EP

83731-7

NO. ~~63095-4-I~~ 63110-0

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 MAY 21 AM 11:21

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Personal Restraint Petition of: CHAD ALAN PIERCE, Petitioner.	RESPONSE OF THE DEPARTMENT OF CORRECTIONS TO PERSONAL RESTRAINT PETITION

COMES NOW Respondent Department of Corrections (DOC), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and DOUGLAS W. CARR, Assistant Attorney General, and submits the following Response to Petitioner's Personal Restraint Petition (PRP).

I. INTRODUCTION

Petitioner Chad Pierce is a Washington State inmate who has filed a PRP challenging deductions made from his prison account by DOC for cost of incarceration and for legal financial obligations (LFOs) that Petitioner owes as a result of his criminal convictions. Specifically, Petitioner asserts that DOC may not make any deductions from his funds for cost of incarceration because the sentencing courts waived imposing costs of incarceration in his criminal judgments and sentences, and that these judgments and sentences prohibit DOC from collecting LFOs until Petitioner is released from DOC custody.

Petitioner seeks the return of all funds he asserts were taken unlawfully, an order for DOC to stop collecting cost of incarceration and LFOs from him, and reimbursement of his costs in this matter. Petitioner's PRP is meritless as a matter of law and should be dismissed as frivolous pursuant to RAP 16.11(b).

II. BASIS FOR PETITIONER'S CUSTODY

Petitioner is currently serving a 9-year to life indeterminate sentence pursuant to convictions of two counts of First Degree Child Molestation in King County Superior Court Cause No. 05-1-06490-7KNT. Petitioner does not challenge his criminal convictions or sentences in this action but instead challenges deductions made by DOC from Petitioner's funds for cost of incarceration and LFOs.

III. ISSUES PRESENTED[1]

1. Whether the criminal sentencing courts' decisions to not impose incarceration costs on Petitioner under RCW 9.94A.760(2) preclude DOC from collecting cost of incarceration from Petitioner under RCWs 72.09.111 and 72.09.480.

---

[1] The only evidence relevant to Petitioner's claims in this PRP are his criminal judgments and sentences in King County Superior Court Cause Nos. 01-1-10417-5KNT and 05-1-06490-7KNT, accurate copies of which have been attached as exhibits 1 and 3 to Petitioner's PRP.

2. Whether DOC may lawfully collect LFOs from Petitioner while he is incarcerated when Petitioner's criminal judgments and sentences provide that Petitioner's LFO payments will be made "on a schedule established by the defendant's Community Corrections Officer or Department of Judicial Administration (JDA) Collections Officer".

3. Whether Petitioner may obtain any monetary relief in this petition.

IV. ARGUMENT

A. DOC MAY LAWFULLY COLLECT COST OF INCARCERATION FROM PETITIONER.

RCW 9.94A.760(2) authorizes a sentencing court to sentence an offender to pay the costs 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 under RCW 9.94A.145, the predecessor statute to RCW 9.94A.760. See Petitioner's exhibit 1.

Petitioner argues that since his criminal judgments and sentences do not impose incarceration costs on him, DOC may not collect any costs of incarceration from his prison funds. Petitioner asserts that DOC has violated his judgments 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 this issue, Petitioner's arguments would be compelling. However, such statutes and cases do exist and make clear that Petitioner's claim concerning cost of incarceration deductions is frivolous.

Several statutes other than RCW 9.94A.760, formerly RCW 9.94A.145, authorize DOC to collect cost of incarceration from inmates. RCW 72.09.111 requires the DOC to make various deductions from the wages and gratuities that inmates earn in prison, including deductions for costs of incarceration, crime victims compensation, and legal financial obligations. RCW 72.09.480 requires the DOC to make similar deductions from funds inmates receive other than their wages and gratuities. Both of these statutes have consistently been upheld by state and federal courts to a broad array of legal challenges. Wright v. Riveland, 219 F.3d 905 (9th Cir. 2000); Dean v. Lehman, 143 Wn.2d 12, 18 P.3d 523 (2001); Personal Restraint of Metcalf, 92 Wn. App. 165, 963 P.2d 911 (1999).

RCW 72.09.111 and 72.09.480 are not criminal in nature, do not amend Petitioner's criminal judgments and sentences, and do not impose criminal punishment. In Metcalf, the Court of Appeals rejected a broad

challenge to the constitutionally of the above deduction statutes, including claims that the statutes violated the ex post facto clause of the U.S. Constitution, due process, the double jeopardy clause, excessive fines, and Bill of Attainder. Id. 92 Wn. App. At 177. In analyzing Petitioner's constitutional claims, the Metcalf court concluded that the deduction statutes did not impose criminal punishment:

> The picture which emerges from this examination of the Mendoza-Martinez factors does not demonstrate that the fund deductions are criminal penalties. The deductions operate essentially like a tax on prisoners, not as a punishment for their criminal conduct. Our conclusion that the deductions are remedial therefore stands. And from this conclusion, it follows all Metcalf's federal (and analogous state) constitutional claims fail.

Id., 92 Wn. App. At 183.

In Dean, supra, the Supreme Court upheld RCW 72.09.480, finding that this statute is essentially a recoupment provision: "The overall scheme of the deductions authorized by RCW 72.09.480 is to seek recompense for the costs associated with incarcerating an inmate". Id., 143 Wn.2d at 33.

Because RCWs 72.09.111 and 72.09.480 do not impose criminal penalties, they do not contravene Petitioner's criminal judgments and sentences. Dean, supra; Metcalf, supra. The sentencing courts in Petitioner's criminal cases did not and could not waive the deductions

required by RCWs 72.09.111 and 72.09.480, and only properly waived incarceration costs under RCW 9.94A.760 and its predecessor, RCW 9.94A.145. Petitioner's claim that DOC violated his criminal judgments and sentences by collecting costs of incarceration is frivolous and should be dismissed as such.

B. DOC IS ALLOWED BY LAW TO COLLECT LFOS FROM ALL INMATES.

Petitioner argues that his criminal judgments and sentences prohibit DOC from collecting LFOs from him until he is released from prison. Both of 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. Once again, Petitioner cites numerous state statutes and state legal cases to support his argument on this claim. However, once again Petitioner ignores clear statutes and cases that support DOC's collection of LFOs from Petitioner.

DOC is authorized by several statutes to make LFO deductions from funds inmates receive. RCW 72.09.111 allows DOC to make LFO deductions from inmates' wages and gratuities and RCW 72.09.480 allows DOC to make LFO deductions from funds inmates receive from outside sources. Petitioner conveniently ignores these statutes and other statutory

authority which gives DOC broad discretion to deduct funds from inmates' accounts to pay unpaid LFOs.

In 1989 the legislature enacted a statute giving DOC broad authority to disburse money from inmates' accounts to pay unpaid LFOs:

> . . . the secretary shall have authority to disburse money from such person's personal account for the purpose of satisfying a court-ordered legal financial obligation to the court.

RCW 72.11.020.

The only constraint placed on DOC's authority to make disbursements for LFOs under RCW 72.11.020 is that the disbursements may not reduce "the inmate's account to an amount less than the defined level of indigency to be determined by the department." Id. RCW 72.11.020 authorizes DOC to disburse inmates' funds to pay unpaid or unsatisfied LFOs regardless of whether the LFOs are presently due and owing, due and payable, or have been ordered to be paid on a schedule established by the inmate's community corrections officer. RCW 72.11.020 allows DOC to disburse funds from an inmate's account whenever the account exceeds the indigency standard and the inmate has LFO obligations that have not yet been fully satisfied.

The legislature amended RCW 72.11.020 in 2002 to require that LFO deductions be made without exception: "Legal Financial Obligation

deductions shall be made as stated in RCW 72.09.111(1) and 72.65.05 without exception." This amendment makes clear that DOC must make LFO deductions from the funds of all inmates who have LFO obligations regardless of language to the contrary in their judgments and sentences. When RCW 72.11.020 is read in conjunction with RCWs 72.09.111 and 72.09.480, it is clear that DOC is authorized to make LFO disbursements from inmates' accounts whenever inmates acquire funds and have unsatisfied LFOs. State v. Chapman, 140 Wn.2d 436, 478, 998 P.2d 282 (2000) (Statutes relating to the same subject must be read as complementary, instead of in conflict with each other). RCW 72.11.020 supports DOC's position that the term "owing" in RCWs 72.09.111 and 72.09.480 has its usual meaning which is "unpaid" or "unsatisfied". Because it is undisputed that Petitioner had unpaid, unsatisfied LFOs at the time DOC disbursed funds from his account to pay such LFOs, his claim concerning LFOs should be dismissed as meritless.

Petitioner's judgment and sentence in cause Nos. 01-1-10417-5 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.

This provision of Petitioner's judgment and sentence does nothing more than allow the DOC to set a payment schedule for LFOs once Petitioner is released from custody and is being supervised by a DOC Community Corrections Officer. Provisions such as this are common in criminal judgment and sentences and are employed by trial courts which, logically, are not in a position to know what the defendant's financial situation will be when the defendant is released from custody years or perhaps even decades later. Petitioner will have a Community Corrections Officer supervising him upon his release from prison as he has community custody obligations in both of his judgments and sentences. The sentencing courts intended nothing more than that Petitioner's Community Corrections Officer would set a LFO payment schedule for Petitioner upon his release rather than the court attempting to set such schedule at the time of Petitioner's sentencing. The sentencing court did not intend to make Petitioner's LFO obligations unenforceable for many years.

Petitioner's judgment and sentence contains no language setting a start date on Petitioner's LFO obligations. Moreover, the trial court has no authority to delay the enforceability of LFO obligations. See RCW 9.94A.760 (Parties or entities owed LFOs may collect on judgment any

time after judgment and sentence is entered); RCW 10.82.090 (LFOs bear interest from date of judgment). "The 'trial court's sentencing authority is limited to that expressly found in the statutes.'" State v. Furman, 122 Wn.2d 440, 456, 858 P.2d 1092 (1993) (quoting State v. Theroff, 33 Wn. App. 741, 744, 657 P.2d 800, review denied, 99 Wn.2d 1015 (1983)); see also State v. Johnson, 104 Wn. App. 489, 17 P.3d 3 (2001) (court lacked authority to order defendant convicted of a non-sex offense to register as a sex offender). "If this were not true ... the judiciary would be able to intrude into the realm of legislative power, in violation of the doctrine of separation of powers." State v. Skillman, 60 Wn. App. 837, 838-39, 809 P.2d 756 (1991) (court lacked authority to order community placement). "In Washington, the authority to sentence in felony cases is prescribed by the Sentencing Reform Act (SRA), RCW 9.94A." Id. at 839.

Nothing in the SRA authorizes a sentencing court to delay the enforceability of LFOs which are immediately enforceable by any and all lawful means. Petitioner's judgments and sentences also contain no language indicating that the ordered LFOs are not immediately collectible. 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.

RCW 9.94a.772 specifically authorizes the LFO deductions in this case.

RCW 9.94A.772 states in full:

> Notwithstanding any other provision of state law, monthly payment or starting dates set by the court, the county clerk, or the department before or after October 1, 2003, shall not be construed as a limitation of the due date or amount of legal financial obligations, which may be immediately collected by civil means and shall not be construed as a limitation for purposes of credit reporting. Monthly payments and commencement dates are to be construed to be applicable solely as a limitation upon the deprivation of an offender's liberty for nonpayment.

On its face, RCW 9.94A.772 applies to DOC, the courts, and any other entity that may be called upon to interpret or construe LFO monthly payment and starting dates set by a court or by DOC.

Other legislation demonstrates that RCW 9.94A.772 was intended to apply to DOC's collection of unpaid LFOs:

> The legislature intends to revise and improve the processes for billing and collecting legal financial obligations. The purpose of sections 13 through 27 of this act is to respond to suggestions and requests made by county government officials, and in particular county clerks, to assume the collection of such obligations in cooperation and coordination with the department of corrections and the administrative office for the courts. The legislature undertakes this effort following a collaboration between local officials, the department of corrections, and the

> administrative office for the courts. The intent of sections 13 through 27 of this act is to promote an increased and more efficient collection of legal financial obligations and, as a result, improve the likelihood that the affected agencies will increase the collections which will provide additional benefits to all parties and, in particular, crime victims whose restitution is dependent upon the collections.

Laws of 2003, ch. 379, § 13. As such, under RCW 9.94A.772, monthly payment and starting dates in defendants' judgments and sentences may not be construed as limitations on the lawful authority to collect LFOs by civil or any other means, including the deductions authorized by RCWs 72.09.111, 72.09.480, and 72.11.020.

Finally, this Court's decision in In re Personal Restraint of Martin, 129 Wn. App. 135, 118 P.3d 387 (2005) forecloses Petitioner's claim concerning DOC's collection of LFOs. In Martin, the Petitioner, a Washington inmate, asserted that DOC's collection of LFOs while he was still incarcerated was unlawful because his judgment and sentence ordered him to pay LFOs "on a schedule established by the defendants' Community Corrections Officer". Id., 129 Wn. App. At 137. This Court denied Martin's PRP, holding that DOC has the authority to collect LFOs in spite of language to the contrary in an inmate's judgment and sentence:

> The statute is not ambiguous. Its clear language provides that monthly payment or starting dates contained in a court order "shall not be construed as a limitation on the due date" for purposes of collecting legal financial obligations by civil means. Although perhaps not enacted directly in

> response to *Angulo*, RCW 9.94A.772 changes the Sentencing Reform Act to specifically allow for collection of legal financial obligations during incarceration despite language in a defendant's judgment and sentence that would direct otherwise.

Martin, 129 Wn. App. at 140.

Petitioner's claim concerning collection of LFOs by DOC is identical to the claim in Martin and is therefore foreclosed by this Court's decision in Martin.

C. PETITIONER MAY NOT OBTAIN MONETARY RELIEF IN THIS PRP.

Petitioner seeks the return of all cost of incarceration and LFOs deducted by DOC from his prison account, with interest. See PRP, p. 18. Even if Petitioner were to prevail in this matter, he may not obtain the forementioned relief. The relief available to a Petitioner in a PRP is limited to relief from illegal restraint and any other relief, including monetary relief or monetary reimbursement, is "beyond the scope of relief of a PRP". Personal Restraint of Sappenfield, 138 Wn. 2d 588, 595, 980 P.2d 1271 (1999).

V. CONCLUSION

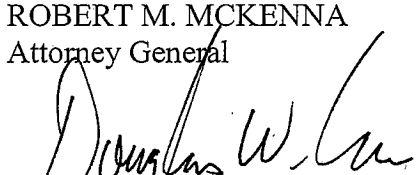
Petitioner has submitted a well organized PRP with numerous citations to authority, including 16 published court cases, 5 court rules, 6 provisions of the Washington State Constitution, and 10 or so statutes, to

support his claims in this case. However, it strains credulity to believe that Petitioner did not find the statutes and cases cited by Respondent, including this Court's published decision in Martin, which establish conclusively that Petitioner's PRP is not only meritless but frivolous.

For the reasons set forth above, Petitioner's PRP is frivolous and Respondent requests that it be dismissed as such under RAP 16.11(b). Respondent also requests that it be awarded its costs as allowed by law.

RESPECTFULLY SUBMITTED this 20th day of May, 2009.

ROBERT M. MCKENNA
Attorney General



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

CERTIFICATE OF SERVICE

I certify that I served a copy of the foregoing document on all parties or their counsel of record as follows:

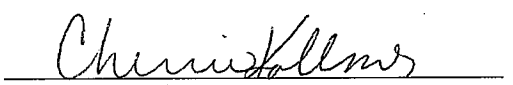
- ☒ US Mail Postage Prepaid
- ☐ United Parcel Service, Next Day Air
- ☐ ABC/Legal Messenger
- ☐ State Campus Delivery
- ☐ Hand delivered by _____

CHAD ALAN PIERCE, DOC #714567
AIRWAY HEIGHTS CORRECTIONS CENTER
PO BOX 2049
AIRWAY HEIGHTS WA 99001-2049

FILED
COURT OF APPEALS DIV #1
STATE OF WASHINGTON
2009 MAY 21 AM 11:21

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

EXECUTED this 20th day of May, 2009 at Olympia, WA.



CHERRIE KOLLMER
Legal Assistant