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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2020AP1394

VICTOR ORTIZ, JR.,

Petitioner-Respondent,

v.

CATHY JESS,

Respondent-Appellant.

APPEAL FROM A FINAL ORDER OF
THE DANE COUNTY CIRCUIT COURT,
THE HONORABLE PETER C. ANDERSON, PRESIDING

**BRIEF AND APPENDIX OF RESPONDENT-
APPELLANT**

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INTRODUCTION

This appeal concerns a question that this Court has not yet directly addressed: whether the Wisconsin Department of Corrections has statutory authority to deduct funds at a reasonable percentage rate from an inmate's trust account for payment of his restitution obligation when a judgment of conviction directs the Department to deduct funds from his prison wages at a percentage rate that is lower? The answer to this question should be "yes."

Here, the Department began deducting funds from Victor Ortiz's trust account at a rate of 50 percent to pay his \$43,777 restitution obligation. He later obtained an amended judgment of conviction that "ordered restitution to be paid from 25% of prison wages." Ortiz filed an inmate complaint, alleging that the Department was in violation of this judgment. The Secretary of the Department dismissed his complaint. This Court should affirm the Secretary's decision.

This Court has long held that the Department has broad authority to deduct funds from an inmate's trust account to pay criminal sentencing court-ordered financial obligations, including restitution. And when the judgment of conviction does not explicitly state that the 25 per cent rate is a ceiling, it is instead a floor and the Department's deduction authority is not limited to that rate. The crux of the matter is that there is no conflict between the Department's deduction action and the amended judgment of conviction. The Department wholly complies: it deducts 25 percent of Ortiz's prison wages and also exercises its authority to deduct more. Further, there could be no conflict as a matter of law because a criminal sentencing court has no authority to limit the Department's broad statutory authority to deduct inmate funds at a reasonable rate.

Because the Secretary's decision is lawful, Ortiz's certiorari petition should be dismissed.

STATEMENT OF THE ISSUE PRESENTED FOR REVIEW

Does the Department of Corrections have statutory authority to deduct funds from Victor Ortiz's inmate trust account, comprised of prison wages and gifted monies, at a rate of 50 percent to pay his court-ordered restitution obligation, when his amended judgment of conviction directs that restitution is to be paid from 25 percent of his prison earnings?

The circuit court answered no.

This Court should answer yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

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

Publication is warranted. There are no published decisions directly addressing the Department of Corrections' authority to deduct funds from an inmate's trust account under the present circumstances.

STATEMENT OF THE CASE

I. Nature of the case.

This is an appeal of a certiorari action in which the circuit court reversed the Department Secretary's¹ denial of

¹ Cathy Jess was the Department Secretary at the time of Ortiz's complaint. Kevin A. Carr is now Secretary. Because this certiorari action names Jess in her official capacity, Carr should be substituted for her and the caption amended. *See* Wis. Stat. § 803.10(4)(a) ("When a public officer . . . is a party to an action in an official capacity and during its pendency dies, resigns, or

Ortiz's inmate complaint. The circuit court decided that Ortiz's amended judgment of conviction, which "ordered restitution to be paid from 25% of prison wages," prevents the Department from deducting 50 percent of his inmate trust account funds—which includes prison wages and gifted moneys—to pay court-ordered restitution.

II. Short statutory background about restitution.

When a criminal sentencing court orders a defendant to pay restitution, the restitution order must require him to deliver the amount of money (or property) due as restitution to the Department for transfer to the crime victim. *See* Wis. Stat. § 973.20(11)(a). A copy of the judgment of conviction and restitution order must be delivered to the warden or superintendent of any institution when the prisoner is delivered. *See* Wis. Stat. § 973.08(1). The Department must establish a separate account for each person in its custody or under its supervision who is ordered to pay restitution for the collection and disbursement of funds. *See* Wis. Stat. § 973.20(11)(b).

III. Statement of facts and procedural history.

In *State of Wisconsin v. Victor Ortiz Jr.*, No. 2009CF5507 (Wis. Cir. Ct. Milwaukee Cty.), Ortiz was convicted of 1st degree reckless injury and armed robbery with use of force. On September 2, 2010, he was sentenced to state prison and extended supervision. Ortiz was ordered to pay restitution of \$43,777, but all fees, surcharges, and assessments were waived. (R. 9:8.)

On June 21, 2016, the Department sent a memo to all inmates regarding a revision of the DOC policy governing

otherwise ceases to hold office, the action does not abate and the successor is automatically substituted as a party.”).

inmate trust system deductions—DAI Policy 309.45.02. The memo states that the rate of deduction for restitution, statutory surcharges, and court costs would increase from 25 percent to 50 percent. (R. 9:30–46.)

About six months later, on December 16, 2016, the sentencing court issued an amended judgment of conviction which stated in part: “Court ordered restitution to be paid from 25% of prison wages and as a condition of Extended Supervision.” (R. 9:12, A.-App. 108.)²

Almost two years after the Department memo, on April 16, 2018, Ortiz filed an inmate complaint challenging the Department’s collection of restitution at the rate of 50 percent from his inmate trust account. He alleged that his amended judgment of convicted limited collection at the rate of 25 percent of prison wages. (R. 9:24.) He also claimed that 2015 Wisconsin Act 355 (“Act 355”) could not be applied retroactively to authorize the Department to collect funds in “an amount or percentage [DOC] determines is reasonable for payment to victims.” (R. 9:24.) *See* Wis. Stat. § 973.20(11)(c), effective July 1, 2016 (codification of Act 355).

On April 17, 2018, an institution complaint examiner recommended that Ortiz’s inmate complaint be dismissed. (R. 9:27–28.) Although the examiner noted the enactment of Act 355, he determined that the Department had pre-existing authority under Wis. Stat. §§ 301.31 and 301.32 to collect

² The amended judgment of conviction also states: “If the defendant is in or is sentenced to state prison and is ordered to pay restitution, **IT IS ORDERED** that the defendant authorize the department to collect from the defendant’s wages and other monies held in the defendant’s inmate account, an amount or percentage which the department determines is reasonable for restitution to victims.” (R. 9:14, A.-App. 109.) As this brief explains below, to the extent this language means to apply Act 355, this portion of the order was not necessary for the Department to take its deduction action.

court-ordered restitution from prison wages and other inmate funds, and that DAI Policy 309.45.02 was supported by statutory authority both prior to and after the enactment of Act 355. (R. 9:27–28.) On April 24, 2018, the warden adopted the examiner’s recommendation. (R. 9:29–30.)

On April 30, 2018, Ortiz filed an appeal. (R. 9:31–33.) Two days later, a correctional complaint examiner recommended affirming the reviewing authority’s decision. (R. 9:38.) On May 21, 2018, the Department Secretary adopted the recommendation and dismissed Ortiz’s appeal. (R. 9:80, A.-App. 110.)

Ortiz filed a petition for writ of certiorari with the Milwaukee County Circuit Court on August 2, 2019. (R. 7.) The certified record was returned on September 6, 2020. (R. 9.) Briefing on the merits ensued. (R. 15, 16, 18, 19, 22.)

On July 23, 2020, the circuit court issued its written opinion and order. (R. 27, A.-App. 101–07.) The court held that while the Department had authority to set deduction percentage rates for restitution obligations, that authority was not exclusive. (R. 27:3, A.-App. 103.) It opined that the criminal sentencing court also had authority to set deduction rates in prisons, based on three grounds: its exclusive authority to impose a restitution order in the first instance; a provision of the restitution statute permitting the court to direct that its restitution order “be paid immediately, within a specified period or in specified installments,” Wis. Stat. § 973.20(10); and this Court’s decision in *State v. Baker*, 2001 WI App 100, ¶ 17, 243 Wis. 2d 77, 626 N.W.2d 862, holding that Wis. Stat. “§. 303.01(8)(b) gives the trial court the authority to order restitution be disbursed from prison wages.” (R. 27:3–5, A.-App. 103–05.)

The circuit court then stated that the Department’s deduction action had voided Ortiz’s amended judgment of conviction, and that it has no authority to modify or void valid

court orders (R. 27:5–6, A.-App. 105–06) The court therefore reversed the Department Secretary’s decision dismissing Ortiz’s inmate complaint and remanded the matter for further review consistent with the court decision. (R. 27:6–7, A.-App. 106–07.)

The Secretary then appealed. (R. 29.)

STANDARD OF REVIEW

On certiorari review, this Court reviews the decision of the agency, not the decision of the trial court. *State ex rel. Markovic v. Litscher*, 2018 WI App 44, ¶ 9, 383 Wis. 2d 576, 916 N.W.2d 202. “Certiorari is limited to review of the record brought up by the writ” *State ex rel. Richards v. Leik*, 175 Wis. 2d 446, 455, 499 N.W.2d 276 (Ct. App. 1993) (citation omitted).

On review, this Court may only consider whether: (1) the agency stayed within its jurisdiction, (2) it acted according to law, (3) its action was arbitrary, oppressive or unreasonable, and represented the agency’s will and not its judgment, and (4) the evidence was such that the agency might reasonably make the determination in question. *State ex rel. Greer v. Wiedenhoeft*, 2014 WI 19, ¶ 36, 353 Wis. 2d 307, 845 N.W.2d 373. Whether the agency kept within its jurisdiction and acted according to law are questions that this Court reviews de novo, without deference to the agency or the circuit court. *Id.*; *State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶ 10, 256 Wis. 2d 787, 650 N.W.2d 43.

ARGUMENT

Wisconsin statutes and case law demonstrate that the Department has broad authority to deduct funds from an inmate’s trust account, consisting of prison wages and gifted monies, at a rate of 50 percent to pay court-ordered restitution obligations. And any judgment of conviction that directs the Department to deduct at a lesser percentage, without express

language capping the percentage, does not limit the Department's authority. Here, Victor Ortiz's amended judgment of conviction directs the Department to deduct 25 percent of his prison wages to pay down his \$43,777 restitution obligation and does not set that percentage as a cap. Thus, the Department's deduction of all funds from his inmate trust account at a rate of 50 percent complies with the court order and is otherwise lawful. The Secretary's decision, therefore, should be affirmed and the circuit court's final order reversed.

I. The Department has authority to deduct funds from Ortiz's inmate trust account at a rate of 50 percent to pay his court-ordered restitution obligation.

A. The Department has statutory authority to deduct an inmate's funds at a reasonable rate to pay his restitution obligation.

The plain language of Wisconsin statutes demonstrates that the Department has broad authority to deduct funds from Ortiz's inmate trust account, consisting of prison wages and gifted monies, at a rate of 50 percent to pay his court-ordered restitution obligation.

"[S]tatutory interpretation 'begins with the language of the statute. If the meaning of the statute is plain, [courts] ordinarily stop the inquiry.'" *State ex rel. Kalal v. Circuit Court for Dane Cty.*, 2004 WI 58, ¶ 45, 271 Wis. 2d 633, 681 N.W.2d 110 (quoting *Seider v. O'Connell*, 236 Wis. 2d 211, 232, 612 N.W.2d 659 (2000)). "[S]tatutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes" *Id.* ¶ 46.

Chapter 301 of the Wisconsin statutes is devoted to the Department of Corrections. It provides clear and unambiguous authority for the agency to deduct funds from

prisoner trust accounts, and none of the statutes restrict the deductions to a certain amount or percentage.

General authority is found in Wis. Stat. § 301.32(1), which provides that “[a]ll money” received by a Department correctional institution “for the benefit of the prisoner” is placed into an account, commonly known as a trust account. That money may then be used “only under the direction and with the approval of the . . . warden” for payment of certain surcharges and “the benefit of the prisoner.” Wis. Stat. § 301.32(1).³

In addition, Wis. Stat. § 301.31 specifically concerns inmates’ wages. Under this statute, the Department “may provide . . . *for the payment, either in full or ratably, of [prisoners’] obligations acknowledged by them in writing or which have been reduced to judgment by the allowance of moderate wages . . .*” These prison wages remain under the control of the warden “and shall be used for the benefit of the prisoner.” *Id.*

Further, outside of chapter 301, under Wis. Stat. § 303.01(8)(b), the Department “may distribute earnings” of an inmate for “obligations either acknowledged by the inmate

³ 2015 Wisconsin Act 355 § 6 added to this statute “victim restitution under s. 973.20(11)(c)” as a permissible basis for the use of a prisoner’s funds. The Secretary, however, did not retroactively apply Act 355 to Ortiz. (R. 9:58, 62, 78, 80; 16:2 n.1.) Thus, although she did not consider this new statutory language in dismissing Ortiz’s inmate complaint, it makes no difference because the amendment merely codified what was already true as a matter of law. This Court, in *State v. Williams*, 2018 WI App 20, ¶ 2, 380 Wis. 2d 440, 442, 909 N.W.2d 177, confirmed that: it held that Act 355, in amending Wis. Stat. §§ 301.32(1) and 973.20(11)(c), “*codified the common law* by specifically authorizing [the Department] to take restitution from an inmate’s account at “an amount or a percentage the [Department] determines is reasonable for payment to victims.” *Id.* (emphasis added) (footnote omitted).

. . . in writing or which have been reduced to judgment that may be satisfied according to law.”

In sum, under the authority of Wisconsin statutes, the Department may use a prisoner’s wages and gifted monies to pay, either in full or ratably, his obligations which have been reduced to judgment, such as a judgment of conviction and restitution order.

B. Case law confirms the Department’s broad authority.

In addition to the plain language of the statutes, decisions from this Court confirm the Department’s broad authority. For instance, this Court concluded, in *State v. Baker*, that “a judgment of conviction including an order to pay restitution is an ‘other obligation reduced to judgment that may be satisfied according to law.’” 2001 WI App 100, ¶ 17, 243 Wis. 2d 77, 626 N.W.2d 862 (quoting Wis. Stat. § 303.01(8)(b)). Therefore, despite Wis. Stat. § 303.01(8)(b) not mentioning restitution, this statute “gives the trial court the authority to order restitution be disbursed from prison wages.” *Id.*

Later, in *State v. Greene*, 2008 WI App 100, ¶¶ 1, 7–13, 313 Wis. 2d 211, 756 N.W.2d 411, this Court addressed whether, under Wis. Stat. § 973.20, a circuit court could direct the Department to use inmate trust account funds, which includes wages and gifted monies, to pay restitution. This Court noted that under the statute, “the circuit court is required to order restitution for a crime considered at sentencing ‘unless the court finds substantial reason not to do so and states the reason on the record,’” and may consider the financial resources of the defendant. *Id.* ¶ 11 (quoting Wis. Stat. § 973.20(1r)). It also construed the restitution provisions “broadly and liberally in order to allow victims to recover their losses as a result of a defendant’s criminal conduct.” *Id.* ¶ 12 (quoting *State v. Anderson*, 215 Wis. 2d 673, 682,

573 NW.2d 872 (Ct. App. 1997)). Thus, this Court held that a prisoner's "gifted funds" are not off limits to pay down a restitution obligation. *Id.*

More recently, this Court expounded that "[i]t has long been the law that restitution may be disbursed from an inmate's prison account." *State v. Williams*, 2018 WI App 20, ¶ 2, 380 Wis. 2d 440, 909 N.W.2d 177. And it explained that 2015 Wis. Act 355, amending Wis. Stat. §§ 301.32(1) and 973.20(11)(c), "*codified the common law by specifically authorizing the department to take restitution from an inmate's account at 'an amount or a percentage the department determines is reasonable for payment to victims.'*" *Id.* (emphasis added) (footnote omitted). Thus, even before the enactment of Act 355—which, again, the Secretary did not apply to Ortiz—the Department had statutory and common law authority to deduct funds at a reasonable percentage rate from inmate trust accounts to pay court-ordered restitution obligations.

And, finally, this Court's later decision in *State ex rel. Markovic v. Litscher*, 2018 WI App 44, 383 Wis. 2d 576, 916 N.W.2d 202, *review denied sub nom. Markovic v. Litscher*, 2019 WI 8, ¶¶ 37–38, 385 Wis. 2d 207, 923 N.W.2d 162, and *review denied sub nom. Markovic v. Litscher*, 2019 WI 8, ¶¶ 37–38, 385 Wis. 2d 208, 923 N.W.2d 163, resolves any doubt about the breadth of the Department's authority to deduct funds from an inmate trust account for restitution payment.

In *Markovic*, the Department began deducting funds from Markovic's inmate trust account to satisfy a restitution obligation from a criminal sentence he had already completed. *Id.* ¶ 6. (Markovic was still incarcerated because of a separate conviction. *Id.* ¶ 5.) This Court noted that Wis. Stat. § 301.32(1) provides that money "delivered to an employee of any state correctional institution for the benefit of a prisoner . . . may be used . . . under the direction and with the approval

of the superintendent or warden and for . . . the benefit of the prisoner.” *Id.* ¶ 32. This Court then opined that “defendants ‘benefit’ from being required to contribute toward making their victims whole and that the reasoning underlying this holding applies even in the absence of a legal obligation to pay restitution.” *Id.* To be sure, “case law well supports the view that it is in the rehabilitative interest of a defendant to compensate his or her victims.” *Id.* ¶ 37. This Court then “conclude[d] that [the Department] may take money from Markovic’s account that has been “delivered to an employee of any state correctional institution for . . . a prisoner” to satisfy the restitution Markovic previously failed to pay, because it benefits him to pay unpaid restitution.” *Id.* ¶ 38. In sum, the Department may deduct funds from an inmate’s trust account to pay restitution even when a sentencing court’s order directing the Department to do so has expired.

Notably, none of these aforementioned statutes imposes any limit on the amount or percentage rate that the Department can apply to collect funds from an inmate’s trust account to pay court-ordered financial obligations, including restitution. Neither does the case law state any statutory percentage limit on the Department’s authority. Thus, the Department has broad authority to deduct funds at any reasonable rate from an inmate’s funds, which includes wages and gifted monies, to pay the inmate’s restitution obligation in furtherance of making the crime victim whole.

C. The Department’s deduction of Ortiz’s funds from his trust account at a 50 percent rate is in accordance with the law.

Here, Ortiz is a prisoner confined to a Department institution. The criminal sentencing court ordered a restitution obligation of \$43,777.00 in his amended judgment of conviction. (R. 9:12, A.-App. 108.) Ortiz has an inmate trust account comprised of prison wages and gifted monies.

(R. 3–5.) Therefore, given the broad authority of the Department to set a reasonable percentage rate to deduct funds to pay a restitution obligation, the Department has authority to deduct Ortiz’s funds from his inmate trust account—comprised of wages and gifted monies—at a rate of 50 percent. The Secretary’s decision that the Department has statutory authority to set the deduction rate is thus in accordance with the law.

II. The Department’s deduction from Ortiz’s inmate trust account at a 50 percent rate does not conflict with Ortiz’s amended judgment of conviction.

The circuit court held that, while the Department has broad statutory authority to set deduction percentage rates for inmates who must pay restitution obligations, that power was not exclusive. It decided that the Department’s 50 percent deduction rate conflicts with the sentencing court’s amended judgment of conviction. (R. 27:1–2, 5–6, A.-App. 101–02, 105–06.) However, the circuit court’s conclusions do not hold up to scrutiny. First, there is no conflict and, second, a sentencing court has no authority to limit the Department’s determinations of percentage deduction rate and source of funds for payment of a prisoner’s restitution obligation. Because no conflict exists, and the Department’s deduction is authorized by law, the Department properly acted.

A. No conflict exists under the language of Ortiz’s amended judgment of conviction.

There is no conflict between the Department’s deduction action and Ortiz’s amended judgment of conviction.

The amended judgment conviction states: “Court ordered restitution [is] to be paid from 25% of prison wages and as a condition of Extended Supervision.” (R. 9:12,

A.-App. 108.) On its face, this language does not restrict the Department, which controls Ortiz's prison wages, from deducting more than 25 percent of his wages. Indeed, the sentencing court did *not* use the phrases "only from 25% of prison wages" or "from up to 25% of prison wages" when describing the percentage rate. Rather, the language merely sets the *minimum* rate at which the Department *must* deduct Ortiz's prison wages to pay his restitution obligation. Put simply, for every dollar Ortiz earns in prison, the Department must take a quarter to pay restitution to his victim. But the amended judgment of conviction places no cap on the Department's authority to deduct *more*.

Further, that result is supported by the case law. This Court's recent decision in *State ex rel. Markovic v. Litscher* resolves any doubt.

As described above, in *Markovic*, the Department deducted funds from Markovic's inmate trust account to satisfy a restitution obligation from a criminal sentence he had already completed. 383 Wis. 2d 576, ¶ 6. This Court concluded that the Department, under Wis. Stat. § 301.32(1), could take money from Markovic's trust account to satisfy the restitution obligation he had failed to pay, because it benefited him to pay unpaid restitution. *Id.* ¶ 38. Thus, since the Department's collecting of *any* funds from an inmate's trust account to pay restitution is permitted, even in the face of an expired restitution order, the Department's deduction of *more than* a court-ordered percentage must also be within the Department's authority. Here, then, the Department complies with the amended judgment of conviction by collecting 25 percent from Ortiz's prison wages. The additional 25 percent the Department collects from his prison wages, and the additional 50 percent it collects from his gifted money, are authorized by statutes because they are for Ortiz's benefit—making his crime victim whole.

Hence, contrary to the circuit court's and Ortiz's view, the Department is not evading Ortiz's amended judgment of conviction; it is merely exercising its statutory authority to deduct Ortiz's funds *on top of* its compliance with it.

B. No conflict exists because the law does not allow a sentencing court to limit the Department's authority to set reasonable deduction percentage rates.

Although this Court's analysis may end with the conclusion that no conflict exists between the Department's deduction action and the amended judgment of conviction here, there also cannot be a conflict because the law does not allow a sentencing court to limit the Department's authority to set reasonable deduction percentage rates of an inmate's funds.

In its decision, the circuit court correctly acknowledged that the Department has substantial authority over inmate trust accounts, including the authority to set the percentage rates at which it deducts funds for court-ordered obligations, like restitution. (R. 27:3, A.-App. 103.) But then, respectfully, its analysis got off track. It noted the commonplace proposition that sentencing courts retain exclusive authority to impose restitution. (R. 27:4, A.-App. 104 (citing *Bartus v. Wisconsin Dep't of Health and Social Services*, 176 Wis. 2d 1063, 1077, 501 N.W.2d 419 (1993)). It also cited a subsection of the restitution statute that the sentencing courts may require that restitution "be paid immediately, within a specified period or in specified installments," Wis. Stat. § 973.20(10). (R. 27:3–4, A.-App. 103–04.) And it referenced *State v. Baker's* holding that "§ 303.01(8)(b) gives the trial court the authority to order restitution be disbursed from prison wages." (R. 27:4, A.-App. 104 (citing 243 Wis. 2d 77, ¶ 17).) It used these statutes and decisions to conclude that the Department had no *exclusive* authority to set deduction rates on collection of an inmate's trust account for restitution

obligations, but rather the sentencing court had supreme authority. (R. 27:4–5, A.-App. 104–05.) And because the circuit court viewed the language of the amended judgment of conviction as a cap on the percentage rate of deduction to be used by the Department, the court implicitly found a conflict between the Department’s 50 percent deduction and Ortiz’s amended judgment of conviction. (R. 27:6, A.-App. 106.) The court erred.

The Department agrees that a criminal sentencing court has exclusive authority to impose restitution generally, but it has no statutory authority to set the percentage rate at which the Department must deduct funds from an inmate’s trust account to collect payment of his restitution obligation.

A sentencing court’s authority to order that a criminal defendant pay restitution is of no moment. An order that restitution be paid and the means by which that obligation is paid are separate concepts. A sentencing court’s authority to order that restitution be paid “in specified installments,” Wis. Stat. § 973.20(10), does not support the circuit court’s position. Unlike the sentencing court’s *general* authority to order restitution payments in specified installments, the Department has more *specific* statutory authority to provide “for the payment, either in full or ratably, of [a prisoner’s] obligations . . . which have been reduced to judgment by the allowance of moderate wages.” Wis. Stat. § 301.31. So, while both Wis. Stat. §§ 301.31 and 973.20(10) can apply to criminal defendants who have been ordered to pay restitution, only Wis. Stat. § 301.31 specifically applies to criminal defendant (1) prisoners and (2) percentage rates. Put another way, Wis. Stat. § 301.31 is more specific than Wis. Stat. § 973.20(10) regarding restitution payments as applied to Ortiz, a prisoner. See *Clean Wisconsin, Inc. v. Pub. Serv. Comm’n of Wisconsin*, 2005 WI 93, ¶ 175, 282 Wis. 2d 250, 700 N.W.2d 768 (“Where two statutes apply to the same subject, the more specific controls . . .”).

Thus, because a sentencing court has no statutory authority to limit the Department's ability to use deduction percentage rates for collecting restitution from a trust account in the first place, the circuit court's holding that a conflict exists between Ortiz's amended judgment of conviction and the Department's deduction action is erroneous.

Statutes permit the Department to deduct Ortiz's inmate trust account funds at a rate of 50 percent and simultaneously comply with his amended judgment of conviction requiring the Department to deduct 25 percent of his prison wages. As a result, the Secretary acted according to law in dismissing Ortiz's inmate complaint. This Court should affirm the Secretary's decision.

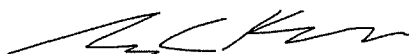
CONCLUSION

Respondent-Appellant asks this Court to reverse the final order of the circuit court and thereby affirm the Department Secretary's decision dismissing Petitioner-Respondent Ortiz's inmate complaint.

Dated this 25th day of November 2020.

Respectfully submitted,

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State Bar #1025452

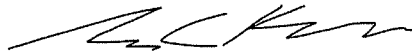
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CERTIFICATION

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 4622 words.

Dated this 27th day of November 2020.



STEVEN C. KILPATRICK
Assistant Attorney General

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

I hereby certify that:

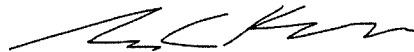
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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 27th day of November 2020.



STEVEN C. KILPATRICK
Assistant Attorney General