

FILED
AUG 17 2011
COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

28922-2-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

SHERMAN I. PULLEY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE PAUL A. BASTINE

BRIEF OF RESPONDENT

STEVEN J. TUCKER
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Andrew J. Metts
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I.

APPELLANT'S ASSIGNMENTS OF ERROR

1. The court erred by denying defendant's motion to terminate legal financial obligations.
2. The court erred by finding that the defendant had not established manifest hardship.

II.

ISSUES PRESENTED

- A. Has the defendant shown that the Department of Corrections [DOC] has deducted more than the amount of the Legal Financial Obligations [LFOs], plus attendant interest, ordered by the trial court?
- B. Did the trial court err by refusing to grant the defendant's motions to terminate his LFOs?

III.

STATEMENT OF THE CASE

The defendant was convicted in Spokane County Superior Court on First Degree Burglary charges. CP 1-10. As this conviction was the

defendant's third strike, he was sentenced to prison for life without the possibility of parole. CP 1-10.

As part of the defendant's sentence he was sentenced to pay \$500.00 in crime victims' funds and \$110.00 in court costs. CP 1-10. The defendant brought a motion to terminate his legal financial obligations. This motion was denied on March 4, 2010. CP 13-44.

IV.

ARGUMENT

- A. OTHER THAN HIS BALD ASSERTIONS, THE DEFENDANT HAS SUPPLIED NO PROOF THAT THE DOC HAS DEDUCTED EXCESS FUNDS FROM HIS ACCOUNT.

Referring to CP 42 - 43, there are two categories listed as "unlimited" in the amount owing. The first section is listed as "crime victim compensation." CP 42. The defendant has made claims that "unlimited" means he will pay an unlimited amount to Spokane County. The defendant has the burden of proof on appeal and does not supply any support for his "unlimited" claims.

However, the accounting document at CP 42-43 shows that the fulfillment of Spokane County LFOs is only part of the categories for which DOC deducts funds. The defendant completely misstates the

situation when he claims that he has paid approximately three times the debt owed and DOC continues to collect funds to satisfy LFOs in an improper “unlimited amount.” Brf. of App. pg. 2. This claim is a complete misrepresentation of the actual situation. An examination of the accounting sheet (CP 42) shows that as of the date the document was generated, the defendant had paid a total of \$1385.03. For reasons unknown, the defendant tries to convince this court that the \$1,385.03 all went towards Spokane County LFOs and the defendant therefore overpaid the amounts listed in the judgment and sentence. The document shows that DOC has deducted \$453.47 for crime victims’ compensation fund. CP 42.

What the defendant does not tell the court, but can be seen on the accounting, is that the \$1,385.03 listed as paid, to the defendant claims is overpayment, includes not only LFOs to Spokane County, but amounts for copy costs, medical copay, cost of incarceration, personal hygiene items, TV cable fees, etc. In other words it is inaccurate to claim that DOC overcharged on the Spokane County LFOs. The defendant has not supplied any proof of how much Spokane County has received or how much interest is/was charged. Without proof on either of those two issues, the defendant cannot make a valid claim that the DOC has overcharged him.

DOC is empowered by statute to deduct funds from LWOP (life without possibility of parole) inmate accounts. One of the costs that can be deducted from the inmate's account is the cost of incarceration. The defendant is incarcerated for life without the possibility of parole. It is apparent that the defendant's debt for the costs of incarceration are, in fact, unlimited.

RCW 72.09.480 provides in part:

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.

RCW 72.09.480(1)(a).

The cost of incarceration is one of the larger entries on the tally sheet CP 42. When the cost of incarceration is removed from the total, it is apparent that the defendant has, in no way, paid three times anything, as he claims on appeal.

B. THE TRIAL COURT DID NOT ERR IN REFUSING TO TERMINATE THE DEFENDANT'S LEGAL FINANCIAL OBLIGATION.

For the purposes of appeal, the defendant must show that there has been an error on the part of the trial court that prejudiced the defendant. That has not happened. The defendant seeks redress from this court when his situation is not yet ripe. The defendant has supplied no proof that his Spokane County LFOs have been satisfied. Until the defendant can supply such proof, this case is not ripe. Simply pointing to a total on DOC's accounting sheets does not explain how much the total owed to Spokane County might be.

If the defendant is expecting that someday he will be free of all deductions from his account, he is going to be disappointed. So long as the defendant is incarcerated (which is life), the appropriate amounts will be deducted from his account for all the various and sundry costs, including the costs of incarceration.

RCW 9.94A.760(4) provides:

“For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.”

RCW 9.94A.760(4)

The defendant claims that he cannot be made to repay because he is indigent and will remain that way. The defendant is mistaken. The defendant's citation to mental health recoupment cases are not relevant to this case which involves an inmate sentenced to life in prison.

It should be noted that while the defendant claims indigency and no chance of rising above indigent status, the defendant does not define "indigent." Indigency is defined in the statutes as an inmate who has less than a ten-dollar balance in his account. RCW 72.09.015(14).

The trial court was not required to make inquiries into the defendant's financial situation as Department of Corrections mandatory inmate account deductions are *not* collection actions by the State. RCW 10.01.160(3); RCW 72.11.020; RCW 72.09.111(1). RCW 72.11.020; RCW 72.09.111(1) and RCW 72.09.015(10) set forth specific guidelines for the DOC to follow when deducting funds from inmate accounts. The defendant claims he is indigent and will remain that way. This claim is contrary the defendant's admission in his appellate brief that he makes money at the rate of \$1.60 per hour. Brf. of App. pg. 5. The defendant will not remain indigent by the definition of "indigent" as defined in the statutes.

The statutes provide formulas for determining "indigency" and the DOC may not deduct funds that will lower account totals to less than the

“indigency” amounts. The defendant claims very little personal property and no real property. This is pointless data. The framework for deducting from inmate accounts is set by statute. There is no provision for possession of property or non-possession of property. The defendant may not agree with the statutory frameworks set forth by the legislature, but that does not prove an error on the part of the trial court.

The statutory provisions for deducting funds from inmate accounts has been reviewed and upheld by the Washington State Supreme Court in *Anderson v. State Dept. of Corrections*, 159 Wn.2d 849, 855-65, 154 P.3d 220 (2007).

On appeal, the defendant has ignored the statutory framework for deducting funds from inmate accounts. The defendant’s claims that he is indigent and will remain that way, are not supported by the statutes or the facts. CP 42-43. shows deductions from the defendant’s account. Since the DOC cannot make deductions that would reduce the defendant’s account to the indigency level, logic indicates that his account is, or was, above the indigency level.

The defendant asks that this court absolve the defendant of his required repayment of statutory amounts. The defendant supplies no support for the removal of his requirements to pay LFOs in the amount of \$610.00 to Spokane County. The defendant has not shown that the

amounts deducted for Spokane County LFOs have been exceeded by DOC inmate deductions. It is not entirely clear that the Superior Court even has the power to override statutory mandates the DOC must follow when deducting from inmate accounts. In any event, it is the defendant's burden to show that the trial court erred by not relieving the defendant of his LFOs. The defendant has not shown that his LFOs should be cancelled. The trial court did not err.

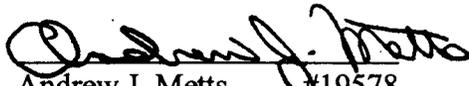
V.

CONCLUSION

For the reasons stated, the actions of the trial court in denying the defendant's motions should be affirmed.

Dated this 10TH day of August, 2010.

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