

IN THE COURT OF APPEALS

8/12/97

OF THE

STATE OF MISSISSIPPI

NO. 95-KA-00941 COA

LEE RICO, A/K/A WILLIAM LEE RICO APPELLANT

v.

STATE OF MISSISSIPPI APPELLEE

PER CURIAM AFFIRMANCE MEMORANDUM OPINION

THIS OPINION IS NOT DESIGNATED FOR PUBLICATION AND

MAY NOT BE CITED, PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE: HON. CLARENCE E. MORGAN III

COURT FROM WHICH APPEALED: WEBSTER COUNTY CIRCUIT COURT

ATTORNEY FOR APPELLANT: JIM WAIDE

ATTORNEY FOR APPELLEE: OFFICE OF THE ATTORNEY GENERAL

BY: BILLY L. GORE

DISTRICT ATTORNEY: DOUG EVANS

NATURE OF THE CASE: CRIMINAL: SALE OF CONTROLLED SUBSTANCES, INCLUDING METHAMPHETAMINE AND MARIJUANA

TRIAL COURT DISPOSITION: MOTION TO DISMISS ON GROUNDS OF DOUBLE JEOPARDY DENIED

MANDATE ISSUED: 9/2/97

BEFORE McMILLIN, P.J., HERRING, AND KING, JJ.

PER CURIAM:

This case comes before the Court by virtue of a direct appeal, which is not allowed pre-conviction; however, in the interest of justice, we will treat the case as a petition for interlocutory appeal and *sua sponte* grant interlocutory appeal and proceed.

The Webster County grand jury returned four indictments against William Lee Rico for the sale of controlled substances, methamphetamine and marijuana, to an undercover narcotics agent. Rico moved the court to dismiss the indictment alleging a violation of the Double Jeopardy Clauses of the Mississippi and United States Constitutions. The court denied Rico's motion to dismiss. Rico perfected this appeal, contending that the State's seizure of various items of personal property and initiation of civil forfeiture proceedings against him was punishment; therefore, the criminal indictments amounted to double jeopardy. Rico contends that both constitutions bar criminal prosecution for an offense after forfeiture of property as "punishment" for the same offense. We affirm.

ANALYSIS

In a recent Supreme Court case, *United State v. Ursery*, 116 S.Ct. 2135, 2138 (1996), the Court held that civil forfeitures do not constitute "punishment" for purposes of the Double Jeopardy Clause. This holding is consistent with our own supreme court's ruling in *Mississippi Bureau of Narcotics v. Lincoln County*, 605 So. 2d 802, 804 (Miss. 1992). The Mississippi Supreme Court held that a civil forfeiture proceeding is *in rem*, or against the property as the wrongdoer and not the individual. *Id.* In *Mississippi Bureau of Narcotics v. Lincoln County*, the court held that forfeitures under § 41-29-176 of the Mississippi Code of 1972 were civil in nature, not criminal, and were not inconsistent with § 261 of the Mississippi Constitution of 1890. *Id.* Pursuant to these holdings, we find that Rico's argument is without merit, and we affirm the circuit court's ruling.

**THE JUDGEMENT OF THE CIRCUIT COURT OF WEBSTER COUNTY IS AFFIRMED.
COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT.**

**BRIDGES, C.J., McMILLIN AND THOMAS, P.JJ., COLEMAN, DIAZ, HERRING,
HINKEBEIN, KING, PAYNE, AND SOUTHWICK, JJ., CONCUR.**