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COURT OF APPEALS

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NO. 33808-4-II

STATE OF WASHINGTON

BY CAA

**COURT OF APPEALS FOR DIVISION II
STATE OF WASHINGTON**

JOHN P. ANDERSON, ET AL.,

Appellants,

v.

STATE OF WASHINGTON, ET AL.,

Respondents.

06 JUN 14 AM 7:51
BY C. J. SEBERT
COURT OF APPEALS

ANSWERING BRIEF OF RESPONDENTS

ROB MCKENNA
Attorney General

DOUGLAS W. CARR
Assistant Attorney General
WSBA #17378
Criminal Justice Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

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I. COUNTER STATEMENT OF ISSUES

Whether RCW 72.09.480 conflicts with and supersedes the Department of Corrections' (DOC) authority to collect Legal Financial Obligations (LFOs) from all inmates under the clear authority of RCW 72.11.020.

II. STATEMENT OF THE CASE

With one exception, Respondents are satisfied that Appellants' statement of the case represents a fair statement of the facts and procedure relevant to the issues presented for review. See RAP 10.3(b). Appellants' statement of material facts omits the fact that on June 13, 2005, DOC Secretary Harold W. Clarke issued a memorandum to all offenders in DOC clarifying that DOC intended to continue to collect LFOs from the incoming funds of all inmates who have outstanding LFOs under the authority of RCW 72.11.020. Appendix 1, Declaration of Victoria Barshaw, Attachment A.

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III. ARGUMENT

A. RCW 72.09.480 DOES NOT NEGATE THE CLEAR AUTHORITY OF THE SECRETARY OF THE DOC TO COLLECT LFOs FROM ALL INMATES' ACCOUNTS PURSUANT TO RCW 72.11.020.¹

Appellants argue that RCW 72.09.480 supersedes and negates DOC's authority under RCW 72.11.020 to collect LFOs from the funds sent to inmates sentenced to death or life without the possibility of parole (LWOP). Appellants' arguments are misplaced because these statutes are not in conflict and DOC has the authority to collect LFOs from the funds of all inmates who owe LFOs.

RCW 72.11.020 states in relevant part:

The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. . . . the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

¹ Respondents agree with Appellants' assertion that this appeal involves only a question of statutory construction which is reviewed de novo by this Court. See Appellants' brief, p. 19.

The fundamental objective of statutory construction is to ascertain and carry out the intent of the legislature. Bellevue Fire Fighters Local 1604 v. Bellevue, 100 Wn.2d 748, 751, 675 P.2d 592 (1984), cert. denied, 471 U.S. 1015 (1985). Where statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself. Bellevue Fire Fighters, 100 Wn.2d at 750. Under the plain language of RCW 72.11.020, DOC is authorized to collect LFOs from all inmates, including the Appellants in this case. Personal Restraint Petition of Martin, 129 Wn. App. 135, 144, 118 P.3d 387 (2005)(DOC authorized to collect LFOs from all inmates under RCW 72.11.020). Appellants do not dispute that, by itself, RCW 72.11.020 authorizes DOC to make LFO deductions from all inmates' accounts.

The authority for DOC to collect LFOs under RCW 72.11.020 is clearly independent of its authority to collect LFOs under RCWs 72.09.111 and 72.09.480. After RCW 72.11.020 was enacted in 1989, DOC was statutorily authorized only to make LFO deductions from inmates' accounts and was not authorized to make any other deductions such as deductions for crime victims compensation, savings, and cost of incarceration from inmates' funds. Deductions from wages and gratuities for crime victims compensation, savings accounts, and costs of incarceration did not begin until 1993 with the enactment of RCW

72.09.111. Deductions from incoming funds for crime victims compensation, savings, and costs of incarceration did not begin until 1995 with the enactment of RCW 72.09.480. Since its enactment in 1989, RCW 72.11.020 has unambiguously and independently authorized LFO deductions from the accounts of all inmates who have outstanding LFO debts, including inmates sentenced to death or life without the possibility of parole.

Even if RCW 72.11.020 were found to be ambiguous, DOC's interpretation of this statute should be accepted by the Court because it is clearly consistent with the intent of the Legislature that DOC collect LFO debt from inmates. In interpreting statutes, courts accord substantial weight to an agency's view of the law that it administers. Alpine Lakes v. Natural Resources, 102 Wn. App. 1, 14, 979 P.2d 929 (1999). An agency's interpretation of a statute should be upheld if it reflects a plausible construction of the language of the statute and is not contrary to legislative intent. Id. The DOC's interpretation of RCWs 72.11.020 and 72.09.480 is consistent with both the statutory language and the intent of the legislature to make inmates financially responsible for their crimes. Appellants do not assert that RCW 72.11.020 does not provide authority for the LFO deductions at issue in this case, but instead argue only that recent amendments to RCW 72.09.480 prohibit DOC from collecting

LFOs from their incoming funds. Appellants' reliance on RCW 72.09.480 is misplaced.

RCW 72.09.480, last amended in 2003, states in relevant part:

When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds in addition to his or her gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation, twenty percent to the department to contribute to the cost of incarceration, and fifteen percent to child support payments.

RCW 72.09.480(7).

While RCW 72.09.480(7) does not itself require or authorize LFO deductions, it does not negate the clear authority of the secretary under RCW 72.11.020 to make LFO deductions from all inmates' accounts, limited only by the \$10 indigency standard. RCW 72.09.480(7) also does not negate the clear authority for DOC to make deductions from all inmates' accounts for other debts, such as debts owed to DOC for services, supplies, and court-ordered costs stemming from litigation against the state. See RCW 72.09.450. RCW 72.09.480(7) does not explicitly or implicitly limit the deductions that can be made from LWOP inmates' incoming funds under other statutes, including LFO deductions under RCW 72.11.020.

The courts have long held that in interpreting statutes pertaining to the same subject, the statutes must be read as “constituting a unified whole, to the end that a harmonious total statutory scheme evolves which maintains the integrity of the respective statutes.” State v. O’Neill, 103 Wn.2d 853, 862, 700 P.2d 711 (1985). Where possible, courts must interpret statutes in such manner as to give effect to each provision. State v. Landrum, 66 Wn. App. 791, 796, 832 P.2d 1359 (1992). Finally, the repeal or amendment of statutes by implication is not favored in the law and will not be found if the statutes can be harmonized. Misterek v. Wash. Mineral Prods., 85 Wn.2d 166, 168, 531 P.2d 805 (1975). However, when two statutes governing the same area conflict and cannot be reconciled, the court must choose between them. Fifteen-O-One v. Department of Rev., 49 Wn. App. 300, 302, 742 P.2d 747 (1987).

There is no conflict between the statutorily required deductions of RCW 72.09.480(7) and the discretionary LFO deductions clearly allowed by RCW 72.11.020. The Legislature chose not to require LFO deductions from the incoming funds of death penalty and LWOP inmates, but instead left such deductions to the discretion of the Secretary of DOC. The Secretary of DOC has consistently exercised his discretion under RCW 72.11.020 to require inmates to pay their LFOs, and current DOC Secretary Harold Clarke has reaffirmed that he intends to continue DOC’s

policy of collecting LFOs from the incoming funds of LWOP and death penalty inmates under the authority of RCW 72.11.020:

The Legislature has clearly and consistently expressed its intent that all inmates pay the legal financial obligations they owe when they have the means to do so, and I do not believe the Legislature intended to exempt LWOP and death penalty offenders from these obligations. RCW 72.11.020 grants the Secretary of the Department of Corrections the authority to make deductions from offenders' accounts to pay their legal financial obligations, so long as these deductions do not take an offender's account below the \$10 indigency level.

Pursuant to the authority granted me by RCW 72.11.020, I now endorse and reaffirm the Department's current policy (DOC 200.000) of making a 20% deduction for legal financial obligations from all incoming, non-exempt funds received by all offenders who have outstanding legal financial obligations, including LWOP and death penalty inmates. DOC 200.000 will continue to be enforced as presently written.

See Appendix 1, Attachment A. RCW 72.09.480(7) does not prohibit the collection of LFOs from Appellants' incoming funds, and does not supersede the clear authority given to DOC under RCW 72.11.020 to collect LFOs from all inmates.

It is puzzling why the Legislature failed to require 20% LFO deductions from the incoming funds of LWOP inmates when it required such deductions from other inmates, especially when LFOs can only be collected from LWOP inmates while they are in prison. This failure runs contrary to the clear legislative trend of requiring inmates to be more

responsible for their debts and the economic impact of their crimes. See RCW 9.94A.772 (LFOs immediately collectable regardless of payment starting date in judgment and sentence), and see Laws of 2003, Ch. 271, § 3 (amending RCWs 72.09.111 and 72.09.480 to require deductions from all inmates' funds to pay child support obligations). Moreover, not requiring LFO deductions from the incoming funds of LWOP inmates is inconsistent with the requirement that DOC make LFO deductions from the wages and gratuities of LWOP inmates under RCW 72.09.111(1). Nevertheless, as discussed above, while RCW 72.09.480 does not itself authorize LFO deductions from the incoming funds of LWOP inmates, it does not negate the longstanding authority of the secretary of DOC to collect LFOs from all inmates under RCW 72.11.020.

Appellants argue that the reference in RCW 72.09.480(2) and(3) to “the priorities established in Chapter 72.11 RCW” demonstrates the Legislature’s intent to exempt LWOP inmates from paying LFOs out of their incoming funds. Appellants read far too much into this language.

The “priorities” in Chapter 72.11 RCW are contained in RCW 72.11.030. RCW 72.11.030 indicates that LFO deductions take priority over all other statutorily mandated deductions except in specified circumstances related only to work release inmates. For example, DOC is entitled to reimbursement for expenses incident to a work release plan and

to room and board charges before LFO payments are collected. RCW 72.11.030(3). Reference to the priorities of Chapter 72.11 RCW was obviously omitted from RCW 72.09.480(7) because this subsection does not mandate LFO deductions and because LWOP inmates cannot be placed in work release facilities. The reference to Chapter 72.11 RCW in RCW 72.09.480(2) and (3) does not indicate an intent on the part of the Legislature to exempt LWOP inmates from the discretionary LFO deductions allowed under RCW 72.11.020.

Appellants also suggest that LWOP and death penalty inmates were segregated out from all other inmates in the 1999 and 2003 amendments to RCW 72.09.480 in order to treat them differently for purpose of LFO collection. Appellants' argument is misplaced. When first enacted in 1995, RCW 72.09.480 required deductions from the incoming funds that all inmates received in addition to their wages and gratuities without regard to the inmates' sentence structures:

When an inmate receives any funds in addition to his or her wages or gratuities, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

Laws of 1995, 1st Sp. Sess., Ch. 19, § 8.

In 1999, the Legislature amended RCW 72.09.480 to explicitly differentiate between inmates whose sentences allowed them to be

released from prison and those inmates whose sentences did not allow them to be released from prison, such as LWOP and death penalty inmates. Laws of 1999, Ch. 325, § 1. However, the 1999 amendments to RCW 72.09.480 were not related to LFO deductions and were made only for purposes of clarifying that LWOP and death penalty inmates were exempt from the 10% savings account deductions. It was not until 2002 that the Legislature began requiring DOC to make LFO deductions from wages, gratuities, and incoming funds. See Laws of 2002, Ch. 126, § 2.

The 2003 amendments to RCW 72.09.480 were also unrelated to LFO deductions. The 2003 amendments were concerned primarily with enforcing child support obligations, adding a 15% deduction from the incoming funds of all inmates to pay outstanding child support obligations. See Laws of 2003, Ch. 271, § 3 (“An act relating to enhancing necessary child support payments; amending RCW 72.09.111 and 72.09.480; and creating a new section.”). The Legislature’s decision to treat LWOP and death penalty inmates differently from other inmates in RCW 72.09.480 does not evince any intent by the Legislature to abrogate DOC’s clear authority to collect LFOs from all inmates under RCW 72.11.020.

Finally, Appellants argue that the Legislature could not have intended for LWOP inmates to pay their LFOs from funds they receive

from outside prison because LWOP inmates have “no actual interest in paying the LFO debt” and “no foreseeable method of ever paying the LFO debt off”. See Appellants’ brief, p. 6. Respondents do not doubt that Appellants and most other LWOP inmates have no interest in paying their LFOs and prefer not to pay them if they can avoid doing so. Appellants’ argument merely demonstrates the need for DOC to exercise its authority under RCW 72.11.020 to collect LFOs from inmates who admittedly have no interest in paying these lawful debts. Nevertheless, Appellants have cited no legislative history to support their self-serving assertions which clearly are contrary to both the criminal statutes that impose LFOs on criminal defendants and the plain language of RCW 72.11.020.

IV. CONCLUSION

The Department of Corrections is lawfully requiring all inmates, including LWOP and death penalty inmates, to pay their legal financial obligations under the broad authority given to the Secretary under RCW 72.11.020. As such, the superior court did not err in dismissing Appellants’ complaint as a matter of law for failure to state a claim for relief.

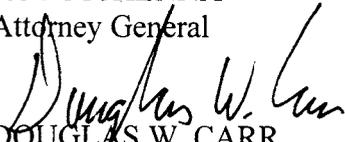
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For the foregoing reasons, Respondents respectfully request that the order and judgment of the superior court be affirmed.

RESPECTFULLY SUBMITTED this 19th day of January, 2006.

ROB MCKENNA
Attorney General


DOUGLAS W. CARR
WSBA #17378
Assistant Attorney General
Criminal Justice Division
P.O. Box 40116
Olympia, WA 98504-0116
(360) 586-1445

CERTIFICATE OF SERVICE

I certify that I served a copy of **ANSWERING BRIEF OF RESPONDENTS** on all parties or their counsel of record as follows:

- US Mail Postage Prepaid
- United Parcel Service, Next Day Air
- ABC/Legal Messenger
- State Campus Delivery
- Hand delivered By: _____

TO:

JOHN PHILLIP ANDERSON, DOC # 811192
CLALLAM BAY CORRECTIONS CENTER
1830 EAGLE CREST WAY
CLALLAM BAY WA 98326-9723

FRANK REED NORDLUND, DOC # 912173
CLALLAM BAY CORRECTIONS CENTER
1830 EAGLE CREST WAY
CLALLAM BAY WA 98326-9723

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I certify under penalty of perjury that the foregoing is true and correct.

EXECUTED this 19th day of January, 2006 at Olympia, WA.


KATHY JERENZ

APPENDIX

The Honorable Ken Williams
Hearing Date:
Hearing Time:
Hearing Location:

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3
4
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6
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8
**STATE OF WASHINGTON
CLALLAM COUNTY SUPERIOR COURT**

9 JOHN P. ANDERSON, ET AL.,

NO. 05-2-00446-3

10 Plaintiffs,

DECLARATION OF
VICTORIA BARSHAW

11 v.

12 STATE OF WASHINGTON, ET AL.,

13 Defendants.

14 I, VICTORIA BARSHAW, make the following declaration:

15 I am currently employed by the Washington Department of Corrections (DOC) as the
16 Trust Accounting Manager at the DOC Headquarters in Olympia, Washington. I am the DOC
17 staff person most involved in account issues and am the primary DOC Headquarters staff
18 person responsible for advising DOC institutions concerning inmate accounts. I am familiar
19 with DOC practices and policies concerning inmate's accounts and frequently consult with the
20 Washington Attorney General's Office on issues related to such accounts. I have worked for
21 DOC for over 21 years.

22 Pursuant to the current version of DOC Policy 200.000, all inmates with outstanding
23 Legal Financial Obligations (LFOs) are required to pay 20% of their incoming funds towards
24 such obligations. This current version of DOC 200.000 became effective in November 2003.
25 This policy does not apply to the incoming funds of inmates whose judgments and sentences
26 preclude DOC from collecting LFOs until after the inmates are released from custody.

1 However, inmates with a sentence of life without the possibility of parole or release (LWOP)
2 or a death sentence are not exempted from the LFO deductions required by DOC 200.000.

3 The DOC policy of requiring inmates who owe LFOs to pay their LFO debt has existed
4 in various forms since 1992. From 1992 to 1995, LFO deductions were made from funds
5 inmates had in their account in excess of \$250.00. From 1995 to the present, LFO deductions
6 have been made from deposits to inmates' accounts, with the exception of a brief period of
7 time when LFO deductions were suspended.

8 DOC Secretary Harold Clarke has issued a memo to all offenders clarifying that under
9 the authority of RCW 72.11.020, 20% of the incoming funds of LWOP inmates will continue
10 to be taken by DOC to pay their outstanding LFOs because he does not believe the Legislature
11 intended to exempt LWOP and death penalty inmates from paying their LFOs. Attached to
12 this declaration as Attachment A is a true and accurate copy of Secretary Clarke's memo
13 concerning LFO deductions.

14 I declare under penalty of perjury that the foregoing is true and correct to the best of my
15 knowledge.

16 SIGNED this 30th day of June, 2005, in Olympia, Washington.

17 
18 VICTORIA BARSHAW

ATTACHMENT A



STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF THE SECRETARY

P. O. Box 41101 • Olympia, Washington 98504-1101 • Tel (360) 753-2500
FAX (360) 664-4056

June 13, 2005

TO: All Offenders



FROM: Harold W. Clarke
Secretary

SUBJECT: LFO Deductions

It has come to my attention that some offenders who are serving sentences of life without the possibility of parole or release (LWOP) have questioned the authority of the Department of Corrections to collect legal financial obligations from funds they receive from outside sources. I want to clarify the Department's position on this issue.

The Legislature has clearly and consistently expressed its intent that all inmates pay the legal financial obligations they owe when they have the means to do so, and I do not believe the Legislature intended to exempt LWOP and death penalty offenders from these obligations. RCW 72.11.020 grants the Secretary of the Department of Corrections the authority to make deductions from offenders' accounts to pay their legal financial obligations, so long as these deductions do not take an offender's account below the \$10 indigency level.

Pursuant to the authority granted me by RCW 72.11.020, I now endorse and reaffirm the Department's current policy (DOC 200.000) of making a 20% deduction for legal financial obligations from all incoming, non-exempt funds received by all offenders who have outstanding legal financial obligations, including LWOP and death penalty inmates. DOC 200.000 will continue to be enforced as presently written.

HWC:dg
cc: Executive Staff