

STATE OF WISCONSIN

CIRCUIT COURT
BRANCH 10

DANE COUNTY

STATE ex rel. JOSHUA
HOWARD,

Petitioner,

v.

Case No. 2016CV3251

JON E. LITSCHER, Secretary,
Wisconsin Department of Corrections,

Respondent.

DECISION AND ORDER

Petitioner Joshua Howard, an inmate at Waupun Correctional Institution, filed this certiorari petition for review of the Wisconsin Department of Corrections' ("DOC") decision to dismiss his inmate complaints. In July 2016, pursuant to an amendment to its policy, the DOC increased the percentage of restitution, court costs, and surcharges it collected from prisoners' funds from 25% to 50%. Petitioner's judgment of conviction orders that his restitution and other costs are "[t]o be paid from up to 25% of prison wages and as a condition of extended supervision." R. 119. Petitioner complains that, among other things, Respondent's policy violates his judgment of conviction. For the following reasons, the agency decision is REVERSED.

STANDARD OF REVIEW

On certiorari review the court evaluates whether: (1) the agency kept within its jurisdiction; (2) the agency acted according to law; (3) the action was arbitrary, oppressive or unreasonable and represented its will and not its judgment; and (4) the evidence presented was

such that the agency might reasonably make the decision it did. *State ex rel. Brookside Poultry Farms, Inc. v. Jefferson Cty. Bd. Of Adjustment*, 131 Wis. 2d 101, 119, 388 N.W.2d 593 (1986).

DISCUSSION

Respondent contends that a sentencing court's order specifying that the DOC is to collect from a prisoner at a certain percentage is an "impermissibl[e] attempt[] to limit [the] authority" of the DOC. Whether or not a sentencing court has the authority to require that the ordered restitution and other costs are to be collected by the DOC at a particular rate is beyond the scope of this opinion. The DOC has disregarded a court order, arguing that it can "control the restitution rate even if a court has impermissibly attempted to limit that authority." Res. Br. at 11. The weight of caselaw is contrary to the respondent's assessment.

Even if a trial court acts outside the scope of its authority in an order to an agency, the agency is not empowered to simply disregard the order. *State ex rel. Eastman v. Burke*, 28 Wis. 2d 170, 178, 136 N.W.2d 297(1965); *Bartus v. Wisconsin Dep't of Health & Soc. Servs., Div. of Corr.*, 176 Wis. 2d 1063, 1082, 501 N.W.2d 419 (1993) ("neither the Division of Hearings and Appeals nor the Department of Corrections has been granted the authority to void or reverse circuit court judgments"). The agency "could not independently determine the propriety of the restitution Order, and [it] could not reverse the dictates of the original Order absent receipt of a corrective Order." *State ex rel. Lindell v. Litscher*, 2005 WI App 39, ¶ 20, 280 Wis. 2d 159, 694 N.W.2d 396, aff'd sub nom. *State v. Lindell*, 2006 WI App 194, ¶ 20, 296 Wis. 2d 418, N.W.2d 399. When faced with a potentially erroneous court order, the DOC must seek a remedy just as any other litigant would; it cannot ignore the order and implement a conflicting policy. *State ex rel. Eastman v. Burke*, 28 Wis. 2d 170, 178, 136 N.W.2d 297 (1965).

Here, the DOC received an order requiring it to collect from Petitioner funds for surcharges and restitution at a rate of “up to 25%.” The DOC, aware of the court order, instead collected at a rate of 50%. This amounts to a failure to follow the law.

CONCLUSION

For the above reasons, the final administrative decision of the DOC is REVERSED and REMANDED for further action consistent with this opinion.

Electronically signed by Juan B. Colas

Circuit Court Judge

02/01/2018