



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

March 16, 2016

To:

Hon. Richard T. Werner
Circuit Court Judge
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Jacki Gackstatter
Clerk of Circuit Court
Rock Co. Courthouse
51 S. Main Street
Janesville, WI 53545

Mark M. Jahnke
Asst. District Attorney
51 S. Main St.
Janesville, WI 53545

Tiffany M. Winter
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Dusstin Charles Longtin 580864
Green Bay Corr. Inst.
P.O. Box 19033
Green Bay, WI 54307-9033

You are hereby notified that the Court has entered the following opinion and order:

2014AP2436-CR State of Wisconsin v. Dusstin Charles Longtin (L.C. # 2010CF2473)

Before Lundsten, Higginbotham and Sherman, JJ.

Dusstin Longtin appeals the circuit court's order that denied his motion to correct or clarify his judgment of conviction with respect to the amount or percentage of money that is being taken from his prison account(s) for restitution, court costs, and surcharges. After reviewing the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2013-14).¹ For the reasons discussed below, we affirm.

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

The parties do not dispute the amount of restitution, court costs, and surcharges, but rather when and how those amounts are to be paid. At the sentencing hearing, the court stated:

I will find in this case that restitution to [the parents of the victim] is in the amount of \$17,972.36 and to the Crime Victim Compensation Panel in the amount of \$2,000, and I will order that that be paid as a condition of his extended supervision and however the department chooses to take it out of any account he may have while he's in the institution.

Although not mentioned in the court's oral pronouncement of sentence, the judgment of conviction included several additional monetary obligations mandated by statute—namely: \$163 in court costs, imposed pursuant to WIS. STAT. § 814.60(2); \$92 for a crime victim and witness assistance surcharge, imposed pursuant to WIS. STAT. §§ 814.75(5) and 973.045(1)(b); \$1,111.88 for a 5% restitution surcharge payable to the Department of Corrections, imposed pursuant to §§ 814.75(2) and 973.20(11); and \$2,010.24 designated as “other,” which appears to include the 10% restitution surcharge of \$1,997.24 payable to the county pursuant to §§ 814.75(2) and 973.06(1)(g), that was set forth in an order for restitution attached to the judgment. Under a section of the judgment entitled “Conditions of Extended Supervision,” there were comments stating “Restitution DOC Collect” and “Costs \$268 DOC Collect.” The restitution order itself further specified that, pursuant to WIS. STAT. § 973.20(12)(b), “restitution shall be paid first and then any fines, court costs, surcharges and supervision fees.”

Longtin moved the circuit court “to amend and correct a clerical error” in the judgment of conviction on two distinct grounds. First, he asked that his monetary obligations be taken only from his prison wages and not from any gifts sent to him by his family. Second, he asked the court to clarify that the \$268 costs and the 10% and 5% restitution surcharges were to be paid

while he was on supervision, not while he was in prison, because the judgment of conviction appeared to be silent as to when DOC could collect those amounts.

The circuit court ruled that the judgment and restitution order applied to any funds in Longtin's prison accounts and not only to funds supplied by Longtin's prison wages. Longtin does not challenge that decision on appeal. Accordingly, we move on.

The circuit court did not, however, address Longtin's additional concern about whether DOC could properly be making deductions for costs and surcharges *at the same time* that it was making deductions for restitution—which, due to the amount of the restitution award, would not be completed prior to Longtin's release on extended supervision.

Longtin's appendix includes a copy of a trust account statement showing that DOC has been making separate but simultaneous 25% deductions from Longtin's account for "restitution" and "court ordered obligations." Based upon the outstanding amounts listed on the trust account statement for each of those categories, Longtin reasonably infers that the 5% and 10% restitution surcharges have been added to the \$268 in court costs listed under "court ordered obligations."

We agree with Longtin that it is improper for DOC to be making deductions for court costs and restitution surcharges at the same time that it is making deductions for direct restitution to the victims. We disagree, however, that DOC's practice is attributable to a clerical error in the judgment of conviction.

By the plain language of the restitution order that is attached to the judgment, "restitution shall be paid first and then any fines, court costs, surcharges and supervision fees." Therefore,

the circuit court properly denied Longtin's motion to amend or correct the judgment as unnecessary.

Longtin did not ask the circuit court to compel DOC to comply with the restitution order and, thus, does not complain that the circuit court failed in that regard. We express no opinion about how Longtin might go about compelling DOC to comply with the judgment.

IT IS ORDERED that the circuit court's order is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals