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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2017AP0320-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

MARQUIS T. WILLIAMS,
Defendant-Appellant.

APPEAL FROM THE
WAUKESHA COUNTY CIRCUIT COURT, THE
HONORABLE MICHAEL J. APRAHAMIAN, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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INTRODUCTION

Almost four years ago, Defendant-Appellant Marquis T. Williams pleaded guilty to first degree reckless homicide. The circuit court sentenced him to prison and extended supervision and ordered him to pay restitution to his victim's family. After being incarcerated for over two years, Williams returned to his sentencing court and filed a letter complaining about the Wisconsin Department of Corrections's (DOC) collection of restitution from his prison account. The circuit court properly denied this request.

This Court can affirm the circuit court on two independent grounds. First, the circuit court lacked competency to decide the lawfulness of DOC's collection efforts, and Williams has not pursued the proper remedy for challenging DOC's collection method. Second, even if this Court were to address the merits of the issue, Williams has not shown that DOC's collection of restitution is unlawful.

STATEMENT OF THE ISSUES

1. A court of criminal conviction has competency only to address matters related to the criminal prosecution and ancillary matters essential to carrying out properly delegated judicial functions. Part of the sentencing function is to set the restitution amount. When the defendant is sentenced to prison, DOC takes over and collects funds from the defendant's prison account. An inmate may file an internal complaint with DOC about its collection efforts and, if unsuccessful, seek judicial review through certiorari. Here, Williams did not file a complaint with DOC about its collection methods; instead, he filed a motion with his sentencing court. Did the sentencing court lack competency to determine whether DOC's collection efforts are proper?

The circuit court did not answer this question.

This Court should answer yes.

2. DOC has long had the general authority to collect restitution from an inmate's prison account. A recent amendment to the law—2015 Wis. Act 355—did not create or change that authority; it only made it explicit. Williams argues that DOC is deducting restitution from his prison account contrary to law and his judgment of conviction. Does DOC have authority to deduct restitution from Williams's prison account?

The circuit court answered yes.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary because the briefs, taken together, fully present the issues and relevant legal authority.

Publication may be warranted to clarify a sentencing court's competency to decide an inmate's post-judgment motion complaining about DOC's collection of restitution from his prison account.¹

STATEMENT OF THE CASE

In September 2014, Williams pleaded guilty to first degree reckless homicide. (R. 18; 84:61–66.) The circuit court sentenced him to seven years of confinement and seven years of extended supervision. (R. 30:1.) The court also ordered Williams to pay restitution to his victim's family in the amount of \$25,142.80. (R. 30:2.) The judgment of conviction states that restitution is “[t]o be paid as a Condition of Extended Supervision” and that

¹ Another appeal addressing this issue is also pending before this Court. *See State v. Nance*, Case No. 2017AP0519-CR.

“[i]f Probation/Extended Supervision is revoked and/or a prison term ordered, outstanding financial obligations shall be collected pursuant to statutory provisions, including deductions from inmate prison monies.” (R. 30:2.)²

In December 2016, Williams sent a letter to the judge asking him to order DOC to stop deducting restitution from Williams’s prison account. (R. 58.) Williams claimed that DOC initially did not deduct restitution from his prison account. Then, he claimed, DOC changed course and began deducting restitution from his prison account at a rate of 50%. He claimed that this change was made pursuant to 2015 Wis. Act 355 and that that law should not apply retroactively to him. (R. 58.)

On December 13, 2016, the circuit court denied Williams’s request to stop DOC from deducting restitution from his prison account. (R. 60.) Williams moved for reconsideration. (R. 61.) On January 12, 2017, the circuit court denied Williams’s motion. (R. 62.) The court reasoned that “pursuant to 2015 Wisconsin Act 355, amending § 301.32(1) of the Wisconsin Statutes, the Department of Corrections now has the authority to use any prisoner funds to pay victim restitution ordered under § 973.20(11)(c) and any other appropriate costs in an amount determined reasonable by the Department of Corrections.” (R. 62.) This appeal followed. (R. 67.)

² The judgment of conviction was corrected and amended several times, but the sentence, restitution amount, and relevant language remained the same. (R. 32; 35; 38.)

SUMMARY OF THE ARGUMENT

This Court should affirm the circuit court's decision for two reasons.

First, the circuit court lacked competency to decide the lawfulness of DOC's collection of restitution from Williams's prison account. This Court has held that the sentencing court has competency only to address matters related to the criminal prosecution and ancillary matters essential to carrying out properly delegated judicial functions. DOC's collection of restitution from Williams's prison account is not related to his criminal prosecution, nor is it incidental to the court's sentencing duties. Further, Williams has not pursued the proper remedy for challenging DOC's collection method—an administrative grievance followed by certiorari review.

Second, even if this Court were to address the merits of the issue, Williams has not shown that DOC's collection of restitution is unlawful. The circuit court dismissed Williams's motion, reasoning that Act 355 gave DOC the authority to collect restitution during incarceration. The circuit court reached the correct result, but for the wrong reason. DOC has long had the authority to collect restitution from an inmate's prison account. Act 355 did not create or change that authority; it only made it explicit. Further, DOC's collection efforts are not contrary to Williams's judgment of conviction. This Court should affirm the circuit court on different grounds.

STANDARD OF REVIEW

Whether a circuit court has competency to proceed is a question of law that this Court reviews independently. *Vill. of Trempealeau v. Mikrut*, 2004 WI 79, ¶ 7, 273 Wis. 2d 76, 681 N.W.2d 190. This Court reviews the

interpretation of a law de novo. *State v. Denny*, 2017 WI 17, ¶ 46, 373 Wis. 2d 390, 891 N.W.2d 144; *Huml v. Vlazny*, 2006 WI 87, ¶ 13, 293 Wis. 2d 169, 716 N.W.2d 807 (restitution statute reviewed de novo).

ARGUMENT

I. The sentencing court lacked competency to decide the lawfulness of DOC's collection of restitution from Williams's prison account.

The circuit court addressed the merits of Williams's claim, but should not have. The circuit court lacked competency to decide the lawfulness of DOC's collection efforts. Therefore, this Court should affirm the circuit court's order denying Williams's motion on this alternative basis.

A. DOC's collection of restitution from Williams's prison account is not a matter related to his criminal conviction or ancillary to the court's sentencing function.

This Court has already reasoned that a sentencing court has no competency to address an inmate's complaint about restitution collection matters. In *State v. Minniecheske*, 223 Wis. 2d 493, 496, 590 N.W.2d 17 (Ct. App. 1998), a criminal defendant appealed the denial of his motions for an order directing the state to reimburse him for money unlawfully collected under a restitution order. This Court affirmed the circuit court's decision that it lacked competency³ to order the state to refund the money

³ "The court's competency to proceed . . . addresses its ability to undertake a consideration of the specific case or issue before it." *Minniecheske*, 223 Wis. 2d at 497–98. The court explained that a court's competency is different than its subject matter jurisdiction. The latter is conferred by the state constitution, the former by the Legislature. *Id.* at 497.

collected. *Id.* at 498. The court denied Minniecheske's motions because they were not grounded in "the statutory mechanisms the legislature provided for suits against the State." *Id.* at 497. It acknowledged that a circuit court is "accorded incidental powers necessary to carry out their judicial functions," *id.* at 499, but to make use of its incidental powers, "it must first have competency to proceed to resolve the matter before it," *id.* at 500. That "incidental power sought to be invoked must be 'necessary' for resolution of the matter." *Id.* The court noted that the "criminal court may address all matters related to the criminal prosecution and such incidental or ancillary matters as were essential to carry out appropriately delegated judicial functions." *Id.* But it held that rendering a money judgment against the state was not necessary to resolve the criminal matter before it, and—importantly here—that the circuit court "did not have the authority to determine the amount of restitution improperly collected." *Id.*

Here, under the reasoning of *Minniecheske*, the sentencing court lacked competency to determine the amount of money DOC can periodically collect from Williams's prison account for the purpose of restitution. The sentencing court cannot determine the appropriateness of DOC's collection method because it is not "necessary" for resolution of Williams's criminal matter. Nor is DOC's collection method an incidental or ancillary matter "essential" to carrying out the sentencing function. As in *Minniecheske*, Williams identifies no valid mechanism to allow his sentencing court to address the appropriateness of DOC's collection method during his incarceration.

Because the sentencing court did not have competency to proceed to the merits of Williams's challenge, this Court should affirm the order denying Williams's motion.

B. Williams had a remedy to challenge DOC's collection efforts.

The issue of whether DOC is properly collecting Williams's prison funds can be addressed by a circuit court, but not by the sentencing court and only after administrative review.

In *Minniecheske*, this Court recognized that there must be a remedy for the criminal defendant to recover the money the state improperly seized. *Id.* at 502. While the remedies differ, *see id.*, Williams has a remedy too. He may challenge DOC's collection efforts through the inmate complaint system, and then, if necessary, in a separate civil suit—a certiorari proceeding.⁴

There are several advantages to Williams's first proceeding through administrative channels to resolve his prison funds deduction issue. Placing the issue before DOC—with complete and accurate evidence—would “allow the administrative agency to perform the functions the legislature has delegated to it and to employ its special expertise and fact-finding facility.” *Metz v. Veterinary Examining Bd.*, 2007 WI App 220, ¶ 13, 305 Wis. 2d 788, 741 N.W.2d 244. “Preventing premature judicial intervention also allows the agency to correct its own error, thus promoting judicial efficiency” *Id.* Also, “in the event

⁴ “No prisoner may commence a civil action or special proceeding, including a petition for a common law writ of certiorari, with respect to the prison or jail conditions in the facility in which he or she is or has been incarcerated . . . until the person has exhausted all available administrative remedies that the department of corrections has promulgated by rule.” Wis. Stat. § 801.02(7)(b). “Prison or jail conditions’ means any matter related to the conditions of confinement or to the effects of actions by government officers, employees or agents on the lives of prisoners.” Wis. Stat. § 801.02(7)(a)3.

judicial review is necessary, the complete administrative process may provide a greater clarification of the issues.” *Id.*

Here, Williams does not allege that he filed an administrative grievance. He claims he filed an interview/information request, but he did not seek review through the inmate complaint review system. *See* Wis. Admin. Code ch. DOC 310. Because he did not file an administrative grievance, DOC did not have the opportunity to address Williams’s issue or explain its actions, and the circuit court had no record before it showing DOC’s actions or reasoning.

In addition, exhaustion of administrative remedies and possible certiorari remedy further saves a sentencing court from being bothered with unrelated matters long after closing the criminal case. Here, it was inefficient for Williams’s sentencing court to address an ancillary matter not essential to his criminal conviction or sentencing, over two years after sentencing.⁵

All of these reasons for certiorari review support the sentencing court’s decision to deny Williams’s motion to decide the lawfulness of DOC’s collection method.

⁵ Moreover, in a certiorari proceeding, unlike the case here, DOC would be an actual, represented party, subject to the circuit court’s jurisdiction. In a circuit court criminal matter, the state is represented by the local district attorney, *see* Wis. Stat. § 978.05(1), not the Department of Justice, which has limited statutory authority to appear for the state in criminal proceedings, *see* Wis. Stat. § 165.25(1) and (2). The Department of Justice defends DOC in civil matters, which include certiorari proceedings. *See* Wis. Stat. §§ 165.25(6), 801.02(7)(a)3.

II. Assuming, arguendo, the sentencing court had competency to proceed to the merits, this Court should affirm the circuit court's decision because DOC's collection of restitution from Williams's prison account was lawful.

The circuit court denied Williams's request to stop DOC from deducting money from his prisoner account. (R. 60; 62.) The court reasoned that "pursuant to 2015 Wisconsin Act 355, amending § 301.32(1) of the Wisconsin Statutes, the Department of Corrections now has the authority to use any prisoner funds to pay victim restitution ordered under § 973.20(11)(c) and any other appropriate costs in an amount determined reasonable by the Department of Corrections." (R. 62.) The circuit court reached the correct result, but for the wrong reason. If it reaches the issue, this Court should affirm on different grounds.

A. DOC has always had the authority to collect restitution during incarceration.

When a defendant in state prison is ordered to pay restitution, DOC has long had the general authority to collect that restitution from the defendant's prison account. Under Wis. Stat. § 301.32(1) (2013–14), all money received by a correctional institution for the benefit of a prisoner is placed in an account. Both before and after that section was amended, it allowed the money to be used for "the benefit of the prisoner," and that general authority would have included payment of restitution. Similarly, under Wis. Stat. § 303.01(8), DOC may determine how much of a prisoner's earning may be spent and may distribute his earnings for obligations which have been reduced to judgment. And under Wis. Stat. § 301.31, DOC may use a prisoner's wages to pay his obligations that have been reduced to judgment. These provisions necessarily include judgments of conviction ordering payment of restitution.

DOC's authority to collect restitution during incarceration is also supported by case law. In *State v. Baker*, 2001 WI App 100, ¶ 17, 243 Wis. 2d 77, 626 N.W.2d 862, this Court concluded that Wis. Stat. § 303.01(8)(b) authorizes restitution to be disbursed from prison wages because a judgment of conviction, including an order to pay restitution, is an obligation reduced to judgment. Similarly, in *State v. Greene*, 2008 WI App 100, ¶¶ 7, 12–13, 313 Wis. 2d 211, 756 N.W.2d 411, this Court concluded that DOC may distribute restitution payments from an inmate's prison wages and gifted funds.

The enactment of 2015 Wis. Act 355, effective July 1, 2016, makes no difference here. Act 355 effectively codified *Baker* and *Greene* by amending Wis. Stat. § 301.32(1) to expressly add the word "restitution." It also created Wis. Stat. § 973.20(11)(c) to provide that "[i]f a defendant who is in a state prison or who is sentenced to state prison is ordered to pay restitution, the court order shall require the defendant to authorize [DOC] to collect, from the defendant's wages and other moneys held in the defendant's prisoner's account, an amount or percentage [DOC] determines is reasonable for payment to victims." The latter provision recognizes DOC's pre-existing authority to determine what amount or percentage of an inmate's earnings or other funds is reasonable for payment of restitution.

Williams argues that DOC's collection of restitution from his prison account violates the ex post facto clause. This is not so. The ex post facto clause only applies to statutes which are retrospective, applying to events occurring before the statute's enactment, and which impose punishment. *State ex rel. Singh v. Kemper*, 2016 WI 67, ¶ 43, 371 Wis. 2d 127, 883 N.W.2d 86. DOC acted on its preexisting authority, meaning no provision of Act 355 was applied retroactively to Williams. Therefore, his ex post facto claim fails as a threshold matter. Further, Williams's

punishment was not increased, anyway. DOC's collection of restitution did not alter any provision of Williams's judgment of conviction; it merely changed when Williams was required to begin paying the ordered restitution. Changing the collection method did not increase Williams's sentence or the amount of restitution he was required to pay. There was no ex post facto violation.

Both before the enactment of Act 355 and after, DOC has had the authority to collect restitution from an inmate's prison account. The circuit court properly denied Williams's motion. This Court should affirm.

B. DOC's collection of restitution from Williams's prison account was not contrary to his judgment of conviction.

Williams argues that DOC's collection of restitution from his prison account is contrary to his judgment of conviction. This is not so.

Williams's judgment of conviction states that restitution is "[t]o be paid as a Condition of Extended Supervision" and that "[i]f Probation/Extended Supervision is revoked and/or a prison term ordered, outstanding financial obligations shall be collected pursuant to statutory provisions, including deductions from inmate prison monies." (R. 30:2.) Thus, the sentencing court explicitly noted that when a prison term is ordered—as it was here—restitution may be deducted from the inmate's prison account.

Williams suggests that that is not what this language means. He argues that restitution is a condition of extended supervision and, therefore, cannot be deducted until he is on supervision. Williams is correct that restitution, when deducted during supervision, is a condition of that supervision. *See Wis. Stat. § 973.20(1r)*. But that does not mean that a defendant cannot be required to pay restitution

until he is on supervision. As discussed above, it is well-established that DOC can collect restitution during incarceration. *See Greene*, 313 Wis. 2d 211, ¶¶ 7, 12–13. Any other interpretation would lead to an absurd result where crime victims would be required, in certain circumstances, to wait many years while a defendant is incarcerated before seeing even a penny of restitution.

A sentencing court's role with respect to restitution is limited; it orders a defendant to make full or partial restitution, and it sets the amount of restitution. Wis. Stat. § 973.20(1r), (12)(a). Once the court enters a judgment setting the amount of restitution, it becomes DOC's duty alone to collect the specified amount from an inmate in state prison. *See* Wis. Stat. §§ 301.31, 301.32(1), 303.01(8), 973.20(11).

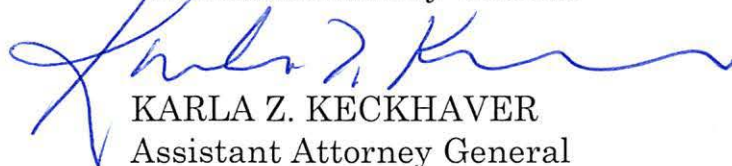
CONCLUSION

This Court should affirm the circuit court's order denying Williams's request that the court order DOC to stop deducting restitution from his prison account.

Dated this 18th day of August, 2017.

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 3,108 words.

Dated this 18th day of August, 2017.



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**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § 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. § 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 18th day of August, 2017.



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