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DISTRICT IV

June 17, 2016

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

2015AP1627-CR

State of Wisconsin v. Jeffry A. Schultz, Jr. (L.C. # 2003CF118)

Before Kloppenburg, P.J., Lundsten and Sherman, JJ.

Jeffry Schultz appeals an order that denied his motion to amend a 2004 judgment of conviction by vacating a DNA surcharge. 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

We affirm for the reasons discussed below.

Schultz asked the circuit court to vacate the surcharge and to direct the DOC to refund the funds it had taken from his account to pay the surcharge on the grounds that Schultz had

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

previously given a sample and paid the surcharge in another case, and had not been required to provide a second sample for this case. He argued both that the court lacked authority under the due process clause to impose a second surcharge, and that the DOC lacked authority under WIS. STAT. § 973.046(4) to collect more than one surcharge. On this appeal, however, Schultz advances only the second theory, regarding the DOC's authority.

We first note that it does not appear that a postconviction motion is the proper mechanism to challenge the DOC's authority to collect multiple DNA surcharges. For one thing, the DOC was not a party to the criminal case under which the postconviction motion was brought.

In any event, Schultz misconstrues WIS. STAT. § 973.046(4). That provision states:

If an inmate in a state prison or a person sentenced to a state prison has not paid the deoxyribonucleic acid analysis surcharge under this section, the department shall assess and collect the amount owed from the inmate's wages or other moneys.

Id. It is plain from the context of a subsection preceding this provision that “the deoxyribonucleic acid analysis surcharge under this section” refers to any DNA surcharge imposed by a court. *See* § 973.046(1). In other words, the DOC is authorized to collect *each* DNA surcharge imposed by a court under § 973.046.

IT IS ORDERED that the order denying Schultz's motion for a refund of his DNA surcharge is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals