

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2016AP0584-CR

IN RE THE FINDING OF CONTEMPT IN

STATE V. CLE A. GRAY, JR.:

CLE A. GRAY, JR.,

Appellant,

v.

ROBERT HUMPHREYS,

WARDEN, KETTLE MORaine

CORRECTIONAL INSTITUTION,

Respondent.

RECEIVED

MAR 10 2017

CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM AN ORDER DENYING VERIFIED

MOTION FOR CONTEMPT OF COURT ORDERS,

ENTERED IN THE DANE COUNTY CIRCUIT COURT,

THE HONORABLE STEPHEN EHLKE PRESIDING

REPLY BRIEF OF APPELLANT

Cle A. Gray, Jr., Defendant-Appellant, pro se

Thompson Correctional Center

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Deerfield, WI 53531-9562

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STATEMENT OF ISSUES

My sincerest apologies to this illustrious Court. While I completed a paralegal course in 1997, I am not an attorney. My expertise lies in building construction, more specifically as a carpenter. In finish carpentry when someone falls short of their measurements they employ a "board stretcher" a "smoke and mirrors" practice. This process utilizes putties, pastes and fillers to give the illusion of a perfect joint. To a nondiscerning eye it may seem that nothing is amiss, but upon closer inspection the truth is revealed. I believe this to be the case here.

1. Did the circuit court of my conviction issue a single order covering the payment of court ordered financial obligations, including restitution?

The circuit court, and now Warden Humphreys, mistakenly conclude that the Amended Judgment of Conviction (JOC 2) and the Order for Restitution were separate of each other.

This Court should answer: Yes.

2. Did the circuit court direct Warden Humphreys to collect court financial obligations at 25% of inmate wages and work release funds?

The circuit court did not address this issue.

This Court should answer: Yes.

3. Did the circuit court cap deductions for court financial obligations at 25% of prison wages and work release funds?

The circuit court erroneously concluded that the

Amended Judgment of Conviction (JOC 2) did not cap deductions at 25% of prison wages and work release funds.

This Court should answer: Yes.

4. Does this Court have jurisdiction over this appeal?

Warden Humphreys is under the impression that only a "defendant aggrieved" has the right to appeal. (Resp.Br.14).

This Court should answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Both parties are in agreement that oral argument is unnecessary because all arguments and relevant law are set out in the parties's briefs.

After careful consideration of the respondent's brief I believe that publication is not only warranted but also needed pursuant to §809.23 (1)(a)1 and 5.

ARGUMENT

I. THE CIRCUIT COURT SET THE AMOUNT OF COURT FINANCIAL OBLIGATIONS IN CONJUNCTION WITH THE ORDER FOR RESTITUTION AND ISSUED A SINGLE ORDER.

The circuit court, and now Warden Humphreys mistakenly conclude that JOC 2 and the Order for Restitution were separate of each other.

Section 973.20 (12)(a), Wisconsin Statutes, provides in pertinent part: "If the court orders restitution in addition to the payment of fines, costs, fees, and surcharges under ss. 973.05 and 973.06 and ch.814, it shall set the amount of fines, costs, fees, and surcharges in conjunction with the amount of restitution and issue a single order, signed by the judge, covering all of the payments..."

Clearly the legislative intent was that there be not two separate orders but one single order to cover all of the payment for court financial obligations and restitution.

To corroborate this argument the following exchange took place at the March 2, 2015 sentence modification hearing:

THE DEFENDANT: ...Your Honor, I have one question.

Now, there's gonna be an Amended Judgment of Conviction coming out on this, right?

THE COURT: Yes.

THE DEFENDANT: Is that gonna also include that the restitution is part of the court obligations on the JOC? That's all I'm -- just 'cause I know on the original JOC, the restitution was to be -- it shows on it 'cause the restitution was to -- it shows on it 'cause the restitution wasn't there yet, and it was forthcoming. So I just wanted to make sure that on this Amended Judgment of Conviction that it's gonna

show that the restitution is part of the court-ordered obligation.

THE COURT: Yeah. It should. Yep.

THE DEFENDANT: Okay.

APP. 708.

If the circuit court was not going to streamline the court financial obligations with the restitution order then why didn't it just say so in open court? Clearly, by the transcript and §973.20(12)(a) the circuit court issued a "single order [JOC 2], signed by the judge, covering all of the payments". The failure to uphold its own order and the law is an erroneous exercise of discretion that runs contrary to the Code of Judicial Conduct, SCR 60.04(1)(hm).

This Court reviews the trial court's use of its contempt power for an erroneous exercise of discretion. State ex rel. N.A v. G.S., 156 Wis.2d 338, 341, 456 N.W.2d 867 (CA 1990).

II. THE CIRCUIT COURT ORDERED THE DOC TO COLLECT ALL COURT FINANCIAL OBLIGATIONS AT THE RATE OF 25% OF PRISON WAGES AND WORK RELEASE FUNDS.

In State v. Baker, 2001 WI APP 100, 243 Wis.2d 77, 626 N.W.2d 862, this Court recognized that Wis. Stat. §973.20 contains several provisions that bestow authority on the trial court to fashion an order to achieve the goals of the restitution statute. Under §973.20(10), the trial court

may require a defendant to pay restitution "immediately, within a specified period or in specified installments"... Section 973.20(11)(a) states that "the restitution order shall require the defendant to deliver the amount of money or property due as restitution to the [DOC] for transfer to the victim or other person to be compensated..."Id., 2001 WI APP 100, ¶15.

In addition, Wis.Stat. §973.20 (11)(b) requires the DOC to "establish a separate account for each person in its custody or under its supervision ordered to make restitution for the collection and disbursement of funds." Based on these provisions in §973.20, the State contends that, by ordering disbursement from prison wages, the trial court was merely implementing the statutory scheme. Id., ¶16.

The question looms, if the State recognized that the trial court had the authority to implement the statutory scheme of §973.20 in Baker does it now claim ignorance of that very statute? To aid in understanding the State's abrupt about-face perhaps further reading of Baker is necessary. Baker went on to discuss section 303.01(8), which it stated "enumerates specific purposes for which the DOC must distribute earnings of an inmate. That section reads in part: (b)The [DOC] shall distribute earnings of an inmate or resident, other than an inmate or resident employed under sub.(2)(em), for the crime victim and witness assistance surcharge under s.973.045(4), for the delinquency

victim and witness assistance surcharge under s.938.34(8d) (c), for the deoxyribonucleic acid analysis surcharge under s.973.046(4) and for the compliance with s.303.06(2) and may distribute earnings for the support of the inmate's or resident's dependents and for other obligations either acknowledged by the inmate or resident in writing or which have been reduced to judgment that may be satisfied according to law.

A provision specifically allowing for distributions for restitution is absent. However, we conclude 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'. Therefore, §303.01(8)(b) gives the trial court the authority to order restitution be disbursed from prison wages.[footnote omitted]".Id. ¶17.

Apart from that, Warden Humphreys, is by statute an "officer in charge of the institution" wherein, until my final discharge, controls the funds arising from wages. §301.31, Wis.Stat. Therefore he is the personage incarnate of the DOC directed by JOC 2 to collect court financial obligations at 25% of inmate wages and work release funds.

*

B. DEDUCTIONS WERE TO BE CAPPED AT 25% OF INMATE WAGES AND WORK RELEASE FUNDS.

Having established that the trial court has the authority to order restitution be disbursed from prison wages then it must follow that it's authority can also cap deductions at 25%.

Wis.Stat. §973.05(4)(b) provides taht the circuit court "issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages,...for payment of unpaid [court financial obligations]".

The circuit court for Dane County went even further with its own Local Rule 223, "Applying Inmate Wages", Unless otherwise ordered, the Judgment of Conviction shall provide that when a defendant is sentenced to prison all outstanding financial obligations shall be paid at the rate of 25% of the prison wages and work release funds..."

Combined with the circuit court's directive that "court financial obligations shall be paid at the rate of 25% of the prison wages and work release funds." (APP.601) clearly signal that deductions were to be:

1. From prison wages and work release funds only; and
2. Capped at 25%.

The circuit court's ruling to the contrary is an erroneous exercise of its discretion that is reviewable by this Court. State ex rel. N.A. v. G.S., 156 Wis.2d 338, 341, 456 N.W.2d 867 (CA 1990).

III. THE RIGHT TO APPEAL AN ADVERSE DECISION OF THE
CIRCUIT COURT IS INHERENT.

Every person is entitled to a certain remedy in the laws for all injuries, or wrongs which he may receive in his person, property, or character; he ought to obtain justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws. Art.I,§9, Wisconsin Constitution.

Warden Humphreys posits that I do not secure appellate jurisdiction through Wis.Stat.§785.03(3) because I am not a "defendant aggrieved...in a proceeding prosecuted by the state." (Resp.Br.16).

This is a failing argument. Even if appellate jurisdiction is not secured through §785.03(3), Wis.Stat., Wisconsin's Constitution, through Article I, §9.

When an adequate remedy or forum does not exist to resolve disputes or provide due process, the courts can fashion an adequate remedy. Collins v. Eli Lilly Co., 116 Wis.2d 166, 342 N.W.2d 37 (1984).

CONCLUSION

For the foregoing reasons Appellant Cle A. Gray Jr., respectfully requests that this court reverse the circuit court's order denying his motion for contempt against Warden Humphreys.

Dated this 7th day of March, 2017

Respectfully submitted,

Cle A. Gray Jr., pro se

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 monospaced font. The length of this brief is 8 pages.

Dated this 7th day of March, 2017.

Cle A. Gray Jr., pro se