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**DISTRICT II**

April 17, 2019

To:

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Circuit Court Judge  
Ozaukee County Circuit Court  
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You are hereby notified that the Court has entered the following opinion and order:

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2018AP197-CR

State of Wisconsin v. Christopher T. Seiler (L.C. #1994CF26)

Before Neubauer, C.J., Reilly, P.J., and Hagedorn, J.

**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 this case, we hold that a sentencing court,<sup>1</sup> after essentially voiding an underlying restitution order, lacks the competency to order the Department of Corrections (DOC) to refund restitution to an inmate he already paid from his prison account. Upon reviewing the briefs and

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<sup>1</sup> The Hon. Walter J. Swietlik presided over the 1994 trial and sentencing and signed the 1995 restitution order. The Hon. Paul V. Malloy presided over the 2017 postconviction motion hearings. We will refer to courts collectively as “the court” or “the sentencing court.”

the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>2</sup> We affirm the order.

In 1994, a jury convicted eighteen-year-old Christopher T. Seiler of having sexual intercourse with two young girls on separate occasions. He was sentenced to a combination of prison, probation, and an imposed-and-stayed prison sentence. As a condition of probation, the court ordered him to pay restitution for one victim’s counseling costs in an amount to be determined by his probation agent. The subsequent DOC restitution order indicated that Seiler owed \$2402.10—\$827.10 to the minor victim’s father and \$1575 to her health insurance plan. When Seiler did not challenge that order, the court signed it without a hearing.

Seiler’s probation was revoked in 2007. In 2015, the DOC notified him that he still owed the full restitution amount. Seiler objected, saying he had not been given notice of the restitution order or of an opportunity to dispute the amount. He requested a hearing and moved for vacation of the restitution order and for an order that the DOC refund the money collected to date from his inmate account. While the court said it did not want to “chas[e] around money” for an insurance company, it also recognized the apparent lack of notice to Seiler and that it did not want to “revictimize” the victim’s family. The court thus held a series of hearings on Seiler’s motion.

When the State’s efforts to contact the victim or her family failed, the court terminated the restitution order in full. It declined to order the DOC to refund the amount already disbursed, however, essentially ruling that it was without competency to direct the DOC to do so. The court explained that it was “not involved in the refund,” had no information about what had been paid

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

to the victim or her father or how to contact them, and that, in any event, it did not have jurisdiction over them, and the prior court had followed the practice in place at the time by relinquishing responsibility for restitution to the DOC. The court advised Seiler to pursue the matter with the DOC. Seiler's informal efforts to secure a refund from the DOC by writing to his penal institution's business office were unavailing.

Seiler now appeals from the court's order to the extent it denied his refund request. He does not argue that the DOC improperly paid restitution at the outset. Rather, he challenges the court's refusal to order the DOC to return funds deducted pursuant to the now-terminated restitution order. He claims the court effectively is ordering him to pay restitution despite there being no existing restitution order.

Competency is the power of a court to exercise its subject matter jurisdiction, *Kohler Co. v. Wixen*, 204 Wis. 2d 327, 337, 555 N.W.2d 640 (Ct. App. 1996), that is, its ability to undertake a consideration of the specific case or issue before it, *Green Cty. DHS v. H.N.*, 162 Wis. 2d 635, 656, 469 N.W.2d 845 (1991). A court may lose its competency to adjudicate a particular case if it fails to comply with various statutory procedures. *Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶¶12-13, 273 Wis. 2d 76, 681 N.W.2d 190. "Whether a circuit court has lost competency is a question of law that we review independently." *Id.*, ¶7.

Once a court orders restitution, the legislature has specifically authorized the DOC to collect it from an inmate's account. See WIS. STAT. §§ 301.32(1), 973.20(11)(c); see also *State v. Williams*, 2018 WI App 20, ¶2, 380 Wis. 2d 440, 909 N.W.2d 177. A court can modify the judgment removing the restitution condition but does not have the authority to order repayment. *State v. Minniecheske*, 223 Wis. 2d 493, 500, 590 N.W.2d 17 (Ct. App. 1998). A money

judgment for reimbursement of funds taken for restitution is not necessary to resolve the criminal matter before the circuit court. *Id.* “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 other designated pathways. *Williams*, 380 Wis. 2d 440, ¶4.

We conclude the court here lacked the competency to order a refund of a disbursement of funds by the DOC. Seiler is not without recourse, however. He may pursue the inmate complaint review system, WIS. ADMIN. CODE ch. DOC 310 (Mar. 2018), which, if denied at the administrative level, allows him to bring a writ of certiorari to the circuit court.

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

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

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*