

Pennsylvania district court denies government custody of seized funds pending criminal forfeiture proceeding because its failure to comply with 90-day civil forfeiture complaint filing deadline left it with no legal right to possess the funds. Defendant Goodchild was charged with wire fraud and aggravated identity theft, which also provided the basis for an earlier FBI civil seizure of approximately \$67,600. Goodchild timely filed a claim and 91 days later, the government moved for an extension of time to file a complaint, which the court granted. The government then filed a complaint, which Goodchild moved to dismiss, arguing the motion to extend was itself untimely, rendering the complaint untimely as well. The court agreed and dismissed the civil forfeiture case as time-barred, and also denied the government's motion to stay the civil forfeiture case pending resolution of the criminal proceedings. The government appealed but did not ask the Court of Appeals for any interim or emergency relief, then dropped its appeal, apparently conceding that the civil forfeiture action was in fact time-barred. After Goodchild was indicted eight months after seizure and five months after he filed his claim, including a notice of forfeiture alleging that his interest in the seized funds was subject to forfeiture as property involved in his unlawful conduct, the government moved to maintain custody of the disputed funds. The court held that to accept the government's position would require an unnatural and strained reading of the statutory language, because it necessarily depends on the premise that the dismissal of its civil forfeiture proceeding as time-barred somehow rendered that action a nullity, i.e., no longer “commenced” because of its dismissal. The government's right to continued possession of the property was not controlled solely by the law of criminal forfeiture, and it therefore could not invoke 21 U.S.C. §853(e) as a means to maintain custody of the property seized pursuant to the civil seizure warrant. Under the literal terms of the statute, the government's right remained controlled by the forfeiture provisions in 18 U.S.C. §983, which required it to “promptly release” the seized property. Accordingly, although the opportunity to pursue criminal forfeiture was preserved, the government's failure to abide by the 90-day deadline in §983(a)(3) left it with no legal right to possess the funds seized pursuant to the civil seizure warrant, which the court ordered returned under §983(a)(3)(B). *United States v. Goodchild*, No. CR 17-549-1, 2018 WL 5977978 (E.D. Pa. Nov. 14, 2018).

Michigan district court held that it did not have the discretion to reduce a restitution obligation because of forfeited property. Bazzi pled guilty to one count of health care fraud and one count of money laundering and agreed to pay \$3,493,088.28 in restitution to the Department of Health and Human Services; he agreed to the entry of a forfeiture money judgment in the same amount. Bazzi also forfeited two Comerica Bank checking accounts containing proceeds of his illegal activities. The government agreed to petition the Attorney General to apply Bazzi's forfeited property to his restitution obligation. After sentencing, Bazzi moved to correct the court's order of restitution, saying the money he forfeited should have been deducted from his restitution obligation; he essentially argued that the restitution order and forfeiture money judgment were the same thing. The court disagreed, finding that forfeiture and restitution are separate remedies with different purposes. Moreover, the court said it did not have the discretion to reduce a restitution obligation because of forfeited property. It noted that the United States Attorney's Office may petition the Attorney General to apply the value of forfeited property to a restitution obligation, “restoring” the victim, but the final decision on restoration rests with the Department of Justice. Therefore, Bazzi must fulfill his obligations under both the restitution order and the forfeiture money judgment; he knowingly and voluntarily agreed to both,

and the two are separate and distinct. *United States v. Bazzi*, No. 15-20555, 2018 WL 5720347 (E.D. Mich. Nov. 1, 2018).

Fourth Circuit finds no Sixth Amendment violation because at no time in the district court did the defendant express dissatisfaction with counsel or claim that he was unable to pay for substitute counsel. An indictment provided Marshall with notice that, in the event of a conviction, the government would seek forfeiture, including a money judgment of \$108,000,000. The government filed a motion to disqualify defense counsel Miller, asserting Miller labored under conflicts of interest arising from his representation of both Marshall and his co-defendant, whose appeal was currently pending, and because the co-defendant's case included protective orders prohibiting dissemination of certain information to Marshall. Miller filed a response, averring that Marshall was entitled to his counsel of choice: Miller and co-counsel Reynolds. Marshall filed a waiver stating that he had consulted with "independent counsel" (Reynolds) and determined that there was no potential conflict of interest. At a hearing, the district court offered Marshall the opportunity to consult, at government cost, with an appointed lawyer who was "unconnected with Mr. Miller." Marshall declined, and the court determined he knowingly and voluntarily gave up his right to a conflict-free attorney. Thus, the court denied the government's motion. The IRS also sought a seizure warrant under seal for \$59,000.28, against a credit union account Marshall jointly held with his wife. The IRS averred that the account was "at least" a "substitute asset" related to Marshall's criminal behavior. The IRS sent out notices of civil forfeiture, and Marshall and his wife both filed administrative claims. After the other defendants pled guilty, a grand jury returned a superseding indictment against Marshall, providing notice of the government's intent to forfeit the credit union account. At trial the government stated that it would not be seeking to forfeit the credit union account as directly traceable to criminal conduct but that it would, if appropriate, seek forfeiture of those funds as substitute assets. After conviction, the court entered a forfeiture order for a money judgment of \$51,300,000. The credit union funds were not included as substitute assets or otherwise in the Government's motion or the district court's order. Marshall moved the district court to release the credit union funds to pay his appellate attorney and for other appellate costs, but the court granted the motion to forfeit the credit union account as substitute assets. On appeal, Marshall contended the government violated his Sixth Amendment rights by placing him in the untenable position of attempting to have his counsel disqualified, while at the same time eliminating his ability to pay for new counsel if he believed his current counsel was indeed conflicted. The court found that Marshall's arguments essentially amounted to claims of ineffective assistance of counsel because his attorney failed to raise the claim and/or properly counsel him, or prosecutorial misconduct based upon the government's intent to prevent him from hiring the attorney of his choice. However, Marshall did not at any time in the district court state that he did not wish to be represented by Miller or that he was unable to pay for other counsel. To the contrary, he filed a written waiver and testified under oath at a hearing that he wished for Miller to represent him, even after being informed of possible conflicts of interest. As such, the district court did not have the opportunity to address the issue of whether the pretrial seizure of his bank account violated his right to counsel of choice. The court found no error. Although the government implicitly admitted Marshall should have had access to the account if he required the funds to hire his counsel of choice, the seizure did not affect his choice of counsel because Miller, the attorney who represented him, was the very attorney he chose. Marshall requested and was appointed counsel

for his arraignment and was informed, prior to arraignment, of his right to counsel. The government actually sought to disqualify counsel, but Marshall adamantly stated that he wanted Miller to represent him. Marshall was also represented by Reynolds, who also was his counsel of choice and did not labor under a conflict of interest. Finally, at no time in the district court did Marshall express dissatisfaction with counsel or claim that he was unable to pay for substitute counsel. There was no record support for Marshall's assertion that, had he better understood his rights, he would have expressed his need and/or desire for new counsel, so there was no need for the seized funds and no Sixth Amendment violation. *United States v. Marshall*, No. 16-4494, 2018 WL 5809728 (4th Cir. Nov. 6, 2018).

Ninth Circuit holds that because criminal activities for which defendant was charged and convicted predated creation of one trust, and defendant continually possessed dominion and control over and never delivered property to second trust, government had superior interests in properties. Defendant was convicted by a jury of multiple counts of health care fraud and money laundering stemming from a Medicare and Medicaid fraud scheme. Hidden Valley Trust and Lost Creek Trust appealed the district court's orders dismissing their third-party petitions claiming ownership of real properties listed in preliminary orders of forfeiture arising from Defendant's convictions. The district court found petitioners failed to meet their burdens of demonstrating either (a) that they had cognizable legal interests in the properties that were superior to any interest held by Defendant, or (b) that they were bona fide purchasers of the properties. The court of appeals found that the district court properly found Hidden Valley Trust failed to establish it had a superior interest in the Nelson Loop Road Property. There was evidence that Defendant used money derived from the fraudulent scheme to fund improvements to and make escrow payments for the purchase of the property; therefore the property was clearly traceable to Defendant's criminal activities. Because the criminal activities for which Defendant was charged and convicted predated the creation of the Hidden Valley Trust, the government had a superior interest in the property pursuant to the "relation back doctrine," since its interest vested at the time the defendant committed the crime. The district court also correctly determined Defendant did not gift the Winch Road Property to Lost Creek Trust. To effectuate a gift under Idaho law, "a donor must deliver property to a donee, or to someone on his or her behalf, with a manifested intent to make a gift of the property." Here, the evidence established that Defendant and his co-owner continually possessed dominion and control over the property and thus never delivered the property to the Trust, and that the trustee never managed, possessed, used, or controlled the property. Moreover, the trustee had no role in collecting proceeds from the property, paying the mortgage note, or maintaining records of the trust activities and the trust bank accounts. *United States v. Close*, No. 16-30303, 2018 WL 5977966 (9th Cir. Nov. 14, 2018).

New Mexico district court grants summary judgment for government, finding petitioner wife had no interest in bank accounts funded solely by illegal businesses and mortgage payments on real property were made using criminal proceeds, but orders return of her half of community funds used to make a down payment on property prior to first alleged fraud transaction. The government moved for summary judgment as to a third party Petition filed by Wei Wang. Defendant Hai Gan was convicted on 62 counts including document fraud, transporting illegal aliens, and money laundering. Each of the counts related to a scheme in

which Gan helped undocumented aliens obtain fraudulent New Mexico driver's licenses. Following conviction, the Court entered a Preliminary Order of Forfeiture for five bank accounts and four parcels of real property. Wei Wang, Gan's wife, filed a timely petition objecting to the forfeiture of one parcel of property located in Texas based on payments made with community funds, and four bank accounts based on her salary contributions. The court previously determined that all the funds in the Bank of America and JP Morgan Chase bank accounts were sufficiently connected to Mr. Gan's offenses. Since an ancillary proceeding is not an opportunity for a third party to relitigate the court's original finding of forfeitability, Ms. Wang's only recourse was to demonstrate an ownership interest in the funds in the account that predated the start of Mr. Gan's criminal activity. A third party can never assert a valid property interest in the proceeds of criminal activity because all property subject to criminal forfeiture vests in the United States upon the commission of the act giving rise to forfeiture. Thus, a third party must show, by a preponderance of the evidence, that her interest in the forfeited property was superior to that of either the defendant or the government at the time the offense began. Ms. Wang alleged she deposited all her salary checks into the joint Bank of America accounts and thus had an ownership interest in the funds remaining in the accounts. Since Ms. Wang earned only \$11,325.00 between December 8, 2008, and May 11, 2011, she would have an ownership interest in, at most, \$5,662.50 in the accounts. Nevertheless, Mr. Gan admitted to investigators that the accounts were funded solely by his illegal businesses. Thus, the court granted summary judgment in favor of the United States and ordered final forfeiture of those accounts. As for the Texas property, Mr. Gan used community funds to make a down payment on the property prior to the first alleged license fraud transaction. Thus, the residence was acquired as community property and Ms. Wang had a 50 percent interest in the property. However, her interest must be reduced based on the subsequent home loan payments Mr. Gan made using criminal proceeds. Once Mr. Gan began using criminal proceeds to pay off the home loan, the increased property interest in the house the couple acquired as a result was actually vested in the government. Therefore, the marital community only had an interest in the Texas property after subtracting the \$68,890 in criminal proceeds used to pay off the home loan. The court also found that Ms. Wang had no property interest in any of the funds used to pay off the loan. The court thus granted summary judgment and ordered final forfeiture of the Texas property and its sale to ensure Ms. Wang received 50% of its final value once the cost of the sale and outstanding taxes were paid and the government reimbursed for the \$68,890 in loan payments made with criminal proceeds. *United States v. Hai Gan*, No. 11-CR-2282 RB, 2018 WL 6019210 (D.N.M. Nov. 16, 2018).