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FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 JUN - 1 AM 11:38

NO. 63095-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
IN AND FOR DIVISION ONE

IN RE THE PRPROF:)
CHAD A. PIERCE,) REPLY OF PETITIONER TO THE
) RESPONSE OF THE DEPARTMENT
)
PETITIONER.)

COMESNOW Petitioner, Chad Pierce, acting on his own behalf as a pro se litigant, requesting the court to deny the response of the Department, and grant the petition based upon the following.

- 1. THE DEPARTMENTS RESPONSE ASSERTING THAT IT HAS AUTHORITY TO COLLECT THE COST OF INCARCERATION AS WELL AS LEGAL FINANCIAL OBLIGATIONS PURSUANT TO OTHER STATUTES IS MISLEADING.

The Department in its response conceded the errors raised in the Petitioners opening PRP. The Department states:

"RCW 9.94A.760(2) authorizes a sentencing court to sentence an offender to pay the cost of incarceration if the offender has the means to pay such costs.

In Petitioner's 2005 cause the court explicitly waived incarceration costs under RCW 9.94A.760. See Petitioner's exhibit 3. In Petitioner's 2001 cause the court neither imposed nor waived incarceration costs...See Petitioner's exhibit 1."

See Response of DOC at 3. (Emphasis mine).

"Both the judgments and sentences at issue in this case provide that Petitioner shall pay his LFOs on a schedule established by Petitioner's Community Corrections Officer. See Petitioner's exhibits 1 and 3."

See Response of DOC at 6. (Emphasis Mine).

Such admissions by the Department establish that the Petitioner has met the threshold burden of proving that by the Department's collection of cost of incarceration costs that were never imposed, and collecting LFOs that are clearly satisfied already, or not yet collectable according to the Judgment and Sentences, such conduct by the Department is unlawful restraint on this Petitioner which entitles him to the relief as deemed proper by this court.

Further the Departments position was well addressed when its response stated:

"Petitioner asserts that DOC has violated his judgment and sentences; and in so doing has violated the separation of powers doctrine. Petitioner cites numerous state statutes and state court cases to support his legal position and if there were no other statutes or court cases relevant to the issue, Petitioner's argument would be compelling."

See Response of DOC at 3-4. (Emphasis Mine).

This argument in support of the Departments Legal position is that several other statutory provisions, namely RCW 72.09.111 & 72.09.480 authorize the Department to collect upon non-imposed cost of incarceration and LFOs that are not yet due, or were never imposed. See Response of DOC at 4-8.

Such a theory would be viable only if it was properly stated, and not meant to deceive this court. The Departments position is specious at best, and shows that the Department has a clear, or intentional misconception of the purposes behind the legislatures enactment of Title 72 which deals with the provisions of State Institutions. The RCWs cited by the Department are civil in nature.

The intentions of the legislatures enactment of Title 72 was to authorize the Department, a civil entity, to collect upon criminal courts imposing sanctions such as cost of incarceration and LFOs.

The courts move under the SRA of 1981 in imposing criminal costs, namely, RCW 9.94A et. Seq. The evolution of Title 72 magnatized the provisions of 9.94A et. seq, such unision is also commonly known as "Harmonization of the laws." Such harmony is clearly a needed vehicle to prevent the Department from being restrained at collecting the costs as imposed by a criminal court, since the DOC entity is civil in nature, and such harmony grants the Department the needed jurisdiction and authority to collect fees in order to satisfy the court imposed costs. Not to allow the Department to in fact collect fees that were never imposed by the court, or fees that are not yet owed. Thus, the Departments job is only to collect that which is stated on the face of the judgment and sentences, nothing further.

Based upon the foregoing arguement, the Departments claims must fail, and should not be persuasive to this court.

2. THE DEPARTMENT CITED CLEARLY DISTINGUISHABLE CASELAW IN SUPPORT OF ITS POSITION WHICH IS PERNICIOUS TO ITS CONTENTIONS.

This argument is linked, and directly related to section 1, Supra, as the Departments proposition in support of its claim cites this court to three distinguishable case laws, specifically, the case of Wright V. Riveland; Dean V. Lehman; and Personal Restraint Petition of Metcalf. See Response of DOC at 4-6.

The Departments use of the the three cases cited one in the 9th Circuit court, one in the Washington State Supreme Court, and one in the court of appeals division one was to make it seem like the Departments position was based upon an "Iron Clad" argument, but as each case is clearly distinguishable from this petitioners case, also the statutes the Department cited are not properly used, the Departments position becomes shattered like using pottery in the metal fabrication shop.

The contextual language and issues presented in the cases were clear attacks on the constitutionality of the statutes used to in fact authorize the Department to collect upon costs as set forth in all three judgments and sentences of the three cases cited by the Department.

This argument is way out in left field as to the framework of the petitioner's opening PRP. The petitioner's arguments were not that the statutes were unconstitutional, but since the courts in both the judgments and sentences waived explicitly the cost of incarceration, and the \$500.00 LFO was to be paid upon the release of petitioner, as established on a monthly schedule by the Community Corrections Officer, then by what authority does the Department retain to charge the petitioner up to 50% or more of his incoming money for these unauthorized costs. See PRP of Petitioner.

Further argument was had that in so doing by the Department, the department has in fact violated the Separation of Powers doctrine, thus entitling this petitioner to relief as he now is unlawfully restrained. Id.

The Department in responding, would have this court close its eyes to very exculpatory evidence, such being the attached exhibits to the first petition. The Department stated that the only relevant evidence in this case, would be the exhibits 1 and 3 in the opening petition. See Response of DOC at 2 n.1.

This is the Departments attempt to bluff this court, and severely distort the truth of the matters asserted, as the Departments main argument in its brief is that even though the courts did not impose such costs, it still nevertheless retains authority pursuant to the poorly cited statutes and case law to collect for itself. (Emphasis Mine). See Response of DOC at Et. Seq.

Such an argument is severely contradicted by what is in the exhibits that the Department wishes this court would not read, as the petitioner in the beginning of this mission, drafted several kites and grievances of the Departments, to accounting, to inquire as to what authority the Department has in taking costs that are not imposed. The Departments employee's stated that the cost were being collected to satisfy the judgment and sentences. See PRP exhibits.¹

Thus, the Departments new argument is frivolous in its based on the practice of fraud, due to the Departments record retentions,

The utilizing of false and severely misleading arguments by the

1. AS a caveat the petitioner sent his only copy of the petition and the exhibits to division two with a request that one be sent back, the petition was transfered to division 1 and there the court wants \$40+ dollars first before turning a copy over, and thus this petitioner cannot properly point this court to the exhibits, and indigency was ordered.

Department in responding, is clearly fraud used as a tool meant to deceive this court, and sending such fraudulent argument through the Federal Mail system is Federal mail fraud that is severely a criminal offense, and most certainly frivolous and punishable by imposing sanctions and costs.

3. THE DEPARTMENT CONTENDS THAT DUE TO THE LANGUAGE OF THE JUDGMENT AND SENTENCES IT MAY COLLECT LFOs.

A thorough examination of the Department's response points out that the Department's main assertion was that the language in both of the judgments and sentences was vague, and thus the Department through such vagueness may collect the costs it is collecting.

See Response of DOC at 6-13.

Specifically, the Department stated:

"Petitioner's judgment and sentences also contain no language indicating that the ordered LFOs are not immediately collectable. Finally, Petitioner's judgments and sentences contain no provision waiving or restricting DOC's authority under RCW 72.11.020 or any other statute to disburse funds from Petitioner's account to pay his unpaid LFOs. Because nothing in Petitioner's judgments and sentences delay the enforceability of Petitioner's LFO obligations, DOC properly collected and may continue to collect LFOs from Petitioner's funds."

See Response of DOC at 10-11.

Such a proposition as raised by the Department is frivolous and is without merit. This petitioner bases his assertion upon the very fact that both of the judgments and sentences are clear in their contextual language stating that the LFOs are to be paid on a set schedule upon the Petitioner's release within 24 hours as established by a Community Corrections Officer, not the Department accountants.

See PRP exhibits 1 and 3.

In fact the Departments response concedes to this very argument stating:

"Petitioner's judgment and sentence in cause NOs 01-1-10417 orders petitioner to pay \$500.00 in LFOs. See exhibit 1 to Petitioner's PRP. The judgment and sentence also states that LFO payments shall be made 'on a schedule established by the Defendant's Community Corrections Officer.' Id. This provision in petitioner's judgment and sentence does not preclude collection of LFOs from Petitioner prior to his release from prison."

See Response of DOC at 8-9 (Emphasis Mine).

The Departments assertions are specious in stating that it may still collect the costs of LFOs while the petitioner is in the system of prison, as the judgment is clear on its face, that such cannot be taken until the petitioner is released as established by his CCO. See PRP exhibits 1 and 3.

The Departments assertion only addressed the court cause No. 01-1-10417-5, and went silent upon the cause No 05-1-06490-7.

The Department is incorrect that the 2001, \$500.00 LFO, is unpaid and collectable. This presumption is based upon the attached exhibit No. ² . In the attached exhibit, the petitioners cause in 2001 shows that the petitioner has paid toward the LFO a total consisting of \$795.84, which is over the amount due by \$295.84, and such amount is still owed to the petitioner. Take note that Restitution as set forth in RCW 9.94A.760 is not considered a LFO, and is not a part of this petition. As in the case at issue in 2005, Mr Pierce does not have any set restitution to deal with.

2. The Petitioner would ask this court to please number the attached exhibit to properly continue where the last exhibit attached to the petition left off, as the petitioner is arguing this reply blind due to the lack of retaining a copy of the petition and exhibits.

Furthermore, the Department failed to address the 2005 cause language as it pertains to the collection of the \$500.00 LFO, but this petitioner will state that the language is exactly the same as what was on the 2001 judgment stating that the petitioner is to on a schedule as established by a CCO, upon his first 24 hours of release, pay the LFO, not before, and such authority is derived from the law as set forth in the SRA of 1981, which is constitutional.

Therefore, from the understanding of the language in both of the judgment and sentences, the Department does not retain any authority or jurisdiction to collect the cost its taking.

4. THE DEPARTMENT INCORRECTLY ASSERTS THAT THE TRIAL COURT RETAINS NO AUTHORITY TO DELAY THE ENFORCEMENT OF LFO OBLIGATIONS.

First and foremost, the trial courts authority to impose, or not to impose, cost of LFos and cost of incarceration fines is well established in the SRA of 1981, and has been held to be lawfully enacted authority. Such authority of the court is directly found under the provisions of RCW 9.94A.760(2). Such a statute must be taken in the light of what the words mean on their face as intended by our state legislature.

The Department again makes a false argument to this court in stating:

"Petitioner's judgment and sentence contains no language setting a start date on Petitioner's LFO obligations."

See Resoponse of DOC at 9. (Emphasis Mine).

The Petitioner's position is that the language on the face of the judgment and sentence does state a start date, and such a date is as established after 24 hours of release and set by the Community Corrections Officer, not while in the Department of Corrections prison. See PRP exhibits 1 and 3.

If the trial court wanted the petitioner to pay for the costs while he was in prison, then the trial court on the judgment and sentence would have ordered a payroll deduction granting DOC with the authority to collect such obligations from the petitioner. See RCW 9.94A.7601-7608.

In this case, that never occurred. But also in support of the Department's response in this area, it cited again several cases that have absolutely no relevance to this proceeding. The cases cited were distinguishable in the sense that they were where the courts imposed conditions not authorized by law, such as setting a condition upon an inmate to register as a sex offender, when he was not a sex offender, which is clearly not authorized by law.

Thus, the Department is making numerous attempts through the cases they cite, which are distinguishable from this petitioner's, to persuade this court, and such persuasion seems to be from the Department's desperate attempt to conceal its fraud that it has been perpetuating upon this petitioner for some time now.

Further, the judgments and sentences as so argued in the opening brief waive the interest fee on the LFOs. See PRP exhibits 1 and 3.

The Department further cited this court to the Martin case, and it is a case that is clearly distinguished in that the costs were

imposed, and in this petitioner's case, the costs were waived, or imposed to be paid at a later date, thus that case is distinguishable as well.

The trial courts authority and power is not to be impaired by the Department and that was well settled in the provisions of RCW 72.02.015 which reads in part:

"Powers of court of judge not impaired. Nothing in this chapter shall be construed to restrict or impair the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this chapter applies, to fix the term of imprisonment and to order commitment, according to law..."

Such a provision is clearly damaging to the Departments false assertions of the courts lack of authority to decide when the LFO is to be paid, and thus the petitioner stands on the case law cited in his opening petition, and thus is entitled to relief as he is being illegally restrained.

4. THE DEPARTMENT FAILED TO DENY OR RESPOND TO SEVERAL ISSUES.

The Department did not respond to the argument raised by this petitioner as to the unlawful collection of the LFO costs on the 2005 cause number.

The Department failed to deny that it violated the separation of powers doctrine.

The Department failed to deny or respond to the petitioner's asserting that there are 2 cost of incarceration accounts being deposited into, one a COI, and the second a COIS, as that seems to be illegally being conducted.

The rules of this court state:

"...The response must answer the allegations in the petition."

See RAP 16.9.

The Departments cannot respond as they are in the clear wrong in overriding the courts authority, and thus have by silence in fact conceded to the errors raised. Thus, this court should so hold.

5. CONCLUSION.

The Petitioner will directly assert that he has met his burden in the establishing an unlawful act of the Department to which he may be entitled to relief by way of the PRP submitted.

The Departments response is fraudulently drafted, with the only intention to deceive this court, and is furthermore frivolous.

For the reasons set forth in the original petition as well as stated in this reply, the petitioner asks this court to find the departments response is frivolous and further the petitioner asks this court to dismiss that response as such under RAP 16.11(b).

The petitioner also requests that it be awarded costs as allowed and authorized by law.

I Chad Pierce declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Dated this ^{26th} day of May, 2009. Executed at Airway Heights, WA.

~~Chad A. Pierce~~
CHAD A. PIERCE-714567-KB-23
A.H.C.C.
P.O.BOX 2049
Airway Height, WA 99001

CERTIFICATE OF SERVICE

I certify that I caused to be deposited into the Airway Heights Correction Center Federal Mail System via a pre-paid first class envelope a true copy of the foregoing document on all parties of interest in the case or their counsel of record. The documents sent were:

1. REPLY OF PETITIONER TO THE RESPONSE OF THE DEPARTMENT:
2. CERTIFICATE OF SERVICE.

The documents were sent to the following parties or counsel:

ATTORNEY GENERAL OF WASHINGTON
ROBERT MCKENNA
c/o DOUGLAS W. CARR WSBA #17378
ASSISTANT ATTORNEY GENERAL
CORRECTIONS DIVISION
P.O. BOX 40116
OLYMPIA, WA 98504-0116

CLERK OF COURT OF APPEALS-DIVISION ONE
ONE UNION SQUARE
600 UNIVERSITY STREET
SEATTLE, WA 98101

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

EXECUTED this 27th day of May, 2009 at Airway Heights, Wa.

Chad Pierce
CHAD A. PIERCE-714567-KB
A.H.C.C.
P.O. BOX 2049
AIRWAY HEIGHTS, WA 99001

EXHIBIT

DP32 0 714567 AC

03/29/05 08.27.38

DORO032

PAYMENT HISTORY SUMMARY

PAGE 002

DOC NO: 714567 NAME: PIERCE, CHAD A
BODY STATUS: ACTIVE DET-JAIL CLCTS: NO
CMT: AC CAUSE: 011104175 COUNTY: KING

OFFICE: 225 EVERETT UNIT
OFFICER: CU55 ROBERTSON, SHAN
CAUSE STATUS: ACTIVE DET-JAIL

PAYMENT SCH. \$ 50 MONTHLY EFF DT 11/2003 BY: DOC
2003 M A M J J A S O N D 04 J F M A M J J A S O N D 05 J F M BILL PAY LFO
BILL X X X X X X X X X X X X X X X X X X INTR DUC VER COS
PAID 1 2 1 2 1 2 1 1 1 1 2 1 2 1 Y

LFO TYPE	*--ORDERED AMOUNT--*	BALANCE	TRANS DATE	TYPE	AMOUNT
	DOC CO. CLERK		01/14/04	PAYMENT OAC	20.00
RESTITUTION	7049.47	6253.63	11/26/03	PAYMENT OAC	50.00
ATTORNEY			10/17/03	PAYMENT OAC	73.25
FINES			10/07/03	PAYMENT OAC	44.00
VICTM ASSMT	500.00	500.00	09/19/03	PAYMENT OAC	35.00
COURT COSTS			08/22/03	PAYMENT OAC	25.00
DRUG FUND			08/08/03	PAYMENT OAC	52.73
OTHERS			07/18/03	PAYMENT OAC	5.86
MODIFIED INTEREST		2394.32			
TOTAL	7549.47	9147.95			

PF12=COS SUMMARY

PD TO-DATE: 795.84

