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Minn. Stat. § 480A.08, subd. 3 (2016).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A17-0902**

Ricky Ray Evoniuk,
Appellant,

vs.

Springfield Armory XD 9mm- XD19144, et al.,
Respondents.

**Filed March 12, 2018
Affirmed
Bratvold, Judge**

Hennepin County District Court
File No. 27-CV-15-18608

Daniel Guerrero, Meshbeshier & Spence, Minneapolis, Minnesota (for appellant)

Michael O. Freeman, Hennepin County Attorney, Daniel D. Kaczor, Assistant County Attorney, Minneapolis, Minnesota (for respondents)

Considered and decided by Bratvold, Presiding Judge; Ross, Judge; and Johnson, Judge.

UNPUBLISHED OPINION

BRATVOLD, Judge

Appellant challenges the district court's decision to dismiss his demand for judicial determination of forfeiture as untimely because appellant served it one day after the statutory deadline. He does not contest the district court's application of the relevant statute. Instead, he contends that the 60-day deadline in Minn. Stat. § 609.5314, subd. 3(a),

is unconstitutional because it violates procedural and substantive due process guarantees. But appellant did not raise any constitutional challenges during district court proceedings. While in some circumstances we will consider a constitutional issue that is raised for the first time on appeal, we decline to do so here. As a result, we affirm.

FACTS

The State of Minnesota charged appellant Ricky Ray Evoniuk with fifth-degree marijuana possession stemming from events on September 7, 2015. In connection with that charge, Hennepin County (the county) seized 12 firearms from Evoniuk. The county served Evoniuk with “Notice of Seizure and Intent to Forfeit Vehicle/Property” on September 8, 2015. On October 27, 2015, Evoniuk e-filed a demand for judicial determination, but did not attempt to serve the county with his demand until November 10, 2015. After Evoniuk’s criminal case ended, the county moved to dismiss Evoniuk’s demand as untimely.

On April 17, 2017, the district court granted the county’s motion. First, the district court determined that the 60-day deadline to file and serve a demand for judicial determination ended on November 9, 2015. Because Evoniuk served his demand on the county on November 10, 2015, the district court concluded that it was untimely. Second, the district court addressed Evoniuk’s request to “forgive” his mistake because the county was not prejudiced by the late notice. While the district court found “there is absolutely no prejudice,” the court concluded that Evoniuk’s failure to timely serve his forfeiture demand deprived the court of subject-matter jurisdiction, based on applicable caselaw.

Although Evoniuk did not mention either substantive or procedural due process in his responsive memorandum or during the hearing on the county’s motion, the district

court’s memorandum stated that the 60-day deadline “is problematic and appears to have no rational basis.” The district court added that “[r]a[dic]ally short periods such as this raise due process issues.” The district court nonetheless concluded that “the law requires this result,” even though “the result does seem unfair.” Evoniuk appeals.

DECISION

Under Minnesota’s forfeiture statute, a claimant seeking to challenge the state’s seizure of property must file a demand for judicial determination in the form of a civil complaint and serve the prosecuting authority “[w]ithin 60 days following service of a notice of seizure and forfeiture.” Minn. Stat. § 609.5314, subd. 3(a). For simplicity’s sake, we will refer to the relevant statute as “subdivision 3(a).” If the claimant’s demand is filed or served beyond the 60-day deadline, the district court lacks subject-matter jurisdiction over the claim, and it must be dismissed. *Kokosh v. \$4657.00 U.S. Currency*, 898 N.W.2d 284, 287 (Minn. App. 2017).

On appeal, Evoniuk does not claim that the district court erred in dismissing his demand for judicial forfeiture as untimely.¹ Instead, Evoniuk argues for the first time that subdivision 3(a) violates constitutional guarantees to procedural and substantive due process. We initially consider whether Evoniuk’s constitutional challenges are properly before us.

¹ The county asserts that Evoniuk’s attempts to serve the county on November 10 were ineffective and that we may affirm on that basis. Because we affirm the district court’s decision on other grounds, we do not address this alternative argument.

Under *Thiele v. Stich*, a “reviewing court must generally consider only those issues that the record shows were presented and considered by the trial court in deciding the matter before it.” 425 N.W.2d 580, 582 (Minn. 1988) (quotation omitted). There is “generally” no exception for constitutional issues, see *Constans v. Comm’r of Pub. Safety*, 835 N.W.2d 518, 526 (Minn. App. 2013), although appellate courts have sometimes considered constitutional issues raised for the first time on appeal in criminal cases. See, e.g., *State v. Lindquist*, 869 N.W.2d 863, 866-67 (Minn. 2015). On “rare occasions” appellate courts have exercised discretion and allowed a party in a civil case to raise an issue for the first time on appeal. *Roth v. Weir*, 690 N.W.2d 410, 413-14 (Minn. App. 2005) (discussing factors favoring appellate review and exercising discretion to address issues raised for first time on appeal).

Based on this caselaw, we first determine whether Evoniuk presented either constitutional issue to the district court. In his brief to the district court, Evoniuk did not mention either constitutional issue. Evoniuk’s brief cited to an unpublished decision by this court. See *Sing v. 1997 Cadillac*, No. A05-2320, 2006 WL 2474071, at *3 (Minn. App. Aug. 26, 2006). The majority in *Sing* held that the 60-day deadline in subdivision 3(a) did not violate constitutional due-process requirements. While the dissent did not comment on the constitutionality of the statute, it concluded that the district court had the authority to overlook the defective service that led to dismissal of appellant’s forfeiture claim. *Id.* at *3-4 (Minge, J., dissenting). During the hearing on the state’s motion to dismiss, Evoniuk’s attorney did not mention the constitutionality of subdivision 3(a). We conclude that, during

district court proceedings, Evoniuk never presented the constitutional issues he now raises on appeal, and his brief citation to *Sing* did not preserve the issue.

Second, we consider whether the district court considered the constitutional issues that Evoniuk asks this court to decide. It is true that the district court's written memorandum questioned the statute's "rational basis" and mentioned "due process issues." But the district court did not decide any constitutional issue. In fact, the district court stated that "[w]hether this case or another may be used as a vehicle to contest the legitimacy of the 60 day jurisdictional notice requirement or to launch a far more comprehensive re-examination of civil forfeiture . . . is up to others to decide." We conclude that neither constitutional issue was considered by the district court.

Two additional considerations bear mention. One reason parties must argue an issue at the district court level in order to preserve appellate review is to prevent "unfair surprise at the appellate level if [the parties] had no opportunity to address the issue in the district court." *Doe 175 ex rel. Doe 175 v. Columbia Heights Sch. Dist., ISD No. 13*, 842 N.W.2d 38, 43 n.1 (Minn. App. 2014). Here, the county had no opportunity to present relevant arguments or authorities to the district court.

Moreover, Evoniuk did not comply with notice requirements. While in district court, Evoniuk did not provide notice to the Minnesota Attorney General that he was challenging the constitutionality of a state statute, even though he was required to do so under Minn. R. Civ. P. 5A. Appellate courts have denied review when parties have not complied with the attorney general notice requirements. See *In re Leary*, 272 Minn. 34, 46-47, 136 N.W.2d 552, 560 (1965) (declining to address a constitutional issue for failure to satisfy

Minn. R. Civ. P. 24.04, which Minn. R. Civ. P. 5A replaced with largely unchanged meaning); *Erickson v. Fullerton*, 619 N.W.2d 204, 208-09 (Minn. App. 2000) (declining to address constitutional issue because attorney general was not notified, issue was not adequately considered by the district court, and record was insufficient for review). While proceeding in this court, Evoniuk purported to comply with Minn. R. Civ. App. P. 144, which requires notice to the Minnesota Attorney General when a constitutional issue is raised on appeal. But he did not provide notice until the day he filed his appellate brief. We question whether Evoniuk's notice satisfied the rule's requirement that notice "afford an opportunity to intervene."

We see no reason to vary our general rules in this case. Because the constitutionality of subdivision 3(a) was not presented to or considered by the district court, we decline to address it in this case.

Affirmed.