

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

APPEAL CASE NO. 2017AP000320 CR

CIRCUIT COURT CASE NO. 2013CF1209

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARQUIS T. WILLIAMS,

DEFENDANT-APPELLANT,

RECEIVED

OCT 05 2017

CLERK OF COURT OF APPEALS
OF WISCONSIN

ON APPEAL FROM AN ORDER DENYING DEFENDANT-APPELLANT'S REQUEST TO INTERVENE/IMPOSE ORDER UPON THE DEPARTMENT OF CORRECTIONS TO FOLLOW DEFENDANT-APPELLANT'S JUDGMENT OF CONVICTION; STOP GARNISHING DEFENDANT-APPELLANT'S MONIES ENTERED IN THE CIRCIUT COURT FOR WAUKESHA COUNTY, THE HONORABLE MICHAEL J. APRAHAMAIN, PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

MARQUIS T. WILLIAMS #620775

RACINE CORR. INST., P.O. BOX 900 UNIT: WAL-E

STURTEVANT, WI 53177 (Inmate) / Pro Se

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STATEMENT OF THE ISSUES

1. It had been expressed that the circuit court lacked competency, and did not hold grounds to decide the lawfulness of DOC's collection efforts in regard of the defendant-appellant's restitution.
2. It had been expressed that the defendant-appellant hasn't pursued the proper remedy for challenging DOC's collection of restitution from the defendant-appellant's prison account.
3. It had been expressed that the defendant-appellant hasn't shown that the collection of restitution from the defendant-appellant's prison account is unlawful.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The defendant-appellant believes that the briefs filed by the parties to this appeal will adequately develop the issues involved. Therefore, neither Oral Argument nor Publication is requested.

STATEMENT OF THE CASE

The defendant-appellant is producing a reply brief within the Court Of Appeals, from an Order produced by the Circuit Court of Waukesha County; dated January 12, 2017. The January 12, 2017 Order derived from an issue between the defendant-appellant and the DOC (Dept. of Corr.). Due to the enactment of 2015 Wisconsin Act 355, the DOC has been wrongfully garnishing monies from the defendant-appellant's prison account for restitution purposes. The defendant-appellant finding issue with the garnishing's, initially wrote to the institution in which the defendant-appellant is housed (Racine Corr. Inst.) explaining the garnishment of monies for restitution purposes is not in accord with the defendant-appellant's JOC (Judgment of Conviction). DOC finding justification of the garnishments issued reason to the defendant-appellant and proceeded with the garnishments.

In response to the DOC's actions, the defendant-appellant contacted the circuit court for an intervention and enforcement of the JOC to be properly executed. The circuit court judge denied the intervention, due to the reasoning provided by the DOC; via institutional letter provided to the defendant-appellant by RCI. In respect of the circuit courts movement, the defendant-appellant moved for reconsideration, and provided the circuit court with a more in-

depth reasoning, in attempt to receive an intervention on the defendant-appellant's behalf. The defendant-appellant was denied a final time, and an appeal for an intervention and enforcement of the defendant-appellant's JOC to be properly executed is now taken place.

June of 2017 the defendant-appellant provided the Court of Appeals with a brief explaining why the Order imposed against stopping the garnishments is wrong and unlawful. The argument of the brief reflects on three merits; the legislative did not give indication that it intended to exercise its discretion to impose all obligations to be taken out while offenders are in prison, the enactment of 2015 Wis. Act 355 does not apply to the defendant-appellant, and that the circuit courts Order was not consistent with law, nor justified by the laws applicable in this matter.

August 18, 2017 the state provided a response brief, to the appellant's brief. The plaintiff-respondent's brief held three issues. The sentencing court lack competency to determine whether DOC's collection efforts are proper. Two, the defendant-appellant did not seek judicial review through certiorari, nor exhaust administrative remedy for sat procedure. Three, the DOC has always had the authority to collect restitution from an offender during an offender's incarceration, prior through state statutes such as 301.31 or/and 301.32(1); 2013-14, and now more explicit through 2015 Wis. Act 355.

The state, in response to arguing its case, seems to mislead the issue surrounding this situation, in hopes of justifying the DOC's actions. The state's brief seems to imply a procedural issue, oppose to a substantive. The state's brief seems to imply a civil issue, oppose to a criminal matter- in which the defendant-appellant is seeking to have its JOC properly executed. The state's brief heavily speaks on issues that are not being disputed, such as if the DOC, by law, is able to collect restitution from inmates—opposed to if the DOC is authorized to collect restitution from the defendant-appellant's prison account at this time. This entire situation is surrounded by the fact that the DOC is not operating in accord to law, they are acting beyond their scope of authority, and that the Waukesha County judge did not exercise his discretion and oversee the execution of the defendant-appellant's JOC.

The "procedural issue" that's been brought to the courts attention, which is being used as grounds to declare that the January 12, 2017 Order be affirmed, is that the defendant-appellant did not file for a writ of certiorari and skipped the exhaustion requirement for it. Grasping the courts attention, the issue at hand is rather more a substantive issue of law and of judicial agencies not following the law. In prospective, the procedural issue should be considered bar, due to this situation not being related to any civil elements and the administrative rule of law not being applicable.

The court has been heavily implying a civil matter, although the defendant-appellant has not presented concern of any civil components. The brief of plaintiff-respondent have used various case law and Wis. Admin. Codes, that in perspective indicates that this appeal is about civil matters. *State v. Minniecheske*, was used to show that a circuit court lacked competency to dictate the situation. However, although true in that case, that case was directly related to “reimbursement” of money, law suits, and rendering money judgments against the state. Further, by putting attention toward Wis. Admin. Code Ch. DOC 310, it is implicit that the situation at hand has derived from and is about civil matters—opposed to a matter related to the criminal prosecution or an ancillary matter essential to carrying out judicial functions. Neither of the stated litigation mechanisms in association with civil issues is relevant in this appeal.

The brief of plaintiff-respondent speaks of a lot of irrelevant elements that aren’t being disputed, the main element being if DOC has authority to collect for restitution. As presented in the brief of plaintiff-respondent, there is many laws and state statutes that permits the collection of restitution by the DOC. The focus in this brief is that the DOC is not authorized to collect restitution or any other obligations from the defendant-appellant’s prison account, and that the defendant-appellant has specific stipulations within the defendant-appellant’s JOC in which the courts is empowered and obligated to pursue execution for. It has been well established in the brief of plaintiff-respondent, “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.” (Cite; page 4/ Summary of the Argument)

ARGUMENT

- 1. The Circuit Court is and was, empowered to oversee the defendant-appellant’s issue with the DOC’s collection of the defendant-appellant’s restitution.**

The defendant-appellant was sentenced to a bifurcated sentence.

- A. STANDARD OF REVIEW:** *Bifurcated Sentences; use of guidelines; considering of Aggravating and Mitigating factors 973.017(1) definition—“sentencing decision”:*

A decision as to whether to impose a bifurcated sentence under s.973.01 or place a person on probation and a decision as to the length of a bifurcated sentence, including the length of each component of the bifurcated sentence, the amount of a fine, and the length of a term of probation.

B. **STANDARD OF REVIEW:** *Judgment 972.13(6)* Restitution and components are a part of a JOC. (Judgment of Conviction)

C. **STANDARD OF REVIEW:** *Judgment 972.13(3)*

A JOC shall set forth the plea, the verdict or finding, the adjudication and sentencing, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155. If the defendant is acquitted, judgment shall be accordingly.

D. **STANDARD OF REVIEW:** *Judgment 972.13(5)*

A copy of the judgment shall constitute for the sheriff to execute the sentence.

The Circuit Court of Waukesha County is empowered to see that a JOC produced by their courts are being fully executed. If, or if not the DOC id properly following the terms of the defendant-appellant's JOC is a substantive issue, directly related to a JOC, in which a circuit court has the authority to address. As the brief of plaintiff-respondent addressed, "A criminal court may address all matters related to the criminal prosecution and such incidental or ancillary matters as are essential to carrying out appropriately delegated judicial functions."

2. **It was permissible for the defendant-appellant to seek an intervention from the circuit court in regard of collection of restitution from the defendant-appellant's prison account.**

The defendant-appellant isn't pursuing relief through a habeas corpus claim, pursuing a civil matter or compensation, nor a special proceeding through any short of writ of action. The defendant-appellant, is and has been pursuing for the defendant-appellant's JOC to be executed properly in respect of law.

A. **STANDARD OF REVIEW:** *Wis. Admin. Code—DOC 310.05 Exhaustion of Administrative Remedies:*

Before an inmate may commence a civil action or special proceeding against any officer, employee or agent of the department in the officer's, employee's or agent's official or individual capacity for acts or omissions committed while carrying out that person's duties as an officer, employee or agent or while acting within the scope of the person's office, the inmate shall exhaust all administrative remedies that the department of corrections has promulgated by rule.

- B. **STANDARD OF REVIEW:** *Commencement of Action 801.02(7)(B)*: ---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, imprisoned or detained until the person has exhausted all available administrative remedies that the DOC has promulgated by rule or, in the case of prisoners not in custody of the DOC, that the sheriff, superintendent or other keeper of a jail or house of corrections has reduced to writing and provided reasonable notice of the prisoners.

Being that the situation at hand was directly related to the criminal sentence and without any civil suit elements, the exhaustion of administrative remedies criteria (Wis. Admin. Code—DOC 310.05) does not apply to the defendant-appellant. The choice of action pursued by the defendant-appellant was permissible.

3. **The collection of restitution from the defendant-appellant's prison account, by the DOC, is unlawful.**

It is an adjudicative fact that the DOC has not been authorized to collect restitution from the defendant-appellant during this initial incarceration.

- A. **STANDARD OF REVIEW:** *The defendant-appellant's 2014 JOC*

Restitution to be paid joint and several with co-defendant. To be paid as a Condition of Extended Supervision. Costs to be paid as a Condition of Extended Supervision. – If 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. If discharged with outstanding financial obligations, a civil judgment shall be entered against the defendant and in favor of restitution victims and government entities for outstanding financial obligations. (see org. brief of defend.)

- B. **STANDARD OF REVIEW:** *Judgment 972.13.(3)*

A JOC shall set forth the plea, the verdict or finding, the adjudication and sentencing, and a finding as to the specific number of days for which sentence credit is to be granted under s. 973.155. If the defendant is acquitted, judgment shall be accordingly.

- C. **STANDARD OF REVIEW:** *Judgment 972.13(6)*

Restitution and the elements "of", being a part of a sentence.

D. STANDARD OF REVIEW: *Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors: 973.017(1) Definition-“sentencing decision”*

--A decision as to whether to impose a bifurcated sentence under s. 973.01 or place a person on probation and a decision as to the length of a bifurcated sentence, the amount of a fine, and the length of a term of probation.

It is within the scope of a sentencing judge’s discretion and is within their sentencing decisions “if” and how to impose restitution upon a conviction.

E. STANDARD OF REVIEW: *Restitution 973.20(10) (a)*

The court may require that restitution be paid immediately, within a specified period or in specific installments. If the defendant is placed on probation or sentenced to imprisonment, the end of a specified period shall not be later than the end of any period; Extended Supervision or parole.

In the defendant-appellant’s defense, the defendant-appellant was sentenced to a bifurcated sentence where stipulations concerning restitution and cost, being a condition of extended supervision was legally imposed.

F. STANDARD OF REVIEW: *Restitution 973.20 (13) (a)*

The court, in determining whether to order restitution and the amount thereof, shall consider all of the following: 1. The amount of loss suffered by any victim as a result of a crime considered at sentencing 2. The financial resources of the defendant 3. The present and future earning ability of the defendant 4. The needs and earning ability of the defendant’s dependents 5. Any other factors which the court deems appropriate.

G. STANDARD OF REVIEW: *Restitution 973.20 (1r)*

When imposing sentence or ordering probation for any crime, other than a crime involving conduct that constitutes domestic abuse under s.813.12(1)(am) or 968.075(1)(a), for which the defendant was convicted, the court, in addition to any other penalty authorized by law, shall order the defendant to make full or partial restitution under this section to any victim of a crime or, if the victim is deceased, to his or her estate, unless the court finds that imposing full or partial restitution will create an undue hardship on the

defendant or victim and describes the undue hardship on the record. Restitution ordered under this section is a condition of probation, Extended Supervision, or parole served by the defendant for a crime for which the defendant was convicted. After the termination of probation, E.S., or parole, or if the defendant is not placed on probation, Extended Supervision, or parole, restitution ordered under this section is enforceable in the same manner as a judgment in a civil action by the victim named in the order to receive restitution or enforced under Ch. 785.

It is implicit that when the sentencing judge imposed sentence upon the defendant-appellant, the sentencing judge was following along the sentencing lines of the state stat. 973.20(1r). Under the grounds of this state statute, the sentencing judge did not grant authorization upon the DOC to collect restitution nor cost from the defendant-appellant during the initial incarceration, but rather recognized the hardship that it would inflict upon the defendant-appellant if being taken from the defendant-appellant during the initial incarceration. (For a full description of the hardship endured by the defendant-appellant, see the brief of the defendant-appellant, pages 8-12.)

Within the brief of plaintiff-respondent, it is said that if a defendant is not required to pay restitution until the subject is on supervision, it would lead to an absurd result where crime victims would be required to wait many years while a defendant is incarcerated before seeing even a penny of restitution.

H. STATNDARD OF REVIEW: *Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors 973.017(2)(b) "General Requirement":*

When a court makes a sentencing decision concerning a person convicted of a criminal offense committed on or after February 1, 2003 the court shall consider all of the following: "Any applicable mitigating factors and any applicable aggravating factors, including the aggravating factors specified in subs. (3) to (8).

Considering the defendant-appellant has a co-defendant that is to pay restitution joint and several with the defendant-appellant, it is more likely that the crime victim would not have to wait absurd amounts of time before receiving restitution pay. Further, being that the defendant-appellant's co-defendant has been sentenced to E.S., as a result, restitution to the crime victim should have immediately begun being paid by the defendant-appellant's co-defendant.

- I. **STANDARD OF REVIEW:** *Bifurcated sentences; use of guidelines; consideration of aggravating and mitigating factors—“ Aggravating factors listed in this section are not elements of the crime” 973.017(9):*

The aggravating factors listed in this section are not elements of any crime. A prosecutor is not required to change any aggravating factor or otherwise allege of an aggravating factor in any pleading for a court to consider the aggravating factor when making a sentencing decision.

Under the grounds of stat. 973.017(9), the court and all parties can assume that the sentencing judge exercised his power to stipulate the defendant-appellant's sentence and JOC in accord with 973.20(1r), which in result revokes authorization of the DOC to collect restitution from the defendant-appellant's prison account during the initial incarceration.

- J. **STANDARD OF REVIEW:** *2015 WIS. ACT 355, stat. 973.20(11)(c)—Restitution:*

If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the “court order” shall require the defendant to authorize the Dept. to collect, from the defendant's wages and from other money's held in the defendant's account an amount or a percentage the Dept. determines is reasonable for payment to victims.--- Now effective as of July 1, 2016, and enactment date of April 11, 2016.

2015 Wis. Act 355; stat. 973.20(11)(C) contained explicit terms to establish adjective law, “ the court order shall require the defendant to authorize the dept. to collect...” in which the defendant-appellant's JOC states nothing similar to the terms. I would like to bring to the courts attention, once again, that the defendant-appellant's JOC was established roughly two years prior to the effectiveness of the 2015 Wis. Act 355. At the time of constructing and establishing the defendant-appellant's JOC, state statutes 973.20910(a) and 973.20(1r) were in effect supporting the validity of the defendant-appellant's JOC. In regard of this, the new laws of 2015 Wis. Act 355; etc. does not apply to the defendant-appellant.

- K. **STANDARD OF REVIEW:** *Judgment 972.13(5)*

A copy of the judgment shall constitute authority for the sheriff to execute the sentence.

In respect of the defendant-appellant's case, stat. 972.13(5) also sets the establishment of adjective law leaving for the defendant-appellant's JOC to be executed fully and properly. In respect of laws such as stat. 973.20(10)(a) and 973.20(1r), the defendant-appellant's JOC can be deemed legal and correct. With the defendant-appellant serving time on his initial incarceration without any revocation, by law, the obligations of specified debts are undo until a later stipulated time, and the DOC is not yet authorized to collect restitution from the defendant-appellant's prison account.

In respect of law and liberty, a judge may not be inconsistent with law, and the stipulations for victims, government entities, and the offender has been established and in placed by a sentencing judge as a Final Order; an Order which leaves nothing further to be determined or accomplished in that forum except execution of the judgment and from which an appeal will lie. DOC utilizing and imposing the new Wis. Act 355 upon the defendant-appellant, making the defendant-appellant entitled to the pre-arranged obligation and it becoming due immediately is unlawful and a violation of the Ex Post Facto Clause.

L. STANDARD OF REVIEW: *Ex Post Facto Clause/ Wis. Const. Art, I, stat.12*

When a defense raise Ex Post Facto clause concerns with respect to the application of new law, courts must look to see whether the application violates one or more of that clauses protections. Specifically, a court must determine whether the new law criminalizes conduct that was innocent when committed, increases the penalty for conduct after its commission, or removes a defense that was available at the time the act was committed. Only when these protections "are not" violated are retroactive applications allowed. The clauses animating principle is namely that persons have a right to fair warning of that conduct which will give rise to criminal penalties. This principle, fundamental to our concept of constitutional liberty, is premised on the right to know how to conform ones conduct to law, and the consequences of not doing so, at the time one engages in that conduct.

Being that the defendant-appellant's JOC was established September 29, 2014 the application of the 2015 Wis. Act 355; stat. 973.20 (11)(c), etc. would have to be applied retroactively—and without the DOC being empowered to supersede the defendant-

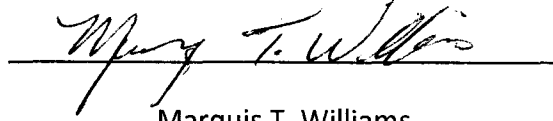
appellant's JOC stipulations. The retroactivity of the application would remove a defense in the defendant-appellant's objection to conform to the new law. Therefore, the enactment of 2015 Wis. Act 355, etc. is not and cannot be applied retroactively.

It was concluded in the January 12, 2017 Order, that the court finding that, pursuant to 2015 Wis. Act 355, amending stat. 301.32(10) of the Wis. Stat.; which were enacted April 11, 2016 and effective July 1, 2016 the DOC now has the authority to collect the defendant-appellant's monies for restitution according to law. The RCI, advocating for the DOC in collecting restitution from the defendant-appellant, has concluded due to the enactment of the new 2015 Wis. Act 355 it is lawful to collect restitution from the defendant-appellant at this time. It is concluded in the brief of plaintiff-respondent, the DOC has always had the authority to collect restitution during incarceration through stat. 301.32(1);2013-14, 303.01(8)(b), and now more explicit through the enactment of Wis. Act 355. Within the brief of plaintiff-respondent it was stated, "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. However, in respect of those laws, restitution can only be collected when authorized. The enactment of any of the state statutes cited or the collection of the defendant-appellant's monies for restitution purposes is done so in Great Conflict of the defendant-appellant's JOC, legislative intent and state statute— which result in the JOC of the defendant-appellant standing until amended. Therefore, the DOC does not have authorization to collect any restitution from the defendant-appellant's prison account at this time, the restitution and court cost of the defendant-appellant is to be paid as a Condition of Extended Supervision, and in respect of law—the court can only amend the JOC if there is a substantial change in sentencing or a clerical error was made in the original JOC. Being that the September 29, 2014 JOC of the defendant-appellant is correct, the collection of restitution from the defendant-appellant's prison account is unlawful.

CONCLUSION

For all of the above reasons the defendant-appellant request that the circuit court's Order be countered, and for the enforcement of the defendant-appellant's JOC stipulations and specification be imposed upon the DOC stopping the DOC from deducting the defendant-

appellant's monies, other than (10%) ten percent for the defendant-appellant's release account purposes only.



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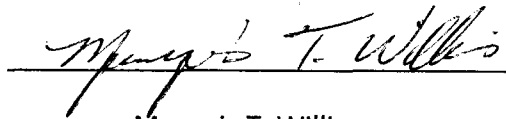
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief and appendix produced with a serif font. The length of the brief is 2,634.



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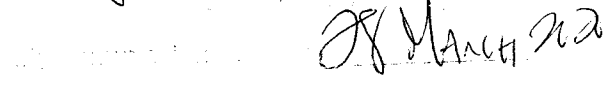
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Subscribed and sworn to before me this

2 day of October 17

 of March 20