IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 94-30306
Summary Calendar

JOHNNIE McCRAY,

Plaintiff-Appellant,

versus

UNITED STATES OF AMERICA,
United States Department of Justice,
Drug Enforcement Administration,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA-93-2354-F)

(December 22, 1994)

Before GOLDBERG, KING, and GARWOOD, Circuit Judges.

PER CURIAM:[*]

This case arises from an administrative forfeiture involving $53,250.00. This court has jurisdiction pursuant to 21 U.S.C. § 877, which provides:

All final determinations, findings, and conclusions of

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

> the Attorney General under this subchapter shall be final and conclusive decisions of the matters involved, except that any person aggrieved by a final decision of the Attorney General may obtain review of the decision in the United States Court of Appeals for the District of Columbia or for the circuit in which his principal place of business is located. . . .

(emphasis supplied). See also Scarabin v. Drug Enforcement Administration, 919 F.2d 337, 338 (5th Cir. 1990) (Scarabin I), reh'g denied, 925 F.2d 100, 101 (5th Cir. 1991) (Scarabin II); see also Scarabin v. Drug Enforcement Administration, 966 F.2d 989, 992 (5th Cir. 1992) (Scarabin III). The Fifth Circuit in Scarabin I held that the circuit court's review of administrative forfeitures,

> is limited to determining whether the agency followed the proper procedural safeguards when it declared [the] property summarily forfeited.

Scarabin I, 919 F.2d at 338. McCray argues that he was afforded insufficient notice of the administrative forfeiture proceedings. To determine the merits of this argument, we turn to the relevant statutory and regulatory provisions for notice of administrative forfeiture proceedings.

The notice requirements for administrative forfeitures are set forth in 19 U.S.C. § 1607(a), which states that

> [T]he appropriate customs officer shall cause a notice of the seizure of such articles and the intention to forfeit and sell or otherwise dispose of the same according to law to be published for at least three successive weeks in such manner as the Secretary of the Treasury may direct. Written notices of seizure together with information on the applicable procedures shall be sent to each party who appears to have an interest in the seized article.

Regulations have been enacted regarding the specifics of summary

forfeiture proceedings and notice of those proceedings. See 19 C.F.R. § 162.45, 21 C.F.R. § 1316.75. Both parties agree these procedures were followed. Notice of the proceedings was published in the newspaper USA Today for three weeks, and McCray was sent notice of the forfeiture proceedings by certified mail. However, McCray never actually received the written notice; the certified letter was eventually returned to the sender. McCray argues that his constitutional due process rights were violated because he did not receive actual notice of the administrative procedure.

The Supreme Court addressed a constitutional due process challenge to the method of providing notice to interested parties in Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 70 S.Ct. 652 (1950). In Mullane, the Court stated that [t]he notice must be of such nature as reasonably to convey the required information, and it must afford a reasonable time for those interested to make their appearance. But if with due regard for the practicalities and peculiarities of the case these conditions are reasonably met the constitutional requirements are satisfied. Mullane, 339 U.S. at 314-15, 70 S.Ct. at 657. The Supreme Court revisited the issue of whether constructive, rather than actual, notice met the requirements of due process in Mennonite Bd. of Missions v. Adams, 462 U.S. 791, 103 S.Ct. 2706 (1983). In that case, the Court reiterated that Mullane requires the method of notice to be "reasonably calculated to provide actual notice of the pending proceeding" in order to satisfy constitutional due process concerns. Mennonite Bd. of Missions, 462 U.S. at 795, 103 S.Ct. at 2709-2710.

In the case at hand, the notice was sent to the address on

McCray's driver's license. McCray offers no evidence that the government knew of any other way of contacting McCray. Cf. U.S. v. Woodall, 12 F.3d 791 (8th Cir. 1993).** While the 19 U.S.C. § 1607(a) states that notice must be sent to interested persons, it does not require that the interested persons actually receive the notice. Notice by publication is intended to reach those individuals who do not receive personal notice of the forfeiture proceedings. Constructive notice through publication is not unconstitutional if it is not unreasonable. See generally, Mennonite Bd. of Missions. The Supreme Court has stated that

> [while actual notice] presents the ideal circumstances under which to commence legal proceedings against a person. . . certain less rigorous notice procedures have enjoyed substantial acceptance throughout our legal history.

Greene v. Lindsey, 456 U.S. 444, 449, 102 S.Ct. 1874, 1878 (1982). In the case at hand, McCray fails to articulate any facts or reasons demonstrating that the notification methods were unreasonable. We find that the notification procedures found in 19 U.S.C. §1607(a) and the attendant regulations do not, on their face, violate the requirements of due process as enunciated by the Supreme Court in Mullane, and therefore we affirm the administrative forfeiture proceedings below.

AFFIRMED

** "When the government has actual knowledge of an interested party's whereabouts at the time forfeiture is commenced, failure to direct the statutorily required personal notice to that address cannot be considered compliance with either the statute or minimum due process standards." Woodall, 12 F.3d at 794.