

SUPREME COURT NO: 83731-7

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STATE OF WASHINGTON

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SUPREME COURT OF THE STATE OF WASHINGTON  
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In re Personal Restraint of:

CHAD A. PIERCE,

PETITIONER.

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PETITIONER'S REPLY TO THE DEPARTMENTS ANSWER  
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PREPARED BY:  
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1. STATEMENT OF FACTS AND PRIOR PROCEEDINGS.

A. PETITIONER'S 01-1-10417-5 KNT CAUSE NUMBER.

On 5-17-2002, the Petitioner was sentenced by the King Co. Superior Court, Honorable Jay V. White to a term of 30.75 months for the crime of Attempted Robbery in the First degree, a class B felony due to the anticipatory element. The Sentencing court never marked the box ordering the Petitioner to pay any Cost of Incarceration fines. See Petitioner's PRP, Exhibit 1; Petition for Discretionary Review, App. A at 31. The sentencing court also explicitly waived all other costs except for the \$500 mandatory VPA fine. Id. The Sentencing Court set a Restitution Hearing to take place at a later date to which the petitioner waived his appearance. Id. The costs that were explicitly waived were due to the petitioner's povertic status.

On June 18th, 2002, and without the Petitioner present, the Sentencing Court held a restitution hearing setting restitution in the amount of \$7,479.47. See Answer of the Department, App. 1. The Petitioner has **NEVER RECEIVED THAT DOCUMENT FROM THE STATE, COURT, OR DEFENSE LAWYER'S** and just received the document on the listed date of 12-21-2009 by the department. See App. B (Affidavit of Petitioner).

The Petitioner was released from Total Confinement in the system on 10-13-2003. The Judgment stated that the petitioner was to begin making monthly payments toward the LFO's as scheduled by the Community Corrections Officer upon release. Petitioner's PRP, Exhibit 1; Petition For Discretionary Review, App. A at 31.

Upon the Petitioner's release, and on a schedule established

by the Petitioner's Burien Community Correction Officer, the Petitioner continued paying the LFO of \$500.00 VPA. The petitioner began actually paying at Reynolds Work release on 7-18-2003 and continued making payments each month, sometimes making two payments in good-faith, until 12-03-2004. The Petitioner was arrested on a Community Custody violation on 3-21-05 and ended up with this current new charge. The Petitioner's arrest tolled the Department's collection as Community Custody tolled at that point. See Petition For Discretionary Review at 2, App. A at 28-38.

B. PETITIONER'S 05-1-06490-7 KNT CAUSE NUMBER.

On 5-30-2008, the petitioner was sentenced under Cause No. 05-1-06490-7 KNT to a term of 108 Months, the low end of the SRA range, and oddly enough was given a Lifetime top end, instead of 144 months as the SRA holds. The Sentencing Court explicitly waived the Cost of Incarceration due to the petitioner's poverty. The sentencing Court also never imposed any other costs except for the mandatory \$500.00 VPA. See Petition For Discretionary Review, App. A at 43-52. No restitution was imposed in that case. Id. The State Department of Corrections, as well as the Court of Appeals, conceded to these factual allegations. See Id. at App. A at 1, 124; Answer of Department at 5.

C. THE PETITIONER NEVER FAILED TO MAKE A SCHEDULED MONTHLY PAYMENT IN ORDER FOR THE DEPARTMENT TO BE ALLOWED AUTHORITY TO BEGIN COLLECTING ON A NON-DELINQUENT LEGAL FINANCIAL OBLIGATION FEE.

The Petitioner never failed to make his scheduled monthly payments as to the 01-1-10417-5 KNT Legal Obligations. The only reason the petitioner has not apyed the Obligation is due to the

petitioner's incarceration on an unrelated charge. Therefore, the Department's collection of the LFO's is not yet ripe and is the reason this Court should accept review due to the department's failure to adhere to the Laws of Washington.

D. THE PETITIONER HAS NOT BEEN RELEASED ON THE 05-1-06490-7 KNT CAUSE NUMBER TO HAVE A MONTHLY PAYMENT ESTABLISHED TO HAVE BEEN DELINQUENT IN MAKING PAYMENTS TOWARDS TO LFO'S IN ORDER TO HAVE THE DEPARTMENT COLLECT SAID OBLIGATIONS.

The Petitioner has not been released on the 2005 cause number for the purposes of scheduling a monthly payment with a Community Corrections Officer as to the \$500.00 VPA in that case. Thus, as of date, the Petitioner has not entered into any delinquent status on the 2005 cause, and therefore the Departments collections are unlawful at this point and contrary to the legislature's intent.

E. THE DEPARTMENT BEGAN COLLECTION OF A NON-DELINQUENT LFO CAUSING THIS PETITIONER TO DRAFT A PERSONAL RESTRAINT PETITION CLAIMING UNLAWFUL RESTRAINT DUE TO THE DEPARTMENTS ACTIONS.

The petitioner filed a Personal Restraint Petition challenging the authority of the department to collect Cost of Incarceration fees that were explicitly waived by the Court below, or never imposed. The Petitioner further challenged the Departments use of two separate accounts utilized for the purposes of collecting Crime Victim Compensation, and Cost of Incarceration, and Cost of Felony Debt. See Petition For Discretionary Review, App. A at 4-121, the Departments collections of LFO's never imposed, or failed to have been checked was challenged by the Petitioner as being a Violation Of the Separation of Powers Doctrine. Id. at App. A at 13-21.

The Department responded asserting that pursuant to the said

statutorial provision of RCW 72.09.111 and 72.09.480 it had the lawful authority to collect a Judgment consisting of Cost of Incarceration fees independantly from the language stated in the Judgment and Sentence entered. The Department further relied on Wright, Dean, and Metcalf to support its position. See Petition For Discretionary Review, App. A at 125-129.

The Department, by asserting such, has in fact breached the Contractual Judgment entered by imposing a sanction that was not imposed and asserting that the Department has its own authority to set sanctions as it sees fit to do. Such an assertion, if taken as the truth, is a strained and absured interpretation of the laws governing the departments powers and authority to collect Judgments entered by Courts of competent jurisdiction.

The petitioner filed a Reply brief to the Department's response and legally impeached the departments assertions, and misapplication of the laws well established and the Legislature's intent. See Petition For Discretionary Review, App. A at 138-149.

The Lower Court of Appeals ruled in favor of the Department on the misapplication of the Laws stating that RCW 72.09.111 authorizes the department to independantly collect LFO's even if they are not imposed by the Courts. The Court also utilized In Re PRP of Martin, to justify its ruling. Id. at 1-3. The Lower Courts ruling failed to consider all of the Statutorial provisions as a whole which set numerous prerequisites and safeguards in place to protect the Petitioner's right to collections of LFO's.

The Petitioner filed a Discretionary review Motion with this Court, the department responded, and this reply timely follows.

2. ARGUMENT IN REPLY.

A. THE DEPARTMENT AUTHORITIES IN SUPPORT OF ITS POSITION ARE MISLEADING, DISTINGUISHABLE, UNSUPPORTIVE, AND VERY CONTRARY TO THE PETITIONER'S CLAIMS AND ARGUMENT AND THUS THIS COURT SHOULD REJECT THEM.

(i). THE DEPARTMENT'S UTILIZATION OF WRIGHT, MARTIN, AND DEAN IS USED TO IMPROPERLY INFLUENCE THIS COURT AS TO THE TRUE FACTS ARGUED BY PETITIONER.

The department, in support of its whole central theme, uses Martin, Dean, and Wright arguing that the statutory provisions of RCW 72.09.111 and 72.09.480 have been consistently held to be Constitutional, and therefore the department argues the court based upon such argument, should reject and deny review. The same argument was used in the Lower Court's to which the Court of Appeals based its decision upon. See Petition For Discretionary Review , App. A at 122-36; and Answer of Department at 1-10.

At "First-Blush" the whole base of the Departments argument seems compelling, persuasive, and supportive of the position that the department maintains throughout the proceedings. The departments position is, even if the Sentencing Court does not impose monetary sanctions, the Department, pursuant to RCW 72.09.111 and 72.09.480, has the lawful authority to independantly charge and set that monetary Judgment and begin collection for itself.

Assuming, arguendo, that this argument is straight across the board, it would fail in light of the department's failure to apply all relevant statutorail provisions, as a whole, to the argument.

Such a failure, is violative of the Legislature's intent behind statutory construction and interpretation.

Furthermore, unlike the department's cases cited, the Petitioner

NEVER argued that the Statutorial provisions of RCW 72.09.111 and 72.09.480 were unconstitutional, in fact, the petitioner's whole argument was that the department's independant collection of the monitary sanction explicitly waived by the sentencing court in excercising its discretion was a violation of the separation of powers doctrine, and inconsistent to the legislatures intent.

The Petitioner also questioned by what authority did the Dep't have in making alterations to the Judgment entered by the Court of Competent jurisdiction. See Petition For Discretionary Review at 1-21, App. A at 4-121, 138-48.

Therefore, the department argument and cases in support thereof is misleading and non-persuasive and is made in an attempt to blindside this court as to the true claims raised by the Petitioner.

Therefore, the Court should accept review and reject the argument raised by the department as frivolous.

(ii).THE DEPARTMENT'S UTILIZATION OF RCW 72.09.111 AND 72.09.480 TO JUSTIFY THE DEPARTMENT'S COLLECTION OF LFO'S WHICH HAVE BEEN EXPLICITLY EITHER WAIVED BY THE SENTENCING COURT OR NEVER SET IS INCONSISTENT TO THE LEGISLATURE'S INTENT THAT STATUTES ARE TO BE CONSTRUED AND READ AS A WHOLE, NOT INDEPENDANTLY TO REACH WHAT IS STRAINED AND ABUSURED RESULTS.

The substance of the department's argument in support of its position is that both RCW 72.09.111 and 72.09.480 allow, independantly from the Judgment and Sentence language, the department to impose a monitary obligation for LFO's and Cost of Incarceration obligation upon the Petitioner. Such an interpretation is most absured and is severly strained results of the true legislature's intent. The Department also reiterated this argument in its answer to the filed Petition before this Court. See Petition For Discretionary Review,

App. A at 122-37; Answer of the Department at 1-10.

The argument of the department utterly fails and is misplaced and inconsistent to the legislature's true intent behind creating the statute cited by the department.

It is unbeknown to the petitioner as to how the Department in using an attorney general to litigate its case, failed to find and apply all the statutes as a whole in making its argument. In fact, the department neglected to inform the court, which is why the petitioner did, that several prerequisites are set in place which prevent the department from collection until several of the criteria's are met consisting of the following:

1. The Sentencing Court had to have invoked its jurisdiction and authority and imposed monetary Legal Financial Obligations under RCW 9.94A.750 and RCW 9.94A.760(1)(2) and accompanied by a notice of payroll deduction pursuant to RCW 9.94A.7601-09.
2. The Judgment of the petitioner's 2001 cause established that the petitioner was to begin making payments "[]On a schedule established by the defendant's Community Correction Officer." See Petition App. A at 31. (The Court at that time only imposed a mandatory \$500 VPA.)
3. The Petitioner was released from total confinement to work release in July 2003 and began making monthly payments towards the VPA. The Petitioner was released to his current residence on 10-13-03 and as scheduled by CCO Michael Schmitzner out of the Burien DOC Office, the Petitioner began making monthly payments as scheduled. Also, the petitioner made more than one payment toward the LFO's during several months in order to hurry and pay the obligation off. See Petition App. A at 40-41.

4. The petitioner was NEVER delinquent in making payments on the LFO obligation in the 2001 cause while out in the Community.
5. The Petitioner was arrested on another separate charge in 2005 and that arrest triggered the Community Custody and requirements to toll under the statutory provisions of RCW 9.94A.545 while incarcerated on the unrelated charge.
6. The 2005 cause sentencing court only imposed, due to petitioner being poor, the mandatory \$500.00 VPA assessment fine. See Petition App. A at 45.
7. The 2005 LFO imposition, according to the face of the Judgment and Sentence, was to be paid "[✓] On a schedule established by the defendant's Community Correction Officer." See App. A at 45.
8. The Petitioner has not been released on the 2005 cause in order to re-activate the 2001 Community Custody requirements and monthly payments.
9. The petitioner has not been released on the 2005 cause in order to establish a monthly schedule with the Community Correction Officer and subsequently failed to make the monthly payments in order to trigger the statutory provisions of RCW 72.09.111 which state that the secretary of DOC shall deduct taxes and legal financial obligations from the gross wages, gratuities, and worker's compensation benefits payable directly to inmates working in correctional industries programs, or otherwise receiving the same. See RCW 72.09.111.
10. Nothing in the provision of RCW 72.09.111 or 72.09.480 allows the department to specifically collect from an inmate's incoming money to satisfy LFO's. That provision is extremely vague.
11. The department must collect earnings from an inmate after first satisfying the criteria's of RCW 9.94A.7601-7609 before collecting.

Therefore, since the Petitioner is not delinquent in his LFO payments, and in fact, never received the restitution order until just recently, and the 2001 cause being tolled under RCW 9.94A.545 pending the release of the petitioner on the 2005 cause, and since the sentencing court in the 2005 cause ordered the petitioner to begin making monthly payments upon a schedule as established by the CCO upon release, and since the sentencing court's in both the 2001 and 2005 cause's NEVER imposed Cost of Incarceration, then the department is acting without legal right in imposing such a collection.

Therefore, the department's argument is militated by the statutes read as a whole and applied to the petitioner's case facts.

B. THE DEPARTMENT FALSELY ASSERTS THAT THE NOTICE OF PAYROLL DEDUCTION ARGUMENT WAS RAISED FOR THE FIRST TIME IN THE PETITION AND IS THEREFORE UNTIMELY AND FRIVOLOUS.

The department asserts to this court that the petitioner never raised the argument about the Notice of payroll deduction until in the Petition for discretionary review and therefore the issue is untimely. See Answer of Department at 9.

This argument is without merit and frivolous on its face as the facts raised in the Personal Restraint Petition (PRP) in the Lower courts to which this Petition for discretionary review arises does show that the argument was advanced about Notice of Payroll deduction. See Petition, App. A at 23. The department, in answering the PRP, went silent as to that issue waiving any such challenge at this stage of the proceedings. Id. at 122-36. Therefore, the department is attempting to manipulate the court in an attempt to gain favorable rulings on the merits. That conduct is unethical and very sanctionable and this court should admonish the department.

Therefore, this Court should determine the merits to the said claims of the petitioner and allow discretionary review. The said department also claims that the department is the custodian of inmates funds pursuant to RCW 72.02.045 and 72.11.020, and as such, the department is not required to issue notice of payroll deductions due to inmates not being considered "employees" of the department or state. See Answer of Department at 9.

This argument is not only misleading, but is also meritless and made in an attempt to blind the Public to the departments unlawful collections of LFO's without first meeting strict statutory criteria to get to the point of collection.

Assuming, arguendo, that the departments argument is all by the board and what the legislature's intent was in the creation of RCW 72.09.111 and 72.09.480. The departments argument is incomplete due to the language of several statutory provisions coincidentally failed to be raised by the department. The legislature in creating RCW 9.94A.7601 held that as used in this chapter the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, hours, or otherwise, and notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy court-ordered legal financial obligations. "Earnings" shall specifically include all gain from labor." See RCW 9.94A.7601.

Applying this standard to the provisions of RCW 72.09.111, the inmates wages made from hours worked under RCW 72.09.111, the notice of payroll deduction requirement must be included and mean the inmates wages, gratuities, or workers compensation made while

an inmate is employed at the department of Corrections who is in fact collecting and claiming taxes from inmates hours worked.

Therefore, the departments assertion that inmates are not to be considered "employees" within the meaning is frivolous and is reading into the statutes an absurd and strained meaning for the sole benefit of financial gain.

Assuming, arguendo, that the department is correct that the petitioner failed to raise the issue of notice of payroll deduction in the lower pleadings, even though that was not the case as briefed in this petition, that would not prevent the petitioner from raising that issue in relation to the departments assertion of standing on RCW 72.09.111 to authorize and justify its collections of LFO's due to the statutes having to be read as a whole, not independantly.

Besides, this Court in Douglas ruled that the petitioner is not prevented from raising this issue stating:

"...We decline to consider an issue raised for the first time in a supplemental brief after review has been accepted."

See Douglas v. Freeman, 117 Wn.2d 242, 258, 814 P.2d 1160 (1991).

Therefore, based upon this Court's holding, the departments argument fails and needs to be considered frivolous on its face.

C. THE COURT OF APPEALS ERRORED IN APPLYING THE STATUTE OF THE DEPARTMENT INDEPENDANTLY WITHOUT FIRST CONSTRUING THE STATUTES ALLOTGETHER AS A WHOLE IN MAKING ITS DETERMINATION ON THE LAWFUL OR UNLAWFUL COLLECTION BY THE DEPARTMENT OF CORRECTIONS.

For the sake of brevity and out of petitioner desire not to be repititious the petitioner hereby adopts and incorporates by refrence the statutorial construction and determination as found briefed in the petition in its entirity. Therefore, the court of appeals errored in not evaluating the statutes as a whole and this

review to determine the legislature's intent of the statutes as a whole.

D. THE PETITIONER ASSERTS THAT HE HAS MET THE CRITERIA TO HAVE THIS SUPREME COURT ACCEPT REVIEW OF THIS PETITION DUE TO THE LOWER COURTS MISAPPLICATION OF THE LAWS OF WASHINGTON STATE AS APPLIED TO STATUTORIAL CONSTRUCTION AND DETERMINATIONS.

Petitioner directly asserts that the criteria set which must be met before this court will accept review has been met. That criteria states as set forth in RAP 13.4(b):

"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."

See RAP 13.4(b).

The petitioner will directly assert that he has made the vital threshold showing that by the Court of Appeals never analyzing the department's failure to strictly comply to the legislature's intent in reading and construing statutes as applied to this case, but instead the Court of Appeals only used the department's single statute used which is rated at E and not considered A caused the case laws of this Court and the statutorail provisions of the State of Washington to be not complied to and therefore the decision is in conflict with this Court's case laws on the subject of what statutorail construction and reading is.

Further, the department's collection of LFO's without any court imposed authority is a question of broad public importance that will need this Court's addressment to determine the true intent.

Therefore, the petition for review should be accepted. If the

department really researched the question of the being able to raise a question to this Court, the department would have not failed to mention that RCW 2.06.030(d) reads:

"(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination"

Which the statute authorizes the Supreme Court to be the fact finder and ruler as to those types of questions raised by this petitioner.

E. THE DEPARTMENT'S SILENCE CONSTITUTES AN ADMISSION TO SEVERAL ISSUES RAISED BY THE PETITIONER.

The department went silent to the petitioner's claims which consist of:

1. The legislature's intent behind 72.09.111 applied in collection to 9.94A.760 is not how the department is claiming.
2. That the department's collection of Costs not imposed by the Court violated the judgment and sentence proposed.
3. The the Departments Policy 200.000 is unconstitutional and is in violation of the legislature's intent behind povertic state inmates.
4. That the department has breached the petitioner's due process rights by collections and impositions of costs unlawfully and not in compliane to legislative intent.

Therefore, the petitioner would argue that procedural rule CR 8(d) allows this court to take the department's silence to be an admission to be taken in favor of the petitioner and accept review.

F. THE DEPARTMENTS ARGUMENT THAT THE PETITION IS FRIVOLOUS DID NOT CITE THE PROPER STANDARD WHICH HOLDS THE PETITIONERS SAID ALLEGATIONS MUST BE CONSIDERED IN HIS FAVOR.

First, and foremost, for the department to claim that the petition

is frivolous the petitioner's claims had to lack any reasonable and arguable basis either in fact or law. See Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th Cir. 1984).

Therefore, the critical inquiry is whether or not, a constitutional claim, however inartfully plead, has an arguable legal and factual basis. Jackson v. Arizona, 885 F.2d 639, 640 (9th Cir 1989); Harris v. Polskie Linnie Lotnicze, 820 F.2d 1000(CA 9 cal); Reid v. United States, 715 F.2d 1148(CA 7 Ind. \_\_\_\_\_).

In reviewing a complaint under this standard, the reviewing court must first accept as true the allegations of the complaint in question, Hospital Bldg. Co. v. Rex Hospital Trustees, 425 U.S. 738, 740 (1976), and the court must also construe the pleadings in the light most favorable to the petitioner and resolve all doubts in the petitioner's favor. Jenkins v. McKeithien, 390 US 411, 421 (1969).

Therefore, this Court's standard, if taken in favor of the said department, is to take all of the petitioner's claims as truth and decide them on the merits of the claims, not just take the state's word that they are frivolous claims needing dismissal.

Therefore, this Court should accept review to determine the statutes intent as applied by the department in imposing costs that are not imposed by the sentencing court of competent jurisdiction.

#### CONCLUSION

Therefore, the petitioner will assert that since the sentencing court explicitly waived costs of incarceration and only imposed a \$500.00 VPA, and the 2001 cause is tolled, pending the release of

