

NO. 36866-8-II
Skamania County No. 92-1-00036-7

STATE OF WASHINGTON,

Respondent,

vs.

ANTON LINDBECK

Appellant.

FILED
COURT OF APPEALS
DIVISION II
08 MAR 24 PM 1:54
STATE OF WASHINGTON
BY
DEPUTY

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

I. THE TRIAL COURT ABUSED ITS DISCRETION BY FAILING TO PROPERLY CONSIDER MR. LINDBECK'S MOTION FOR RELIEF FROM JUDGMENT

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

I. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO PROPERLY CONSIDER MR. LINDBECK'S MOTION, THEREBY FAILING TO EXERCISE ITS DISCRETION?

C. STATEMENT OF THE CASE

Anton Lindbeck entered a guilty plea to Murder in the First Degree on July 30, 1992. CP 3-7. In his Judgment and Sentence, he was ordered to pay legal financial obligations (LFO). CP 8-14. The court noted on the Judgment and Sentence that he would not be required to start paying his LFOs until he was released from incarceration. CP 10. In November of 2006 the Department of Corrections began collecting payments from his offender trust account to be applied to his LFOs pursuant to RCW 72.09.111 and RCW 72.11.020. CP 18. Mr. Lindbeck moved for relief from judgment under CrR 7.8 (b) (5), alleging the State breached its plea agreement with him when it acted, through the Department of Corrections, to garnish money from his offender trust account when he was promised, he alleges, that collection of his LFOs would not begin until after he was released from incarceration. CP 15-27. The trial court denied his motion

in a bench order dated September 13, 2007, stating “Pursuant to Anderson v. State, No. 78715-8 Supreme Court of Washington, March 22, 2007, the motion is denied.” CP 28. This timely appeal of that order followed. CP 29-31.

D. ARGUMENT

I. DID THE TRIAL COURT ABUSE ITS DISCRETION WHEN IT FAILED TO PROPERLY CONSIDER MR. LINDBECK’S MOTION, THEREBY FAILING TO EXERCISE ITS DISCRETION?

The trial court abused its discretion when it denied Mr. Lindbeck’s motion without giving it proper consideration. This was an abuse of discretion in that the trial court failed to exercise its discretion at all. An abuse of discretion may arise from the manner of the exercise of discretion or from the result of the exercise. *Ben-Neth v. The Indeterminate Sentence Review Board*, 49 Wn.App. 39, 42, 740 P.2d 855 (1987), citing *State ex rel. Brown v. Board of Dental Examiners*, 38 Wash. 325, 328, 80 P. 544 (1905). “The court held that gross abuse or in avoidance of its duty was not an abuse of discretion, but rather the failure to exercise any discretion at all.” *Id.* Here, the court’s action was the failure to exercise any discretion at all. “To find that a result is arbitrary and capricious the agency must have acted willfully and unreasonably, without consideration

of and in disregard of the facts.” *Ben-Neth* at 42, citing *In re Buffelen Lumber & Mfg. Co.*, 32 Wn.2d 205, 209, 201 P.2d 194 (1948).

The trial court, in denying Mr. Lindbeck’s motion without a hearing, relied upon a case that was not on point to the issue Mr. Lindbeck raised. Mr. Lindbeck made a motion for relief from judgment based upon his assertion that the State, acting through the Department of Corrections, had violated the plea agreement into which it entered with him. The court, in denying the motion, relied upon *Anderson v. State*, 159 Wn.2d 849, 154 P.3d 220 (2007), which addressed the issue of whether inmates who are awaiting a death sentence or serving a sentence in which release is not possible, could be subjected to garnishment of their non-work income, pursuant to RCW 72.11.020, to satisfy their LFOs, or if the Department’s ability to act with regard to these inmates was limited to RCW 72.09.480. The Court ruled that RCW 72.09.480 did not supersede RCW 72.11.020. This case is distinguishable not only because Mr. Lindbeck is an inmate who is eligible for release, but because it did not address the question of whether the Department’s action, on behalf of the State, could be deemed a violation of the plea contract entered into by the defendant and the State. *Anderson v. State*, 159 Wn.2d 849.

A violation of a plea agreement may render a plea involuntary. *State v. S.M.*, 100 Wn.App. 401, 996 P.2d 1111 (2000). Mr. Lindbeck,

representing himself, argued in his motion that the State had violated its plea agreement with him and he offered, in lieu of moving to withdraw his plea, to let the trial court excise his legal financial obligations from his judgment and sentence. Mr. Lindbeck, lacking legal expertise, was offering a solution that is not technically available to him. His remedy, in the face of a violation of his plea agreement, is to move to withdraw his plea or to seek specific performance of his plea. *State v. Calhoun*, 134 Wn.App. 84, 138 P.3d 659 (2006).

Because it was clear, or should have been clear, that Mr. Lindbeck was moving to have the original rules of the game restored, whereby his LFOs would not become due until his release from incarceration, the court should have treated his motion accordingly and treated it as a motion for specific performance of the plea agreement. Alternatively, the court should have appointed counsel for Mr. Lindbeck to clarify his motion. In any event, the court, in denying the motion for relief from judgment, relied upon a case that is distinguishable, in substantial respects, from Mr. Lindbeck's. Mr. Lindbeck is entitled to a new hearing where the trial court should be required to give proper consideration to the claim he raised, namely that his plea was not voluntary because the State has violated its plea agreement with him.

E. CONCLUSION

This Court should remand this case to the Skamania County
Superior court for consideration of Mr. Lindbeck's CrR 7.8 motion.
RESPECTFULLY SUBMITTED this 20th day of March, 2008.



ANNE M. CRUSER, WSBA# 27944
Attorney for Mr. Lindbeck

APPENDIX

1. § 72.09.480. Inmate funds subject to deductions -- Definitions -- Exceptions -- Child support collection actions

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsections (4) and (8) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court;

(d) Twenty percent for any child support owed under a support order; and

(e) Twenty percent to the department to contribute to the cost of incarceration.

(3) When an inmate, except as provided in subsection (8) of this section, receives any funds from a settlement or award resulting from a legal action, 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.

(4) When an inmate who is subject to a child support order receives funds from an inheritance, the deduction required under subsection (2)(e) of this section shall only apply

after the child support obligation has been paid in full.

(5) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(6) (a) The deductions required under subsection (2) of this section shall not apply to funds received by the department from an offender or from a third party on behalf of an offender for payment of education or vocational programs or postsecondary education degree programs as provided in RCW 72.09.460 and 72.09.465.

(b) The deductions required under subsection (2) of this section shall not apply to funds received by the department from a third party, including but not limited to a nonprofit entity on behalf of the department's education, vocation, or postsecondary education degree programs.

(7) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(8) When an inmate sentenced to life imprisonment without possibility of release or sentenced to death under chapter 10.95 RCW receives funds, deductions are required under subsection (2) of this section, with the exception of a personal inmate savings account under subsection (2)(b) of this section.

(9) The secretary of the department of corrections, or his or her designee, may exempt an inmate from a personal inmate savings account under subsection (2)(b) of this section if the inmate's earliest release date is beyond the inmate's life expectancy.

(10) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(11) Nothing in this section shall limit the authority of the department of social and health services division of child support, the county clerk, or a restitution recipient from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 9.94A, 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action.

2. § 72.11.020. Inmate funds -- Legal financial obligations -- Disbursal by secretary

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. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and 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.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid.

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DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)
) Court of Appeals No. 36866-8II
) Skamania County No. 92-1-00036-7
 Respondent,)
)
 vs.) AFFIDAVIT OF MAILING
)
)
 ANTON LINDBECK,)
)
)
 Appellant.)
 _____)

ANNE M. CRUSER, being sworn on oath, states that on the 20th day of March, 2008
affiant placed a properly stamped envelope in the mails of the United States addressed to:

Peter S. Banks
Skamania County Prosecuting Attorney
P.O. Box 790
Stevenson, WA 98648

AND

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

AND

Mr. Anton Lindbeck

AFFIDAVIT OF FAXING - 1 -

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DOC# 996653
Clallam Bay Corrections Center
1830 Eagle Crest Way
Clallam Bay, WA 98326

and that said envelope contained the following

- (1) BRIEF OF APPELLANT
- (2) RAP 10.10 (TO MR. LINDBECK)
- (3) AFFIDAVIT OF MAILING

Dated this 20th day of March, 2008



ANNE M. CRUSER, WSBA #27944
Attorney for Appellant

I, ANNE M. CRUSER, certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Date and Place: March 20, 2008, Kalama, WA

Signature: 