



STATE OF WISCONSIN
DEPARTMENT OF JUSTICE

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COURT OF APPEALS

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May 10, 2022

Sheila T. Reiff
Clerk of Court of Appeals
110 East Main Street, Suite 215
Post Office Box 1688
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Re: *State of Wisconsin ex rel. DeLorean Bryson v. Cathy Jess*,
No. 2020AP1949

Dear Ms. Reiff:

This Court directed the parties in the above-captioned appeal to supply supplemental letter briefs addressing the effects, if any, of its recent opinion, *Ortiz v. Carr*, No. 2020AP1394, which has been ordered published. Specifically, the Court asked the parties to state whether *Ortiz* supports or undermines their arguments made in briefing. I write on behalf of Respondent.

In determining whether the Department of Corrections' (the "Department") deduction of Mr. Ortiz's funds for the payment of his restitution obligation were proper, this Court first addressed the sentencing court's language in his judgment of conviction ("JOC"). Mr. Ortiz's JOC stated: "Court ordered restitution to be paid from 25% of prison wages." *State of Wisconsin ex rel. Ortiz v. Carr*, No. 2020AP1394, ¶¶ 1, 7. This Court concluded that "the sentencing court ordered the Department to deduct *exactly* 25% from Ortiz's prison wages to pay his restitution obligations, not more or less." *Ortiz*, ¶ 25. Here, Bryson's JOC reads: "Pay DNA surcharge, all other applicable costs and any other surcharges and assessments. To be collected by DOC from 25% of prison funds and to convert to civil judgment upon release from Extended Supervision." (R. 13:20.) This Court's conclusion about the language of the JOC in *Ortiz* does not support the Department's argument that it may deduct Bryson's inmate funds at a rate of 50% to pay his surcharges, costs, and assessments.

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Beyond looking at the language of the JOC, the *Ortiz* court considered whether the Department had exclusive authority to set a percentage deduction rate different than the one set by the sentencing court. The *Ortiz* court looked at the statutes cited by Respondent. The court held that Wis. Stat. § 301.01 “does not state that the Department has the authority to determine [a] rate or percentage, much less that it has the *exclusive* authority to do so.” *Ortiz*, ¶ 44. It further held that Wis. Stat. § 301.32(1) “does not grant exclusive authority to the Department to set the percentage at which money is deducted from a prisoner’s wages.” *Ortiz*, ¶ 41. Finally, *Ortiz* held that Wis. Stat. § 303.01(8)(b) only allows the Department to deduct funds from an inmate’s wages to pay a court-ordered obligation when there is an order from a sentencing court setting the rate. *Ortiz*, ¶ 46. Here, just as in *Ortiz*, Respondent has argued that Wis. Stat. §§ 301.31, 301.32(1), and 303.01(8)(b) provide the Department with the exclusive authority to deduct Bryson’s funds at a rate of 50% for payment of the court fees.¹ (Respondent’s Br. 15–17.) *Ortiz*, however, appears to foreclose these arguments.

Nonetheless, the *Ortiz* decision does not completely foreclose the Department’s authority to deduct an inmate’s funds—whether wages, gifted monies, or both—at a 50% deduction rate for the payment of surcharges. The *Ortiz* court analyzed the law governing the sentencing court’s authority to order restitution payments, which is set forth in Wis. Stat. § 973.20. That statute, however, is not relevant here because Bryson’s case is not about restitution. The relevant statutes governing surcharges are Wis. Stat. §§ 165.755(6) (drug labs), 973.045(4) (crime victim and witness),² and 973.046(4) (DNA). These statutes give the Department the power to “assess and collect” from the inmate’s wages or other moneys the amount owed to pay surcharges. Respondent has argued that this language is different than the language in the restitution statute. (Respondent’s Br. 13–15.) Therefore, *Ortiz* does not undermine Respondent’s arguments made in its brief that these surcharge statutes provide the Department with the authority to “set the surcharge deduction rate and to receive payment at that rate,” as the circuit court held. (R. 35:5–6.)

¹ Although “court fees” are not expressly referenced in Bryson’s JOC, the circuit court took judicial notice of Bryson’s assessment report to conclude that the reference to “costs” or “assessments” refers to court fees under Wis. Stat. § 814.60(1). (R. 35:2.) Wisconsin Stat. § 814.60(1) does not contain language about authority of the Department to set a percentage deduction rate for collection.

² The circuit court held that the Department is limited to a 25% collection rate as to the crime victim and witness assistance surcharge per administrative rule. (R. 35:7.) Respondent did not appeal this ruling.

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The result, then, with regard to surcharges, is that Bryson's JOC improperly intrudes into the Department's exclusive statutory authority to deduct Bryson's funds. However, to resolve the conflict, *Ortiz* appears to hold that the sentencing court's JOC controls unless and until it is amended. *See Ortiz*, ¶ 56 ("the Department does not have the authority to set a percentage that conflicts with an order from the sentencing court"). Thus, Respondent would be forced to return to the sentencing court to challenge the JOC's 25% deduction rate as applied to surcharges.

In sum, *Ortiz* likely does not support Respondent's argument that the Department has exclusive authority to set the deduction rate at 50% for the collection of court-ordered costs and assessments, *Ortiz* does not undermine Respondent's argument that the Department has exclusive authority to set the deduction rate at 50% for the collection of court-ordered surcharges, and *Ortiz* likely supports a decision that a conflict exists between the JOC's 25% deduction rate for surcharges and the Department's 50% rate, which would require the Department to direct a challenge about the 25% rate to the sentencing court.

Sincerely,

Electronically signed by:

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cc: DeLorean Bryson, #487033 (Petitioner-Appellant)
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