

58. *Mathews*, 424 U.S. at 335.

59. Restraining orders or a bond requirement are viable options. *Good*, 971 F.2d at 1383-84.

60. *Id.* at 1383.

61. *Id.* at 1384.

62. *Id.*

process violation did not render the forfeiture itself invalid, and Good was entitled only to rents accrued during the illegal seizure.⁶³

V. CONCLUSION

The Ninth Circuit held that the government has an obligation to meet the five year requirement of section 1621 *and* the notification and reporting requirements of sections 1602-1604 in order to maintain an action for civil forfeiture.⁶⁴ Although the court's conclusion was novel, and the decision does appear to expand protection for drug offenders, the Ninth Circuit interpreted the statutory language so that no section of the statute is rendered meaningless. Other courts have simply ignored the existence of sections 1602-1604 and applied only the five year limit of section 1621. The Ninth Circuit's holding recognized that sections 1602-1604 must have some meaning or they would not have been included in the statutory procedures governing civil forfeiture. The court's interpretation gives meaning to sections 1602-1604 without rendering section 1621 meaningless. The interpretation was thus the most logical interpretation possible without ignoring sections 1602-1604.

The Ninth Circuit also held, in effect, that the Controlled Substances Act is unconstitutional when applied to forfeitures of real property because due process requires a pre-seizure opportunity to be heard before the government can take real property.⁶⁵ Rather than render the statute invalid on its face, the court chose to send the legislature a clear message: amend the statute to provide for a pre-seizure hearing.

*Kevin T. Hunsaker**

63. *Id.*

64. *United States v. James Daniel Good Property*, 971 F.2d 1376, 1381 (9th Cir. 1992).

65. *Id.* at 1383-84.

* Golden Gate University School of Law, Class of 1993.