

40411-7-IV ORIGINAL
NO. 83530-6

SUPREME COURT OF THE STATE OF WASHINGTON

JAMES A. BOYD,

Petitioner/Appellant,

v.

HAROLD CLARKE, et al.,

Respondents/Appellees.

Respondents
ANSWERING BRIEF OF APPELLEES

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I. **RESPONDENT'S COUNTER STATEMENT OF THE CASE**

Petitioner/Appellant James A. Boyd ("Mr. Boyd") is a convicted felon from Kansas who has been serving his Kansas criminal sentence in the State of Washington pursuant to the Interstate Corrections Compact (ICC), Chapter 72.74 RCW, since October 1992. In July 2007 Mr. Boyd filed a writ of review for declaratory and injunctive relief and a complaint for damages against the Department of Corrections (DOC) and various DOC officials in Thurston County Superior Court. Mr. Boyd asserted in his writ/complaint that Washington statutes requiring deductions from inmates' accounts, RCW 72.09.111 and RCW 72.09.480, were unlawfully applied to him by DOC. Mr. Boyd asserted that his Kansas criminal judgment and sentence, Kansas law, Washington law, and the state and federal constitutions, precluded DOC from applying Washington's deduction statutes to him.

The trial court granted DOC's motion for summary judgment and dismissed Mr. Boyd's action with prejudice. See CP 2-7. The trial court did not decide Mr. Boyd's constitutional claims because Mr. Boyd waived such claims at oral argument. CP 2, 5. Mr. Boyd filed a motion for reconsideration which was denied by the trial court on July 23, 2009. See CP 9-11. Mr. Boyd has now appealed the trial court's dismissal of his action.

In his appeal, Mr. Boyd argues that application of Washington's deduction statutes to him is unlawful under Kansas and Washington law, violates his due process rights, and violates the rule of lenity. Mr. Boyd has apparently abandoned his claim that application to him of Washington's deduction statutes violates the terms of his Kansas criminal judgment and sentence as he does not argue this claim in his opening brief and has not included his judgment and sentence in his designation of clerk's papers. Mr. Boyd's appeal is meritless and should be denied as the trial court correctly ruled that Mr. Boyd is lawfully subject to Washington's prisoner deduction statutes.

II. ISSUES PRESENTED FOR REVIEW

A. Whether the ICC precludes Washington from applying Washington's deduction statutes to inmates from other states who are housed in Washington under the ICC.

B. Whether the trial court correctly dismissed Mr. Boyd's constitutional claims.

C. Whether the rule of lenity precludes Washington from applying Washington's deduction statutes to Mr. Boyd.

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III. ARGUMENT

A. STANDARD OF REVIEW.

The standard of review for Mr. Boyd's assignments of error is de novo review as the trial court dismissed the claims raised in these assignments of error on Defendants' motion for summary judgment. The dismissal of claims on a summary judgment motion is appropriate if viewing the evidence in the light most favorable to the non-moving party, the court concludes that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Civil Rule 56; Gunnier v. Yakima Heart Ctr. Inc., 134 Wn.2d 854, 858, 953 P.2d 1162 (1998). An appellate court reviews a grant of summary judgment de novo, engaging in the same inquiry as the trial court. Id.

B. THE DEDUCTIONS AT ISSUE DO NOT VIOLATE THE ICC.

Washington State law requires deductions from the funds inmates earn or otherwise receive in order to defray the costs of incarcerating inmates and to compensate the victims of crime. RCW 72.09.111 (deductions from earnings); RCW 72.09.480 (deductions from funds received by inmates other than earnings). These statutes apply to all inmates, including Mr. Boyd, as the term "inmate" includes "persons

received from another state, state agency, county, or federal jurisdiction”.
RCW 72.09.015(15).

Mr. Boyd does not assert or argue that Washington State’s deduction statutes are unlawful or that on their face they do not apply to him. Rather, he argues only that the ICC, which has been adopted by Washington and Kansas, prohibits the State of Washington from applying the deduction statutes to him because he is a Kansas prisoner. Mr. Boyd’s argument is misplaced and was properly rejected by the trial court.

The ICC is a uniform law passed by the Washington State legislature in 1983 concerning the transfers of inmates between states. Chapter 72.74 RCW. Pursuant to the authority granted in Chapter 72.74 RCW, the Washington DOC entered into a contract with Kansas for the transfer of prisoners between these two states. Mr. Boyd was transferred to the Washington DOC in 1992 pursuant to this contract.

Mr. Boyd argues that two provisions of the ICC prohibit the Washington DOC from making deductions from funds he receives: RCW 72.74.020(4)(e) which states in full:

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined

of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

And RCW 72.74.020(4)(h) which states in full:

Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

Mr. Boyd's reliance on the foregoing provisions of the ICC is misplaced.

Mr. Boyd's claim concerning deductions from his prison wages or gratuities pursuant to RCW 72.09.111 is plainly meritless. The ICC requires that:

All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution.

RCW 72.74.020(4)(e).

Mr. Boyd does not assert that he is not being treated equally with all other inmates in the Washington DOC. The ICC also specifically requires states to address the issue of participation in inmate work programs and the crediting of payments received by inmates for

participating in such programs in the contracts they enter into under the Compact:

Any such contract shall provide for:

Participation in programs of inmate employment, if any;
the disposition or crediting of any payments received by
inmates on account thereof; . . .

RCW 72.74.020(3)(a)(iii).

Mr. Boyd argues that the Compact prohibits the deductions of RCW 72.09.111 because his transfer to Washington cannot deprive him of any legal rights he would have had if he were confined in Kansas. This argument fails for two reasons. First, this argument ignores the specific provisions of the ICC which require equal treatment and equal compensation in the area of prison employment. It is well-established that specific statutory provisions of a statute control over general provisions. Bowles v. Retirement Systems, 121 Wn.2d 52, 78, 847 P.2d 440 (1993); Wilson Sporting Goods v. Pederson, 76 Wn. App. 300, 306, 886 P.2d 203 (1994). Second, Mr. Boyd has failed to cite any Kansas statute, constitutional provision, regulation, or other such authority, that grants him a legal right to work and not have deductions made from his wages or gratuities on the same basis as all other inmates. The Washington DOC is properly treating Mr. Boyd like all other inmates and is lawfully making deductions from his wages and gratuities pursuant to RCW 72.09.111.

Mr. Boyd's argument concerning deductions from his incoming funds pursuant to RCW 72.09.480 fails as well. Both the ICC and the contract between Kansas and Washington require Mr. Boyd to be treated equally with Washington inmates who are fully subject to RCW 72.09.480. Mr. Boyd has failed to demonstrate that Kansas law grants him a legal right to have funds sent to him without any deductions from such funds. It is also noteworthy that Mr. Boyd is not required to have money sent to him and may avoid the required deductions of RCW 72.09.480 by simply directing his friends and/or family to not send him money. If Mr. Boyd's friends and family choose to send him money, they do so subject to RCW 72.09.480 which applies to all inmates. Finally, Mr. Boyd's reliance on RCW 72.74(4)(b) is misplaced because this provision of the Compact only refers to rights Petitioner has in an "action" or "proceeding" occurring in Washington which may affect Petitioner's benefits or obligations. There has been no "action" or "proceeding" affecting Mr. Boyd's rights in the State of Washington.

Mr. Boyd has failed to cite any authority to support his assertion that the ICC prohibits Washington from treating him like all other inmates in Washington with respect to deductions from his funds. Mr. Boyd's failure is understandable as Washington courts have rarely been called upon to interpret the ICC and the nearly identical Western ICC, and there

does not appear to be any Washington case law on point. However, the case law from other jurisdictions supports DOC's interpretation and application of the ICC.

The courts that have addressed the rights of inmates transferred pursuant to the ICC have required such inmates to cite a specific law of the sending state which grants them a legal right that they retain after their transfer; it is insufficient for a transferred inmate to merely demonstrate that the inmate is being treated differently in the receiving state than the inmate would be in the sending state. As such, the Courts have consistently rejected claims that transferred inmates are entitled to the same disciplinary, classification, visitation, employment, and grooming policies as inmates in the sending state. Daye v. State of Vermont, 171 Vt. 475, 769 A.2d 630 (2000) (visitation); Stewart v. McManus, 942 F.2d 138 (8th Cir. 1991) (disciplinary rules); Jaben v. Moore, 788 F. Supp. 500 (D. Kan. 1992) (custody classification guidelines); Cranford v. State, 471 N.W. 904 (Iowa Ct. App. 1991) (disciplinary rules); Glick v. Holden, 889 P.2d 1389 (Utah Ct. App. 1995) (classification, visitation, grooming, disciplinary rules); Jennings v. Lombardi, 70 F.3d 994 (8th Cir. 1995) (prison wages). Because Mr. Boyd has failed to demonstrate that the Washington DOC is violating a legal right that he retains under Kansas law, he has failed to establish a violation of the ICC.

Curiously, Mr. Boyd cites Kansas Statute 75-52,139 to support his claim that he is not subject to deductions under Washington law:

The secretary of corrections is hereby authorized to adopt rules and regulations under which offenders in the secretary's custody may be assessed fees for deductions for payment to the crime compensation funds.

See Petitioner's brief, p. 7.

Mr. Boyd has apparently quoted a former version of the Kansas statute as the current version reads as follows:

The secretary of corrections is hereby authorized to adopt rules and regulations under which offenders in the secretary's custody may be assessed fees for various services provided to offenders and for deductions for payment to the crime victims compensation fund.

Kansas Statute 75-52,139 (see Appendix 1).

Rather than support Mr. Boyd's claim, this Kansas statute completely undercuts his argument that he had a legal right in Kansas to be free from deductions from his account. This statute makes clear that the funds he earned or received in Kansas were subject to deductions for various services and for crime victims compensation. That the types or amounts of deductions in Washington may be different from those adopted in Kansas under K.S.A. 75-52,139 does not make such deductions unlawful under ICC. See cases cited on p. 8. The trial court properly dismissed Mr. Boyd's ICC claims as a matter of law.

C. THE TRIAL COURT CORRECTLY DISMISSED MR. BOYD'S CONSTITUTIONAL CLAIMS.

Mr. Boyd argues on appeal that DOC violated his constitutional rights by applying the deduction statutes to him:

Thurston County Superior Court Judge Honorable Anne Hirsch disregarded and Respondent's violated Mr. Boyd's 14th Amendment Constitutional right and Washington State Constitutional right Art. I, § 3 ("No person shall be deprived of life, liberty, or property, without due process of law") . . . ,

See Mr. Boyd's brief, p. 6.

The trial court did not decide Mr. Boyd's constitutional claims because he unambiguously waived these claims at oral argument:

Although Mr. Boyd initially raised other issues, including constitutional claims and a personal claim against a private party, he orally withdrew those additional claims at oral argument, at which time he stated that the only issue he wishes to pursue is his claim that the DOC is violating both the terms of his Kansas Judgment and Sentence, and the terms of the ICC.

See CP 2, Court's Opinion, p. 1, footnote 1.

Mr. Boyd has not alleged or demonstrated that the Superior Court's determination that he had waived his constitutional claims and arguments was factually inaccurate or legally improper. As such, Mr. Boyd has waived his constitutional claims and may not resurrect them on appeal. In any event, such claims were and are meritless as a matter of law.

In order for Mr. Boyd to show a violation of substantive due process, he must prove that the government's action was "clearly arbitrary and unreasonable, having no substantial relation to the public health, safety, or morals, or general welfare". Village of Euclid, Ohio v. Ambler Realty Co., 272 U.S. 365, 395 (1926). Mr. Boyd cannot meet this standard. RCWs 72.09.111 and 72.09.480 were clearly enacted for reasons of public health, safety and welfare. The law serves the public by affording compensation to crime victims, ensuring that inmates, upon release, will have money from their own savings in which to live, and by helping to defray the cost of incarcerating convicted criminals. See In re Metcalf, 92 Wn. App. 165, 176-77, 963 P.2d 911 (1998) (holding that Washington's mandatory deduction statutes do not violate due process as they "are rationally related to the legitimate government interests of curtailing the costs of incarceration and compensating victims of crime.").

The case law is clear, "[L]egislative Acts adjusting the burdens and benefits of economic life come to a court with a presumption of constitutionality[;] . . . the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way. Kyle Railways, Inc. v. Pacific Admin. Services, Inc., 990 F.2d 513, 518 (9th Cir. 1993), citing Pension Benefit Guar. Corp. v. R.A. Gray & Co., 467 U.S. 717, 729 (1984) (citations omitted). In addition,

substantive due process claims of governmental action are reviewed by the court under a rationality standard. See Kawaoka v. City of Arroyo Grande, 17 F.3d 1227, 1234 (9th Cir. 1994); see also Harrah Indep. Sch. Dist. v. Martin, 440 U.S. 194, 198-99 (1979).

The legislative history behind RCW 72.09.480 shows that the Legislature intended that the public and inmates alike have a personal and fiscal responsibility to the corrections system. For those inmates who voluntarily elect to have money sent to them while in prison, a percentage of this money will be deducted pursuant to state statute. The Legislature increased "accountability and responsibility on the part of inmates" 1995 Laws of Washington 1st Spec. Sess., ch. 19, § 1; "[a]ll citizens, the public and inmates alike, have a personal and fiscal obligation to the corrections system." RCW 72.09.010(5)(e); "Offenders must be accountable to the department, and the department to the legislature." RCW 72.09.010(6); "The human and fiscal resources of the community are limited." Id. This law is presumed constitutional. There is no constitutional right to receive money in prison. "Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, a retraction justified by the considerations underlying our penal system." Bell v. Wolfish, 441 U.S. 520, 546 (1979). If an inmate, while incarcerated, chooses to have money sent in, a percentage of that money will be deducted pursuant to legislative authority.

Mr. Boyd cannot show the Legislature acted in an arbitrary or irrational way.

Mr. Boyd fails to show any substantive due process violation.

Assuming arguendo that Plaintiff has substantive rights under the ICC, his claim that DOC's deductions violate the Fourteenth Amendment is not cognizable under 42 U.S.C. § 1983. See Ghana v. Pearce, 159 F.3d 1206 (9th Cir. 1998):

Therefore, the Compact's procedures are a purely local concern and there is no federal interest absent some constitutional violation in the treatment of these prisoners.

...

As the Compact is not federal law and does not create a constitutionally protected liberty interest, we hold that a violation the Compact cannot be the basis for a section 1983 action.

Id., at 1208-09. Thus, the ICC does not provide Mr. Boyd with a liberty interest for which he can assert a claim under the Fourteenth Amendment.

The trial court did not err in dismissing Mr. Boyd's constitutional claims.¹

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¹ The Defendants raised several other affirmative defenses in the trial court to Mr. Boyd's constitutional claims, including Eleventh Amendment Immunity for DOC, qualified immunity for the individual Defendants, and the statute of limitations. The trial court did not have to address these defenses as it determined that Mr. Boyd's claims failed as a matter of law.

D. THE RULE OF LENITY DOES NOT PROVIDE A BASIS TO OVERTURN THE TRIAL COURT'S RULING IN THIS CASE.

Mr. Boyd argues that the Kansas and Washington statutes at issue in this case are ambiguous and that under the rule of lenity they must be interpreted in his favor. Mr. Boyd's argument fails because the rule of lenity does not apply to the civil statutes at issue in this case which are, in any event, not ambiguous.

The "rule of lenity" is a well established doctrine in Washington which requires courts to construe ambiguous criminal statutes in favor of criminal defendants:

. . . fundamental fairness requires that a penal statute be literally and strictly construed in favor of the accused although a possible but strained interpretation in favor of the state might be found.

State v. Hornaday, 105 Wn.2d 120, 127, 713 P.2d 71 (1986).

The rule of lenity only applies to "ambiguous criminal statutes".
State v. Henderson, 48 Wn. App. 543, 553, 740 P.2d 329 (1987); State v. Roberts, 117 Wn.2d 576, 586, 817 P.2d 855 (1991); Personal Restraint of Sietz, 124 Wn.2d 645, 652, 880 P.2d 34 (1994). The lone case cited by

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Mr. Boyd concerning the rule of lenity, State v. Ague-Masters, 138 Wn. App. 86, 156 P.3d 265 (2007), supports the state's argument that the rule of lenity applies only to criminal statutes:

In construing a criminal statute, the rule of lenity applies where two possible constructions are possible.

Id., 138 Wn. App. At 106.

The rule of lenity does not apply in this case because the Kansas and Washington statutes adopting the ICC are not criminal statutes. These statutes do not establish or define crimes in Kansas or Washington, and do not set criminal punishments, such as fines or periods of incarceration. These statutes are civil in nature and merely allow states to send their prisoners to other states to serve their sentences. See Chapter 72.74 RCW. These statutes are legally permissible and do not impose criminal punishment because inmates have no protected liberty interest in serving their criminal sentences in any particular state or in any particular prison.

It is well established that the secretary of DOC alone has the statutory authority and discretion to determine the correctional institution in which any offender will reside. RCW 72.02.210; RCW 72.02.240; RCW 72.68.010. It is equally well established that prisoners have no federal or state constitutional right to be housed in a particular prison or even a particular state and may be transferred to another prison at any time

in the unfettered discretion of prison officials. Personal Restraint of Matteson, 142 Wn.2d 298, 12 P.3d 585 (2000); Olim v. Wakinekona, 461 U.S. 238, 103 S. Ct. 1741 (1983); Meachum v. Fano, 427 U.S. 215 96 S. Ct. 2352 (1976); Montanye v. Haymes, 427 U.S. 236, 96 S. Ct. 2543 (1976). Because the ICC is not criminal in nature, the rule of lenity does not apply to its construction.

The rule of lenity also does not apply to the deduction statutes at issue in this case. The deduction statutes at issue in this case 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). These statutes are not criminal in nature and do not impose criminal punishment. In Metcalf, the Court of Appeals rejected a broad challenge to the constitutionality of the 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 and inmate". Id., 143 Wn.2d at 33. Because RCWs 72.09.111 and 72.09.480 do not impose criminal penalties, the rule of lenity does not apply to them.

Even if the rule of lenity could apply to the civil statutes at issue in this case, it would not provide a basis to overturn the trial court's considered decision in this case. Neither the ICC nor the deductions statutes at issue in this case are ambiguous. The ICC makes clear that transferred inmates are subject to the correctional rules of the receiving state. See Section B above. Washington's deduction statutes are equally clear; they require DOC to make specified deductions from the funds all inmates earn and receive, including inmates from other states. RCW 72.09.015(15); RCW 72.09.111; RCW 72.09.480. Because the statutes at issue in this case are not ambiguous, the rule of lenity does not apply and does not provide a basis to overturn the judgment of the trial court.

IV. CONCLUSION

Mr. Boyd is not in Kansas anymore. Because Mr. Boyd is in the custody of the Washington DOC pursuant to the ICC, he is lawfully subject to Washington's civil deduction statutes like all other inmates.

For the foregoing reasons, Appellees respectfully request that this Court affirm the considered judgment of the trial court dismissing Mr. Boyd's action.

RESPECTFULLY SUBMITTED this 28th day of December,
2009.

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CERTIFICATE OF SERVICE

I certify that I served a true and correct copy of the foregoing ANSWERING BRIEF OF APPELLEES on all parties or their counsel of record as follows:

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

EXECUTED this 28th day of December, 2009 at Olympia, WA.

Cherrie Kollmer
 CHERRIE KOLLMER

APPENDIX A

Kansas Statutes

search

Browsable and searchable archive of 2008 Kansas Statutes Annotated (K.S.A.)

Chapter 75: State Departments; Public Officers And Employees

Article 52: Department Of Corrections

Statute 75-52,139: Secretary adopts rules and regulations for offenders to pay fees; expenditures; department of corrections victim assistance fund. (a) The secretary of corrections is hereby authorized to adopt rules and regulations under which offenders in the secretary's custody may be assessed fees for various services provided to offenders and for deductions for payment to the crime victims compensation fund.

(b) All moneys received for fees imposed under this section for various services provided to offenders shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the department of corrections - general fees fund. All expenditures of the moneys credited to the department of corrections - general fees fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

(c) The expenditures of the fees imposed under this section for various services provided to offenders shall be for victim assistance operations, inmate services and the supervision and management of offenders.

(d) There is hereby created in the state treasury the department of corrections victim assistance fund. All moneys credited to such fund under the provisions of K.S.A. 75-5211, and amendments thereto, or any other law shall be expended only for the purpose of victim assistance operations. All moneys received shall be remitted to the state treasurer in accordance with the provisions of K.S.A. 75-4215, and amendments thereto. Upon receipt of each such remittance, the state treasurer shall deposit the entire amount in the state treasury to the credit of the department of corrections victim assistance fund. All expenditures of the moneys credited to the department of corrections victim assistance fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the secretary or by a person or persons designated by the secretary.

History: L. 1994, ch. 227, § 10; L. 2008, ch. 91, § 2; July 1.