

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2014AP2515-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TOMMY LEE BRANCH,

Defendant-Appellant.

APPEAL FROM A JUDGMENT OF CONVICTION AND ORDER
DENYING POSTCONVICTION RELIEF, ENTERED IN THE
RACINE COUNTY CIRCUIT COURT,
THE HONORABLE FAYE M. FLANCHER, PRESIDING

BRIEF AND SUPPLEMENTAL APPENDIX
OF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Circuit courts have inherent authority to offset judgments. Here, Tommy Lee Branch moved to have money that the court owed him returned. The court owed Branch \$583, but Branch owed the court much more. Did the circuit court properly exercise its discretion when it offset the money owed Branch to reduce Branch's debt to the court?

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication. This case may be resolved by applying well-established legal principles to the facts of this case.

STATEMENT OF FACTS

Branch's statement of the case and statement of facts are sufficient to frame the issues for review. The State will include additional relevant facts in the argument section of this brief.

ARGUMENT

The circuit court properly applied Branch's money towards his debt.

A. Standard of review and legal principles.

When a defendant fails to comply with the conditions of bond, the court shall enter an order declaring the bail to be forfeited. Wis. Stat. § 969.13(1). The circuit court at sentencing may impose victim and witness fees, a restitution surcharge, and other court costs. Wis. Stat. § 973.06. It may also order restitution and a restitution surcharge. Wis. Stat. § 973.20. If the court orders restitution and costs, the restitution should be paid first. Wis. Stat. § 973.20(12).

Any person claiming possession of property seized without a warrant may apply for its return to the circuit court in the county where the property was seized. Wis. Stat. § 968.20.

Circuit courts have the inherent authority to offset judgments. *Black v. Whitewater Comm. & Sav. Bank*, 188 Wis. 24, 27, 205 N.W. 404 (1925). An offset is something, like a debt, that balances or compensates for something else. Bryan A. Garner, *Black's Law Dictionary* 1259 (10th ed. 1999). "The power to offset judgments has been exercised by courts from an early day and is said to be inherent in courts and to depend upon no statute." *Black*, 188 Wis. at 27. The circuit court has discretion to decide whether judgments should be offset. *Id.*

B. The circuit court properly set off the money owed Branch against the money Branch owed the clerk of courts.

Branch seeks return of \$583 taken from him at the time of arrest. Branch's brief at 6-8. This court can assume Branch was entitled to the money under Wis. Stat. § 968.20 because there is no evidence that it was contraband. But that is not the end of the analysis.

Branch currently owes the Racine County Clerk of Court over \$7,000 even after his \$583 was applied towards his debts. *See State v. Branch*, No. 2009CF1646 (Racine Co. Cir. Ct.) CCAP Record at 3 (R-Ap. 103). The court imposed a \$5,000 signature bond contingent on Branch making all future court appearances (28:12). Branch did not appear on March 30, 2010, and the court set the next court date for 45 days away (29:2). At that hearing, Branch also did not appear because he was incarcerated in Tennessee (30:2). The court authorized an arrest warrant and bond forfeiture (30:2). Because of Branch's nonappearance, the court entered a judgment for \$5,000 based on the violation of the signature bond conditions (7).

After sentencing, the circuit court ordered release of the money from the Sheriff's Department to the Clerk of Court for payment of Branch's outstanding debts (17).

Branch owed \$140 in restitution and \$13.95 as a restitution surcharge (11:2). Some of Branch's \$583 went to pay the victim the owed restitution (R-Ap. 103). *See* Wis. Stat. § 973.20(12).

He owes \$7,287.80 towards his bail forfeiture (R-Ap. 103). The judgment entered on the bail forfeiture for \$5,000 (7). When Branch failed to pay, the court entered another judgment ordering 12 percent interest to be added from the date of entry of judgment (8). The clerk of courts applied the remainder of the \$583 to the outstanding bond forfeiture obligation (R-Ap. 103).

Even if the Sheriff's Department owed Branch \$583, Branch owed the clerk of court more than that amount. The circuit court has inherent authority exercise its discretion and offset judgments. *See*

Black, 188 Wis. at 27. The circuit court properly exercised its discretion in offsetting the amounts.

Branch argues that a circuit court does not have the authority to order that an individual's seized property can be used to pay a bond forfeiture. Branch's brief at 8. But "[t]he power to offset judgments has been exercised by courts from an early day and is said to be inherent in courts and to depend upon no statute." *Black*, 188 Wis. at 27. The court has inherent authority derived from common law.

To return the money to Branch, when he owes the court over \$7,000, would be illogical. The victim received \$140 of Branch's money in compliance with the restitution order (R-Ap. 103). *See also* Wis. Stat. § 973.20(12). If the circuit court granted Branch's motion, the victim would be required to pay back that \$140. Of course, that would be absurd.

Branch moved for an order returning his \$583 in cash (18:1). The court denied that motion (35:5). The circuit court noted the bond forfeiture judgment, and stated its intention to have any remaining money be paid towards the outstanding debt (35:4-5). This setoff was a proper exercise of discretion. This court should affirm the circuit court's exercise of discretion offsetting the debt owed Branch against the debt Branch owed the clerk of court.

CONCLUSION

The State respectfully requests this court affirm the circuit court's order denying Branch's motion for return of his money.

Dated this 17th day of February, 2015.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 844 words.

Dated this 17th day of February, 2015.

Christine A. Remington
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 17th day of February, 2015.

Christine A. Remington
Assistant Attorney General