

Reversed and Rendered and Opinion filed October 19, 2000.



In The

Fourteenth Court of Appeals

NO. 14-98-00738-CV

\$6,300 IN U.S. CURRENCY, Appellant

V.

THE STATE OF TEXAS , Appellee

**On Appeal from the County Court at Law No. 13
Harris County, Texas
Trial Court Cause No. 97-40702**

OPINION

Victor Huang Nguyen pleaded *nolo contendere* to a charge of gambling promotion, a Class A misdemeanor. After his conviction and sentencing, the state filed a motion, pursuant to TEX. CODE CRIM. PROC. ANN. art. 18.18(a) (Vernon Supp. 2000), to forfeit the \$6,300 in cash seized during the search of Nguyen's residence. The trial court ordered the money forfeited, prompting this appeal.

In his sole point of error Nguyen contends the trial court erred in ordering forfeiture because such an action is not authorized under article 18.18(a). We agree.

The pertinent sections of the statute provide:

(a) Following the final conviction of a person for possession of a gambling device or equipment, altered gambling equipment, or gambling paraphernalia, for an offense involving a criminal instrument, for an offense involving an obscene device or material, the court entering the judgment of conviction shall order that the machine, device, gambling equipment or gambling paraphernalia, instrument, obscene device or material be destroyed or forfeited to the state . . . If forfeited, the court shall order the contraband delivered to the state, any political subdivision of the state, or to any state institution or agency. If gambling proceeds were seized, the court shall order them forfeited to the state and shall transmit them to the grand jury of the county in which they were seized for use in investigating alleged violations of the Penal Code, or to the state, any political subdivision of the state, or to any state institution or agency.

(b) If there is no prosecution or conviction following seizure, the magistrate to whom the return was made shall notify in writing the person found in possession of the alleged gambling device or equipment, altered gambling equipment or gambling paraphernalia, gambling proceeds, prohibited weapon, obscene device or material, criminal instrument, or dog-fighting equipment to show cause why the property seized should not be destroyed or the proceeds forfeited. The magistrate, on the motion of the law enforcement agency seizing a prohibited weapon, shall order the weapon destroyed or forfeited to the law enforcement agency seizing the weapon, unless a person shows cause as to why the prohibited weapon should not be destroyed or forfeited. A law enforcement agency shall make a motion under this section in a timely manner after the time at which the agency is informed in writing by the attorney representing the state that no prosecution will arise from the seizure.

Few cases have been decided under this statute. The seminal case remains *State v. Dugar*, 553 S.W.2d 102 (Tex. 1977). Dugar was arrested during a gambling raid; after his conviction for gambling promotion, the state sought to have funds seized during the raid forfeited.¹ The supreme court interpreted article 18.18(a) “as applying to situations where there is a conviction for the listed offenses only.” *Dugar*, 553 S.W.2d at 104. The supreme court went on to hold that, in cases where a respondent was convicted of an offense not listed in section (a), i.e. gambling promotion, the state could proceed under section (b). *Id.*

The offense for which Nguyen was convicted, gambling promotion, was the offense involved in *Dugar*. In the years since *Dugar*, the legislature has not amended the statute to include gambling promotion among the enumerated offenses in section (a). In light of *Dugar*, we conclude that article

¹ The state’s petition in *Dugar* apparently did not specify what section of the statute was being proceeded under.

18.18(a) cannot be arbitrarily expanded beyond its specific dimensions to include other offenses. We therefore agree with respondent that forfeiture after conviction for the offense of gambling promotion is not authorized under 18.18(a).

The State argues that since Nguyen was essentially convicted of bookmaking, as defined in TEX. CODE CRIM. PROC. ANN. art. 47.01 (Vernon 1994), the currency was necessarily gambling proceeds and therefore forfeitable under article 18.18(a). If we were considering this contention without prior precedent, we might agree. But gambling proceeds are forfeitable under both articles 18.18(a) and 18.18(b), and the supreme court's interpretation does not permit a blending of the two sections. *Dugar* restricts use of the forfeiture provisions of article 18.18(a) to those offenses enumerated in (a). We therefore reverse the judgment of the trial court ordering forfeiture and render judgment that the money be returned to respondent.

/s/ Joe L. Draughn
Justice

Judgment rendered and Opinion filed October 19, 2000.

Panel consists of Justices Sears, Cannon, and Draughn.*

Do Not Publish — TEX. R. APP. P. 47.3(b).

* Senior Justices Ross A. Sears, Bill Cannon, and Joe L. Draughn sitting by assignment.