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STATE OF WASHINGTON

2006 NOV -8

NO. 78715-8

BY C. J. HERRITT

~~SUPREME COURT~~ OF THE STATE OF WASHINGTON
CLERK

JOHN PHILLIP ANDERSON, ET AL.,

Appellants,

v.

STATE OF WASHINGTON, ETAL.,

Respondents.

RESPONDENTS' SUPPLEMENTAL BRIEF

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I. NATURE OF THE CASE

Appellants are prison inmates who have been sentenced to life without the possibility of parole (LWOP) and owe legal financial obligations as a result of their felony convictions. Respondent, Washington State Department of Corrections (DOC), is authorized by RCW 72.11.020 to take deductions from inmates' accounts for payment of legal financial obligations, despite Appellants' assertion that RCW 72.09.480 prohibits such deductions from the accounts of inmates sentenced to LWOP or death.

II. ISSUES PRESENTED

1. Whether the clear authority granted to the secretary of the DOC under RCW 72.11.020 to collect legal financial obligations from all inmates may be exercised by DOC consistent with the mandatory deductions required by RCW 72.09.480.
2. Whether, if statutory construction is necessary, RCW 72.09.480 should be interpreted consistent with the legislature's intent that inmates sentenced to life without possibility of parole or death pay their legal financial obligations.

III. ARGUMENT

The secretary of DOC has clear authority under RCW 72.11.020 to collect Legal Financial Obligations (LFOs) from all inmates. That

authority does not conflict with the mandatory deductions required by RCW 72.09.480. Inmates sentenced to LWOP or death will never have an opportunity to pay their LFOs outside of prison, so the secretary's authority is necessary to ensure that the Legislature's mandate regarding LFOs is followed.

A. THE PLAIN LANGUAGE OF THE STATUTE IS CLEAR, AND THEREFORE STATUTORY CONSTRUCTION IS UNNECESSARY AND INAPPROPRIATE.

In order to determine the meaning of a statute, the Court will first look to the plain language of the statute. *Cerrillo v. Esparza*, ___ Wn.2d ___, 142 P.3d 155, 158 (2006). If the language is clear on its face, the meaning of the statute is determined by the language alone. *Id.*, citing *Kilian v. Atkinson*, 147 Wash.2d 16, 20, 50 P.3d 638 (2002). When a statute is unambiguous, only a plain language analysis is appropriate. *Cerrillo*, 142 P.3d at 158.

1. The Secretary Of DOC Has Clear Authority To Disburse Money From An Inmate's Personal Account For The Payment Of LFOs, And That Authority Does Not Conflict With The Mandatory Deductions Required By RCW 72.09.480.

The secretary of DOC is directed by RCW 72.11.020 to "disburse money from such [convicted] person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. . . .

[U]nless specifically altered herein, court-ordered legal financial obligations shall be paid.” That is, unless otherwise directed by the legislature, the payment of LFOs is mandatory, and neither inmates nor the secretary of DOC may choose not to pay LFOs from the inmate’s personal account. However, RCW 72.11.020 does not specify to the secretary of DOC how to disburse money from an inmate’s account or how much money should be deducted from various inmates’ accounts. RCW 72.11.020 makes clear that, unless otherwise directed by the legislature, the secretary has discretion regarding the disbursement of money from inmates’ accounts.

The legislature has given some specific direction to the secretary with regard to the disbursement of some inmate funds for the payment of LFOs. For example, if an inmate has a job working in a correctional industries work program, the legislature has directed that the secretary “shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers compensation benefits” and that the secretary “shall develop a formula for the distribution of offender wages, gratuities, and benefits.” RCW 72.09.111(1). The legislature further directed that the minimum deduction for LFOs from correctional workers who work in class I or class II jobs must be twenty percent, regardless of whether the inmates are sentenced to LWOP or death. RCW 72.09.111(1)(a)(iv)-

(b)(iv). The legislature distinguished between inmates who will eventually be released and inmates sentenced to LWOP or death only to the extent that inmates sentenced to LWOP or death are exempt from a ten-percent deduction to a personal inmate savings account, a savings account which is only accessible by an inmate upon his or her release. RCW 72.09.111 (2).

RCW 72.09.480 provides another example of the legislature providing specific direction to the secretary of DOC regarding the disbursement of inmate funds for the purpose of paying LFOs. Under that statute, the secretary is directed that when an inmate who is not sentenced to LWOP or death receives funds in addition to wages or gratuities, those funds are subject to certain mandatory deductions, including a mandatory twenty percent deduction for LFOs for those inmates who owe LFOs. RCW 72.09.480(2). The secretary is further directed that when an inmate sentenced to LWOP or death receives funds in addition to wages or gratuities, those funds are also subject to certain mandatory deductions, but those mandatory deductions do not include a mandatory percentage deduction for LFOs. RCW 72.09.480(7).

The legislature chose to provide specific direction to the secretary of DOC with regard to what percentage of LFO deductions must be made from funds received by inmates who are not sentenced to LWOP or death.

In contrast, the legislature chose not to provide specific direction to the secretary with regard to what percentage of LFO deductions must be made from funds received by inmates who are sentenced to LWOP or death. The fact that the legislature chose not to tell the secretary what percentage must be paid toward LFOs by inmates sentenced to LWOP or death indicates that the secretary is to assert the discretionary authority granted him under RCW 72.11.020 to disburse money from those inmates' accounts to pay the court-ordered LFOs.

That is because the legislature stated, “[U]nless specifically altered herein, court-ordered legal financial obligations shall be paid.” RCW 72.11.020. The legislature has not altered this mandate for inmates sentenced to LWOP or death. On the contrary, RCW 72.09.480(7) is, at best, silent on the issue of payment of LFOs. Without specific direction otherwise, LFOs must be paid, and the secretary of DOC has the authority to disburse money from inmate accounts to see that they are paid.

This Court recently addressed a challenge to the Department of Labor and Industries' authority to enforce the statute imposing a general duty on every employer to keep a workplace safe from known and recognized hazards when applied to hazards that presented a risk of causing ergonomic injuries. *Supervalu, Inc. v Dep't. of Labor & Indus.*, ___ P.3d ___, 2006 WL 2987786 (Wash.). An initiative to the people, I-

841, had repealed certain ergonomics regulations adopted by the Department of Labor and Industries and prohibited further rules on the topic except as required by Congress. *Id.* The challengers reasoned that the repeal of the ergonomics regulations must “completely prohibit L & I from performing inspections and issuing citations with regard to *any* musculoskeletal injury related to an ergonomics hazard.” *Id.* (emphasis in original). The Court held, however, that repealing regulations did not affect the Department’s preexisting statutory power to enforce the general duty clause. I-841 did not mention the general duty clause at all, which the Court found “very significant.” *Id.*

Seldom have there been initiatives before this court that have been more precise.

....
I-841 could have included language to prohibit complete enforcement of ergonomics-related hazards, subject to federal limitations, but it did not. I-841 could have attempted to prohibit prevention of ergonomics-related injuries under RCW 49.17.060(1), the general duty clause, but it did not. . . . Again, I-841 never mentions the elimination of L & I’s ability to prevent serious ergonomics-related hazards under the general duty clause.

Id.

In this case, RCW 72.09.480 is also very precise, and the fact that it does not mention RCW 72.11.020, except with regard to the priorities established for work-release inmates, is “very significant.” RCW 72.09.480 could have included language to prohibit DOC from deducting

LFOs from the incoming funds of inmates sentenced to LWOP or death, but it did not. It could have eliminated DOC's preexisting general authority under RCW 72.11.020 to deduct LFOs from incoming funds, but it did not. Therefore, the general authority of DOC, established in RCW 72.11.020, to deduct LFOs from incoming funds of inmates sentenced to LWOP or death remains intact. The plain language of the statutes does not allow silence in RCW 72.09.480 to amend or modify the power granted by other statutes.

2. Neither RCW 72.11.020 Nor RCW 72.09.480 Is Ambiguous, So Statutory Construction Is Unnecessary And Inappropriate.

In order to ascertain the meaning of a statute, courts look first to the language of the statute. *Cerrillo*, 142 P.3d at 158. "If the language is not ambiguous, we give effect to its plain meaning." *Id.* Tools of statutory construction are used to ascertain meaning of a statute only if the language of the statute is ambiguous. *Id.* In fact, this Court recently stated that "when a statute is not ambiguous, only a plain language analysis of a statute is appropriate. *Id.* at 158. "A statute is ambiguous if it can be reasonably interpreted in more than one way, but it is not ambiguous simply because different interpretations are conceivable." *Kilian v. Atkinson*, 147 Wash.2d 16, 20-21, 50 P.3d 638 (2002), *citing*

State v. Keller, 143 Wash.2d 267, 276 (19 P.3d 1030(2001), *cert denied*, 534 U.S. 1130, 122 S.Ct. 1070 (2002).

Neither RCW 72.11.020 nor RCW 72.09.480 is ambiguous. The legislature was clear when it stated that the secretary of DOC “shall have authority to disburse money from such [convicted] person’s personal account for the purposes of satisfying a court-ordered legal financial obligation to the court.” RCW 72.11.020. Likewise, it is clear that, “[U]nless specifically altered herein, court-ordered legal financial obligations shall be paid.” *Id.* It is equally clear that RCW 72.09.480(7) directs certain mandatory deductions from incoming funds received by inmates sentenced to LWOP or death, but that no mention is made of deductions for LFOs.

Appellants have conceived of a different interpretation of RCW 72.09.480 than that employed by DOC, but Appellants’ interpretation is not reasonable. Appellants argue that the legislature’s silence on the issue of LFOs in RCW 72.09.480(7) must mean that the legislature intended to exempt inmates sentenced to LWOP or death from the requirement that they pay LFOs or that the mandatory deduction for LFOs from those inmates must be zero. This is an inaccurate reading of the statute. “Courts may not read into a statute matters that are not in it and may not create legislation under the guise of interpreting a statute.” *Kilian*, 147 Wn.2d at

21 (footnote omitted)(citing *Associated Gen. Contractors v. King County*, 124 Wn.2d 855, 865, 881 P.2d 996 (1994)).

If the legislature had intended to exempt inmates sentenced to LWOP or death from the requirement that they pay their court-ordered LFOs, it would have done so. It did not. Instead, the legislature clearly directed the secretary of DOC to disburse money from inmate's accounts for the payment of court-ordered LFOs, directed that the LFOs "shall be paid" unless specifically directed otherwise, and then did *not* specifically direct otherwise with regard to inmates sentenced to LWOP or death. There is no ambiguity in either statute, and therefore "only a plain language analysis is appropriate." *Cerrillo*, 142 P.3d at 158.

B. IF STATUTORY CONSTRUCTION IS NECESSARY, THEN RCW 72.09.480 SHOULD BE INTERPRETED CONSISTENTLY WITH THE LEGISLATURE'S INTENT THAT LFOS BE PAID.

The plain language of RCW 72.09.480 is unambiguous, and therefore statutory construction is unnecessary and inappropriate. *Cerrillo*, 142 P.3d at 158. However, if the statute were ambiguous, "this court resorts to principles of statutory construction, legislative history, and relevant case law to assist in interpreting it." *Kilian*, 147 Wash.2d at 21. When interpreted through these tools, it is clear that inmates sentenced to

LWOP or death are not exempt from LFO deductions under RCW 72.09.480(7).

1. Deduction Of LFOs From Funds Sent To Inmates Sentenced To LWOP Or Death Is Necessary So That The Inmates Can Pay Court Debts And Restitution To Victims.

A 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 (1984). In this case, the legislature has made its intent abundantly clear.

It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

....
(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

RCW 72.09.010 Legislative Intent.

Restitution is paid through court-ordered legal financial obligations.

“Court-ordered legal financial obligation” means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed

attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.

RCW 72.11.010(1).

Appellants' interpretation of RCW 72.09.480 would lead to "unlikely, strange or absurd consequences," which the Court avoids. *State v. Contreras*, 124 Wash.2d 741, 747, 880 P.2d 1000 (1994). Under Appellants' interpretation, this Court must conclude that the legislature intended to exempt inmates sentenced to LWOP or death from having to pay their debts to crime victims, society or the courts. It would be strange indeed if the legislature intended to exempt from payment of LFOs only those inmates most likely to have incurred large debts for restitution and court costs and who will never have an opportunity outside of prison to pay those debts. In fact, it is far more likely that the Legislature's silence on the issue of LFOs in RCW 72.09.480(7) was intended to allow the secretary of DOC to deduct *more* than twenty percent from the incoming funds of those inmates, rather than none.

Appellants argue that they have "no actual interest in paying the LFO debt" because they will never be released from prison with a reduced debt as a result of paying the debt while in prison. *See* Appellants' Opening Brief, p. 6. Appellants misunderstand the purpose of paying the LFO debt. Payment of LFOs is not designed as a benefit for the inmates.

Rather, the purpose of LFO payments is to make restitution, to pay the inmate's debt to the victim and to the courts. RCW 72.09.010(7); RCW 72.11.010(1).

If the legislature's intent were not clear from the above, it is reiterated in RCW 72.11.020: "[U]nless specifically altered herein, court-ordered legal financial obligations *shall be paid*." (Emphasis added.) The legislature further signaled its intent with regard to payment of LFOs in RCW 72.11.030, which states, "Except as otherwise provided herein, all court-ordered legal financial obligations *shall take priority* over any other statutorily imposed mandatory withdrawals from an inmate's account." RCW 72.11.030 (emphasis added). The only exceptions provided for in RCW 72.11.030 pertain to work-release inmates. Moreover, in RCW 72.09.111, the legislature made clear that LFOs must be deducted from all wages, gratuities, or worker's compensation benefits, regardless of the sentence received by the inmate. The legislature went even further with regard to worker's compensation benefits, requiring as a minimum deduction "An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award." RCW 72.09.111 (1)(c)(iv). As a result, inmates sentenced to LWOP or death who receive workers' compensation benefits will pay a greater percentage of their benefits for

LFOs, up to seventy-five percent, than other inmates, who will pay up to sixty-five percent of workers' compensation benefits for LFOs.

When the statutes concerning payment of LFOs are read as a unified whole, it is clear that the legislature intended that LFOs be paid, that all inmates pay their LFOs, and that there be no exceptions other than for some work-release expenses. RCW 72.11.030.

2. Appellants' Strained Interpretation Of RCW 72.09.480 Creates The Appearance Of A Conflict Only When It Is Read In Isolation.

Appellants' interpretation of RCW 72.09.480 would conflict with RCW 72.11.020 and nullify it as it applies to inmates sentenced to LWOP or death. However, it is only when RCW 72.09.480 is read in isolation and given the strained interpretation suggested by Appellants that the appearance of a conflict arises. When more than one statute pertains to the same subject, the statutes must be read as a "unified whole" so that a "harmonious statutory scheme evolves which maintains the integrity of the respective statutes." *State v. O'Neill*, 103 Wn.2d 852, 862, 700 P.2d 711 (1985). When RCW 72.11.020 and RCW 72.09.480 are read as parts of a "unified whole," there is no appearance of a conflict.

The two statutes are easily reconciled when given the plain language interpretation used by DOC. "When two statutes apparently conflict, the rules of statutory construction direct the court to, if possible,

reconcile them so as to give effect to each provision.” *State v. Landrum*, 66 Wn.App. 791, 796, 832 P.2d 1359 (1992). The plain language of RCW 72.09.480 simply gives no direction with regard to LFO deductions from funds sent to inmates sentenced to LWOP or death, and therefore it does not conflict with the plain language of RCW 72.11.020, which directs that LFO deductions shall be made from the personal accounts of all convicted persons who owe LFOs .

3. DOC’s Interpretation Of RCW 72.09.480 Is Consistent With RCW 72.09.111.

RCW 72.09.111 directs the secretary of DOC to deduct a minimum of twenty-percent of the wages or gratuities earned by inmates working in the correctional industries work programs, regardless of the inmate’s sentencing scheme. The secretary must deduct at least twenty percent of all wages or gratuities, but he may deduct more than twenty percent if he chooses. RCW 72.09.111.

Appellants are correct that the legislature clearly intended to treat deductions from wages and gratuities differently from other incoming funds, as the two types of funds are governed by different statutes. RCW 72.09.111; RCW 72.09.480. Appellants are incorrect, however, when they interpret the distinction to mean that the legislature meant there to be no LFO deductions from other incoming funds sent to inmates sentenced to

LWOP or death. Appellants argue that the fact that the legislature requires a “minimum” deduction for LFOs from all wages and gratuities under RCW 72.09.111 but does not require a minimum deduction for LFOs under RCW 72.09.480(7) must mean that the legislature did not intend for there to be *any* deduction for LFOs from funds sent to inmates sentenced to LWOP or death. On the contrary, the omission of a requirement for minimum deductions for payment of LFOs under RCW 72.09.480(7) means just that: there is no requirement for minimum deductions for payment of LFOs under RCW 72.09.480(7). Rather than specifying what percentage should be deducted from the incoming funds of inmates sentenced to LWOP or death, the legislature deliberately chose to leave that determination to the discretion of the secretary.

4. A Historical Analysis Of The Statutes Provides No Support For Appellants’ Interpretation Of RCW 72.09.480.

Appellants are correct that the legislative history shows that that legislature deliberately excluded a required percentage deduction under RCW 72.09.480 for LFOs from inmates sentenced to LWOP or death. However, Appellants are incorrect in their interpretation of that fact. Appellants again argue that the fact that the legislature intended to treat LFO deductions differently for inmates sentenced to LWOP or death must mean that the legislature intended that those inmates pay no deductions

from their incoming funds. The fact that the legislature intended to treat inmates sentenced to LWOP or death differently than other inmates with regard to LFO deductions does not mean that the legislature intended that inmates sentenced to LWOP or death be exempt from having to pay any LFOs from incoming funds. On the contrary, the intent of the legislature is clear: legal financial obligations shall be paid.

IV. CONCLUSION

The lower court's decision that the secretary of the Department of Corrections is authorized to take deductions from incoming funds of inmates sentenced to life without possibility of parole or death for legal financial obligations should be affirmed.

RESPECTFULLY SUBMITTED this 7th day of November, 2006.

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CERTIFICATE OF MAILING

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