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DISTRICT IV

May 7, 2018

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

2016AP2430

State of Wisconsin v. Tomas D. Cuesta (L.C. # 2000CF1226)

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

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Tomas Cuesta, Sr., pro se, appeals a circuit court order denying his motion seeking to challenge deductions from his inmate trust account. Cuesta argues that the Department of Corrections (the department) is improperly deducting funds in order to pay Cuesta's court-ordered restitution. Based upon our review of the briefs and record, we conclude at conference

that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2015-16).¹ We affirm the circuit court's order.

In 2001, Cuesta was charged with several felony counts following an incident in which he repeatedly hit, choked, and bit a victim. A jury convicted Cuesta of aggravated battery with intent to cause substantial bodily harm, false imprisonment, and second-degree recklessly endangering safety. Cuesta was sentenced to twenty-five years of initial confinement and fifteen years of extended supervision. Cuesta was also ordered to pay restitution totaling \$7,995.90.

In November 2016, Cuesta filed a document in the circuit court that sentenced him entitled, "Notice of not have been serve with court ordered (in this case) the institution to take 50% from any income of Tomas D. Cuesta, Sr." The circuit court construed Cuesta's filing as a challenge to the department's authority to collect court-ordered obligations from an inmate's wages. The circuit court concluded that the department had authority to deduct up to fifty percent of court-ordered obligations from Cuesta's inmate funds. Accordingly, the circuit court denied Cuesta's motion. Cuesta appeals.

In his appeal to this court, Cuesta argues that the trust account deductions violate the ex post facto clause. However, Cuesta did not make this argument to the circuit court. We typically do not address issues raised for the first time on appeal. *See State v. Rogers*, 196 Wis. 2d 817, 827, 539 N.W.2d 897 (Ct. App. 1995) ("[Appellate courts] will not ... blindsides trial courts with reversals based on theories which did not originate in their forum."). As a result, we will not address further Cuesta's ex post facto clause argument.

Cuesta also makes a due process argument that he is entitled to some sort of procedure before the department can deduct restitution payments from his wages. *See Mathews v.*

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Eldridge, 424 U.S. 319 (1976). Construing Cuesta’s pro se filings liberally, we think he preserved this argument. However, we see no response from the State to Cuesta’s due process argument. Nonetheless, we can affirm the circuit court’s denial of Cuesta’s motion on other grounds. See *State v. King*, 120 Wis. 2d 285, 292, 354 N.W.2d 742 (Ct. App. 1984) (“If a trial court reaches the proper result for the wrong reason it will be affirmed.”).

As we recently explained in *State v. Williams*, 2018 WI App 20, ¶2, ___ Wis. 2d ___, 909 N.W.2d 177, “[i]t has long been the law that restitution may be disbursed from an inmate’s prison account.” Accordingly, we held that a circuit court “lacks the competency to address an allegedly improper disbursement of funds by the [department].” *Id.*, ¶4. Instead, an inmate’s remedy is certiorari review, which requires that the inmate first exhaust his administrative remedies. *Id.*, ¶5 (explaining that exhaustion requires an inmate to file a complaint under WIS. ADMIN. CODE § DOC 310.09, wait for a decision under § DOC 310.12, then appeal to the corrections complaint examiner who will recommend a decision to the Secretary under §§ DOC 310.13 and 310.03(15)). After receiving the Secretary’s final decision under § DOC 310.14, the inmate may then file a petition for a writ of certiorari in circuit court. *Williams*, 2018 WI App 20, ¶5 (citing WIS. STAT. § 801.02(7)(b) and § DOC 310.05).

Here, Cuesta filed a motion before the circuit court that sentenced him in the criminal case. That is not the proper procedure as set forth in *Williams*, 2018 WI App 20, ¶5. Instead, Cuesta was required to initiate a proceeding separate from the criminal case in which he requests common law certiorari review. Because Cuesta has not done so, we conclude that the circuit court lacked the competency to address this issue. As a result, we conclude that the circuit court properly denied Cuesta’s motion, but for reasons different than those stated by the circuit court.

Upon the foregoing reasons,

IT IS ORDERED that the order is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals