

NO. 83731-7

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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In the Personal Restraint Petition of:

CHAD ALAN PIERCE,

Petitioner.

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**ANSWER OF THE DEPARTMENT OF CORRECTIONS TO  
MOTION FOR DISCRETIONARY REVIEW**

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**TABLE OF CONTENTS**

I. RESPONDENT .....1

II. DECISION BELOW .....1

III. ISSUE FOR REVIEW.....1

IV. STATEMENT OF THE CASE .....1

V. ARGUMENT .....3

    A. PETITIONER HAS NOT MET THE CRITERIA FOR  
    DISCRETIONARY REVIEW.....3

    B. THE COURT OF APPEALS CORRECTLY REJECTED  
    PETITIONER’S CLAIM THAT HIS CRIMINAL  
    JUDGMENTS AND SENTENCES PROHIBITED DOC  
    FROM COLLECTING COSTS OF INCARCERATION  
    UNDER RCWS 72.09.111 AND 72.09.480.....4

    C. THE COURT OF APPEALS CORRECTLY REJECTED  
    PETITIONER’S CLAIM OF OVERPAYMENT OF  
    LFOS AS UNTIMELY.....8

    D. PETITIONER’S CLAIM CONCERNING PAYROLL  
    DEDUCTION NOTICES IS UNTIMELY AND  
    MERITLESS.....9

VI. CONCLUSION .....9

APPENDIX 1: Order Setting Restitution

## TABLE OF AUTHORITIES

### Cases

<u>Dean v. Lehman</u> , 143 Wn.2d 12, 18 P.3d 523 (2001).....	6, 7
<u>In re Metcalf</u> , 92 Wn. App. 165, 963 P.2d 911 (1999).....	6, 7
<u>In re Peterson</u> , 99 Wn. App. 673, 995 P.2d 83 (2000).....	9
<u>Wright v. Riveland</u> , 219 F.3d 905 (9th Cir. 2000) .....	6

### Statutes

RCW 72.02.045 .....	9
RCW 72.09.111 .....	3, 5, 7, 9
RCW 72.09.480 .....	6, 7, 9
RCW 72.11.020 .....	9
RCW 72.60.100 .....	9
RCW 9.94A.145.....	5, 7
RCW 9.94A.760.....	5, 7
RCW 9.94A.760(2).....	5

### Rules

RAP 13.4(b) .....	3, 4, 9
RAP 13.5A.....	3
RAP 16.11(b).....	2
RAP 16.14(c) .....	3

COMES NOW Respondent, the Washington State Department of Corrections (DOC), by and through its attorneys, ROBERT M. MCKENNA, Attorney General, and DOUGLAS W. CARR, Assistant Attorney General, and answers Petitioner's Motion for Discretionary Review.

**I. RESPONDENT**

The Respondent is the Washington State DOC.

**II. DECISION BELOW**

The decision below is an unpublished order by Acting Chief Judge Stephen J. Dwyer of the Washington State Court of Appeals (Division I) entered on September 22, 2009, dismissing Mr. Pierce's Personal Restraint Petition (PRP).

**III. ISSUE FOR REVIEW**

Whether Petitioner has demonstrated that he is entitled to discretionary review of the Court of Appeals' September 22, 2009, order dismissing his PRP.

**IV. STATEMENT OF THE CASE**

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.

DOC filed its response to Petitioner's PRP on or about May 20, 2009. DOC argued in its response that collection of LFOs and cost of incarceration from Petitioner was mandated by statute and did not violate or otherwise conflict with Petitioner's criminal judgments and sentences. Petitioner's claims were determined by the Court of Appeals to be meritless and Petitioner's PRP was dismissed as such pursuant to RAP 16.11(b) on September 22, 2009.

Petitioner has now filed a motion for discretionary review and this Court has allowed Respondent until December 21, 2009, to file an answer to the motion. See letter dated November 20, 2009, from Supreme Court Deputy Clerk Susan L. Carlson. Petitioner argues in his motion for discretionary review that DOC has collected more LFOs than Petitioner was ordered to pay in his criminal judgments and sentences; that DOC's collection of costs of incarceration violates his judgments and sentences;

and that DOC must issue notices of payroll deduction to inmates before collecting LFOs from inmates under RCW 72.09.111.

Petitioner does not cite the criteria for acceptance of review under the Rules of Appellate Procedure in his motion and fails to demonstrate that he has satisfied such criteria. Petitioner's motion for discretionary review should be denied because the Court of Appeals committed no error in dismissing Petitioner's PRP and Petitioner has failed to demonstrate that he has satisfied the criteria for discretionary review.

## V. ARGUMENT

### A. **PETITIONER HAS NOT MET THE CRITERIA FOR DISCRETIONARY REVIEW.**

RAP 16.14(c) states that if a personal restraint petition is dismissed by the Chief Judge of the Court of Appeals, the dismissal may be reviewed by the Supreme Court only by a motion for discretionary review in compliance with RAP 13.5A. In ruling on motions for discretionary review pursuant to RAP 13.5A, this Court will apply the considerations set out in rule 13.4(b). The standards for discretionary review under RAP 13.4(b) are as follows:

A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of

Washington or the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

Petitioner has not met his burden of showing that this Court should accept review under the criteria set forth in RAP 13.4(b) as Petitioner has failed to demonstrate that the Court of Appeals' decision is in conflict with a decision of this Court or the other Courts of Appeals, or that this case involves either a significant constitutional issue or an issue of substantial public interest. Additionally, the Court of Appeals properly analyzed and rejected Petitioner's claims concerning deductions by DOC from Petitioner's prison account.

**B. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONER'S CLAIM THAT HIS CRIMINAL JUDGMENTS AND SENTENCES PROHIBITED DOC FROM COLLECTING COSTS OF INCARCERATION UNDER RCWS 72.09.111 AND 72.09.480.**

The Court of Appeals correctly disposed of this claim:

The deductions Pierce challenges in this case, however, are made under the authority of RCW 72.09.111, which authorizes deductions from wages, gratuities and worker's compensation benefits any inmate receives for a number of purposes, including up to 20 percent to be paid by DOC for the cost of the inmate's incarceration. Pierce's claim fails because nothing in the provisions of 9.94A.760(2), which applies to the authority of the court to set payment of costs as a condition of sentence, either directly, or indirectly serves to limit the express authority of DOC under RCW 72.09.111.

See Order Dismissing PRP, p. 2.

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 PRP, 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 PRP, 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); In re 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 constitutionality of the above deduction statutes, including claims that the statutes violated the Ex Post Facto Clause of the United States 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 was properly dismissed as such by the Court of Appeals.

**C. THE COURT OF APPEALS CORRECTLY REJECTED PETITIONER'S CLAIM OF OVERPAYMENT OF LFOs AS UNTIMELY.**

Petitioner argues that DOC has deducted LFOs from his account in excess of the LFOs he owes on his criminal convictions. The Court of Appeals dismissed this claim as untimely:

Finally, in reply, Pierce contends that the DOC has erred by collecting more legal financial obligations that are authorized by one of his sentences. DOC has not had the opportunity to respond to this factual claim. Coming for the first time in reply, this claim is too late. See In re Peterson, 99 Wn. App. 673, 681, 995 P.2d 83 (2000).

See Order Dismissing PRP, p. 3.

Not only was this claim untimely, it is also factually baseless. The sentencing court in Petitioner's 2001 criminal conviction, Cause No. 01-1-10417-5KNT, ordered Petitioner to pay restitution exceeding \$7,000.00. See Appendix 1, Order Setting Restitution.<sup>1</sup> DOC has lawfully collected and may lawfully continue collecting LFOs from Petitioner who still owes substantial restitution LFOs.

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<sup>1</sup> Counsel for Respondent obtained this order directly from the court and provided a copy to Petitioner under cover of letter dated December 8, 2009. As counsel advised Petitioner in this letter, whatever legal issues Petitioner has with this order are issues with the Prosecutor, not DOC, which is lawfully collecting LFOs pursuant to presumptively valid Judgments, Sentences, and orders.

**D. PETITIONER'S CLAIM CONCERNING PAYROLL DEDUCTION NOTICES IS UNTIMELY AND MERITLESS.**

Petitioner now argues that DOC must issue payroll deduction notices to inmates before collecting LFOs from them. Petitioner raises this claim for the first time in his motion for discretionary review and this claim should therefore not be considered. See In re Peterson, 99 Wn. App. 673, 681, 995 P.2d 83 (2000). This claim is also frivolous on its face. DOC is the custodian of inmates' funds. RCW 72.02.045; RCW 72.11.020. As such, DOC is not required to issue payroll deduction notices to itself before collecting LFOs from inmates' accounts, especially since inmates are not considered employees of DOC or the state. RCW 72.60.100. Nothing in the statutes authorizing DOC to collect LFOs requires DOC to issue payroll deduction notices before collecting LFOs. RCW 72.09.111; RCW 72.09.480. This claim is both untimely and frivolous, and provides no basis for discretionary review.

**VI. CONCLUSION**

Petitioner has failed to demonstrate any error by the Court of Appeals or that review of the Court of Appeals' decision is appropriate under the criteria of RAP 13.4(b), therefore this Court should deny Petitioner's motion for discretionary review of the order dismissing Petitioner's PRP.

RESPECTFULLY SUBMITTED this 18th day of December,  
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 on the date below I served a copy of ANSWER OF THE DEPARTMENT OF CORRECTIONS TO MOTION FOR DISCRETIONARY REVIEW 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 #714567  
AIRWAY HEIGHTS CORRECTIONS CENTER  
PO BOX 2049  
AIRWAY HEIGHTS WA 99001-2049

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

EXECUTED this 18<sup>th</sup> day of December, 2009 at Olympia, Washington.

  
\_\_\_\_\_  
KATRINA TOAL

# **APPENDIX 1**

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IN THE SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

CHAD ALLAN PIERCE,

Defendant,

No. 01-1-10417-5 KNT

ORDER SETTING RESTITUTION

The court ordered payment of restitution as a condition of sentencing. The Court has determined that the following persons are entitled to restitution in the following amounts; IT IS ORDERED that defendant make payments through the registry of the clerk of the court as follows:

BRANDON RAMIREZ

3106 Sumner Tapps Highway, #A  
Sumner, WA 98390

Re: Insurance Deductible.

Amount: \$ 250.00

MUTUAL OF ENUMCLAW

Attention: Tacoma Claims Office, Betsy

1111 Fawcett, # 201

Tacoma, WA 98402

Re: Claim # PA41003303 / Insured Guy & Debbie Pillow

Amount: \$4,027.36

STATE FARM INSURANCE COMPANY

Attention: Claims Office

PO Box 3483

Silverdale, WA 98383

Re: Claim #47-4301-062 / Insured William Acosta

Amount: \$2,088.91

ORDER SETTING RESTITUTION - 1

Norm Maleng,  
Prosecuting Attorney  
Regional Justice Center  
401 Fourth Avenue North  
Kent, Washington 98032-4429

1 AUBURN REGIONAL MEDICAL CENTER  
Attention: Patient Billing  
2 Plaza One, 202 North Division  
Auburn, WA 98001-4900  
3 Re: Patient #78332491 / Bill Acosta

Amount: \$ 933.20

TOTAL AMOUNT: \$7,479.47

4  
5  
6 DONE IN OPEN COURT this 18 day of June, 2002.

Jay White  
JUDGE JAY WHITE

8 Presented by:

Copy received; Notice  
Presentation waived:

9  
10 M. Vasquez #30322  
Deputy Prosecuting Attorney

Julie Lawry  
Julie Lawry / ACA  
Attorney for Defendant 17685

11 Order Setting Restitution  
12 CCN# 1697125 REF#2011215501

CAUSE#011104175KNT LJ051702

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ORDER SETTING RESTITUTION - 2

Norm Maleng,  
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