

STATE OF MAINE

SUPREME JUDICIAL COURT
Sitting as the Law Court
Docket No. Han-23-421
Decision No. 2026 ME 75

State of Maine

v.

**ORDER ON MOTION TO
RECONSIDER**

Jeffery A. Witham Jr.

On July 30, 2026, Jeffery A. Witham Jr. filed a motion to reconsider the Court's decision dated July 30, 2026. The motion was reviewed by the panel that decided the original appeal.

The motion is granted in part and denied in part. The request to alter the outcome of the case is denied. The decision is, however, revised to correct the discussion of *Kaley v. United States*, 571 U.S. 320 (2014), to clarify that *Kaley* left unanswered the question of whether there is a federal constitutional right to a hearing on the second prong of the forfeiture test, namely whether the property at issue had the requisite connection to the charged criminal offense. That clarification is effectuated by making the following revisions to the decision:

- The following text is added as footnote 19, with the reference number placed after the first sentence of paragraph 15, and the remaining footnotes are renumbered accordingly:

¹⁹ A grand jury's determination of probable cause forecloses a pretrial hearing on the issue of probable cause as to the commission of an underlying criminal charge permitting forfeiture after a defendant has been indicted for the underlying charge and for a

forfeiture. *Kaley v. United States*, 571 U.S. 320, 325-33 (2014). Whether that same defendant has a constitutional right to a pretrial hearing as to the traceability of seized assets to an underlying charge has not yet been established as firm federal precedent. *See id.* at 325-26, 328, 331 n.9. We need not decide whether a defendant has this right in the appeal before us, however, because we have no jurisdiction in the matter in which that issue has arisen for Witham. *See infra* ¶¶ 17-20; *State v. Bassford*, 440 A.2d 1059, 1061 (Me. 1982) (“[T]he fundamental rule of appellate procedure that a court should avoid expressing opinions on constitutional law whenever a nonconstitutional resolution of the issues renders a constitutional ruling unnecessary.” (quotation marks omitted)).

- Paragraph 18 is deleted,¹ and the remaining paragraphs are renumbered accordingly.

Dated: August 11, 2026

For the Court,

/s/
Matthew E. Pollack
Clerk of the Law Court
Pursuant to M.R. App. P. 12A(b)(5)(A)

¹ Paragraph 18 read as follows:

[¶18] Contrary to Witham’s argument, he has no constitutional right to a pre-trial hearing regarding the seized funds when, as here, he has been indicted for drug-trafficking offenses and forfeiture. The grand jury in the drug-trafficking case found probable cause to believe that he committed the offenses, and in that instance has also found probable cause to believe that the funds should be forfeited. That is all the federal constitution requires, even if the seizure of the funds impairs the defendant’s ability to hire counsel. *Kaley v. United States*, 571 U.S. 320, 333 (2014); *see United States v. Monsanto*, 491 U.S. 600, 615-16 (1989).