

FILED

AUG 19 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 28922-2-III

IN THE COURT OF APPEALS
OF THE
STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

SHERMAN I. PULLEY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SPOKANE COUNTY

The Honorable Ellen Clark

APPELLANT'S REPLY BRIEF

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A. REPLY TO STATE'S ARGUMENT

Sherman Pulley, through counsel, requests that the argument and law set forth in his opening brief be incorporated herein. Appellant takes this opportunity to briefly clarify certain misstatements or allegations in the State's response brief.

First, the State suggests that Mr. Pulley is somehow expecting to be free of all obligations owed to the State despite his incarcerated status. This is simply not the case. The State misdirects the issue by focusing on all the payments the Department of Corrections is authorized to collect, such as the costs of incarceration, mailing fees, personal hygiene items, and etcetera. Mr. Pulley is not contesting the Department's authority to garnish funds from his account to satisfy these debts. What Mr. Pulley challenges is the Department's authority to collect Legal Financial Obligations and Crime Victim Compensation of an "unlimited" amount. CP 42. Such actions by the Department are contrary to well settled law, as set forth in Mr. Pulley's opening brief.

Second, the State incorrectly encourages this Court of Appeals to assume a fact-finders role. Mr. Pulley does not encourage this Court to sort through the accounting statements and determine exactly what amounts have been paid or overpaid by the Appellant. This is a function that should be performed by the trial court. Rather, Mr. Pulley simply

requests that the Court of Appeals notice that the record does support his argument that the Department may have already fully collected or over-collected funds from Mr. Pulley in its continuing collection of an “unlimited” LFO debt. Mr. Pulley submitted the only evidence that could be expected of him: the Department’s accounting statement. Since the error is plain on that accounting statement, this case is ripe for review and remand so that the trial court may take additional evidence from the Department if necessary or direct the Department to correct its accounting system and refund if overpayment was made.

B. CONCLUSION

The Department of Corrections continues to incorrectly collect LFOs from Mr. Pulley in order to satisfy an “unlimited” LFO and crime victim compensation debt. But these debts are specifically limited by statute; thus, the collection effort may have exceeded well settled law. Mr. Pulley renews his request that the matter be remanded so that a proper investigation of the accounting may be conducted at the trial court.

Respectfully submitted this 17 day of August, 2010.


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