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DISTRICT I

August 3, 2018

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

2017AP2071	State of Wisconsin v. Melvin Ray Tucker (L.C. # 1991CF914179)
2017AP2072	State of Wisconsin v. Melvin Ray Tucker (L.C. # 1991CF914259)
2017AP2073	State of Wisconsin v. Melvin Ray Tucker (L.C. # 1993CF930819)

Before Kessler, P.J., Brennan and Brash, 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).

In these consolidated appeals, Melvin Ray Tucker, *pro se*, appeals the order denying his postconviction motion. In the motion, Tucker objected to the Department of Corrections (DOC) deducting funds from his inmate trust account to pay his court-imposed obligations and sought a refund. 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 Because the circuit court did not have competency to address this matter and because it did not have personal jurisdiction over the DOC, we summarily affirm.

More than two decades ago, Tucker was convicted of numerous crimes involving three victims. The circuit court sentenced him to lengthy prison terms on the various charges. The circuit court additionally imposed mandatory victim/witness surcharges and ordered restitution “to be paid from his prison earnings up to 25%.”

Twenty-four years after receiving his sentences, Tucker filed a motion complaining about the DOC’s collection of funds from his inmate trust account. He claimed that the circuit court issued “comment stipulations” that all fees, costs, and surcharges were to be paid during his term of extended supervision. He also argued that the DOC was deducting 50% of his inmate trust account money pursuant to a policy that conflicts with state law and violates the *ex post facto* clause. Tucker demanded that the circuit court order the DOC to refund the amounts that were improperly taken from him.

The circuit court issued a written decision and order denying Tucker’s motion. The circuit court concluded that it did not have jurisdiction to decide questions of the DOC’s implementation of the statutory provision governing restitution or its administrative policies and further provided: “If the defendant believes that the DOC is acting without authority or contrary to law, he is obliged to direct his concerns to the DOC or to pursue a civil claim for relief.” This appeal follows.

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

We conclude that two independent bases support an affirmance in this case: the circuit court's lack of competency and its lack of personal jurisdiction over the DOC. Both bases present questions of law that we independently review. See *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶7, 273 Wis. 2d 76, 681 N.W.2d 190 (“Whether a circuit court has ... competency is a question of law that we review independently.”); *Landreman v. Martin*, 191 Wis. 2d 787, 794, 530 N.W.2d 62 (Ct. App. 1995) (“Personal jurisdiction is a question of law, which we review independently on appeal.”).

First, the circuit court lacked competency to review the DOC's collection method or to order the State to refund money collected under the order. Competency is “the power of a court to exercise its subject matter jurisdiction’ in a particular case.” See *State v. Smith*, 2005 WI 104, ¶18, 283 Wis. 2d 57, 699 N.W.2d 508 (citation omitted). As recently held by this court:

[T]he circuit court, acting as the sentencing court, lacks the competency to address an allegedly improper disbursement of funds by the DOC. Once an inmate is sentenced to prison, he or she is under the control of the executive branch and must address his or her objections to the internal operating procedures of the DOC through the ICRS [i.e., the inmate complaint review system], WIS. ADMIN. CODE ch. DOC 310, and then, if necessary, by writ of certiorari to the circuit court. Cf. *State ex rel. Curtis v. Litscher*, 2002 WI App 172, ¶12, 256 Wis. 2d 787, 650 N.W.2d 43 (“A decision may be reviewed by common law certiorari when no legislative provision establishes how review may be had. Certiorari is the well-established mode of judicial review for inmates of Wisconsin prisons who seek to challenge prison disciplinary decisions.” (citation omitted)).

State v. Williams, 2018 WI App 20, ¶4, 380 Wis. 2d 440, 909 N.W.2d 177²; *see also State v. Minniecheske*, 223 Wis. 2d 493, 495, 590 N.W.2d 17 (Ct. App. 1998) (concluding that the circuit court lacked competency to order a refund of money collected pursuant to a restitution order).

Similar to the appellant in *Williams*, here Tucker did not file a complaint in accordance with the procedures found in WIS. ADMIN. CODE ch. DOC 310. Given that he did not follow the proper administrative procedure, the circuit court properly denied his request. *See Williams*, 380 Wis. 2d 440, ¶6.

Second, Tucker’s motion was properly denied because the circuit court lacked personal jurisdiction over the DOC. The only parties to the underlying criminal actions were the State and Tucker. *See Hagen v. City of Milwaukee Employees’ Ret. Sys. Annuity & Pension Bd.*, 2003 WI 56, ¶¶12-13, 262 Wis. 2d 113, 663 N.W.2d 268 (“A circuit court obtains personal jurisdiction over a defendant when the defendant is served with a summons in the manner prescribed by the statutes.... Failure to obtain personal jurisdiction over the defendant by statutorily proper service of process is a fundamental defect fatal to the action, regardless of prejudice.”). The DOC was not a party, and it did not consent to jurisdiction. Consequently, the circuit court did not have personal jurisdiction over the DOC to issue any order against it.

Therefore,

² While this appeal was pending, the State notified this court of *State v. Williams*, 2018 WI App 20, 380 Wis. 2d 440, 909 N.W.2d 177, pursuant to WIS. STAT. RULE 809.19(10).

IT IS ORDERED that the order is summarily affirmed. *See* 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