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**DISTRICT III**

May 19, 2020

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

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2018AP747

State of Wisconsin v. Victor E. Holm (L. C. No. 2001CF122)

Before Stark, P.J., Hruz and Seidl, 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).**

Victor Holm appeals from an order and associated amended judgment that partially granted and partially denied his motion to amend his judgment of conviction with respect to the amount, apportionment, and collectability of restitution. After reviewing the record, we

conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).<sup>1</sup> We affirm.

Holm was convicted in 2002 of first-degree intentional homicide and sentenced to life in prison without the possibility of extended supervision. The circuit court ordered Holm to pay \$6130 in restitution to the victim's mother for funeral expenses and other costs, and an additional \$2326.96 to the crime victim compensation fund for reimbursement of payments that the fund had already made to the victim's mother. Although Holm had been charged as a party to the crime, the court did not specify joint and several liability with any codefendants for the restitution award.<sup>2</sup>

Holm filed a direct appeal in 2004, raising multiple issues, but he did not challenge the restitution order. This court rejected all of Holm's claims and affirmed the judgment of conviction. In 2009, Holm filed a successive postconviction motion that also failed to raise restitution as an issue and that also was denied by both the circuit court and this court.

In 2016, after the legislature enacted several amendments to WIS. STAT. § 973.20 (the restitution statute), the Department of Corrections (DOC) began making deductions from Holm's prison wages for payment of restitution. *See* 2015 Wis. Act 355 §§ 13-18. Holm then filed a

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

<sup>2</sup> Docket entries show that Holm's brother Vincent Holm was ordered to pay the same amounts of restitution to the same parties in Forest County case No. 2001CF123; Dennis Drews was ordered to pay the same amounts of restitution to the same parties in Forest County case No. 2001CF121; and Elizabeth Mrazik was ordered to pay the same amounts of restitution to the same parties in Forest County case No. 2002CF17. Thomas Socha appears to have been convicted as a party to the crime of the same homicide in Forest County case No. 2002CF16, but docket entries do not show whether a restitution order was entered in his case.

series of motions and letters in 2017 and 2018 seeking to amend the judgment of conviction and “determine restitution.” Holm complained that: (1) the State never presented documentary evidence to support the amount of restitution claimed; (2) the circuit court never determined how much of the total restitution amount each of the codefendants was required to pay, and it should apportion the award equally among them; (3) Holm never received any accounting of what other codefendants had already paid; and (4) the DOC was requiring Holm and his brother, who was one of the codefendants, each to pay the full amount of the restitution award.

The circuit court orally granted partial relief at a hearing held on February 2, 2018, directing that an amended judgment be entered specifying that Holm had joint and several liability for the entire amount of restitution previously ordered. Holm then filed a motion for reconsideration of the oral ruling, renewing several requests for relief that the court had not granted. The court issued a written order denying reconsideration on April 9, 2018, and entered an amended judgment of conviction on April 19, 2018. In addition to designating the restitution award as joint and several, the amended judgment also included new language requiring Holm to “authorize the department to collect, from the defendant’s wages and from other monies held in the defendant’s inmate account, an amount or a percentage which the department determines is reasonable for restitution to victims.”

In this appeal, Holm reasserts his contentions that there was no evidence to support the circuit court’s original determination of the amount of restitution, that the restitution award should be equally apportioned among all of the codefendants, and that the victim should not be paid twice. In addition, Holm claims the circuit court’s addition of new language into the judgment of conviction based upon the amended restitution statute is impermissibly retroactive because it allows the DOC to make deductions for restitution in excess of twenty-five percent of

Holm's wages. Holm believes that result would not have been possible under the restitution statute that was in effect at the time of his original sentencing and that it conflicts with another statute.<sup>3</sup>

As a threshold matter, the State argues that Holm is procedurally barred under *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 185, 517 N.W.2d 157 (1994), from challenging restitution in this appeal because he did not provide a sufficient reason for failing to challenge the restitution he was ordered to pay in his direct appeal from his conviction or in other prior proceedings. We agree in part. We conclude that Holm is now barred from challenging the circuit court's calculations of the amounts of restitution recoverable by the victim's mother and the crime victim's compensation fund because Holm had all the information he would have needed to challenge those calculations on direct appeal.

We note, however, that the circuit court entered an amended judgment of conviction that may affect the apportionment of the restitution award among the codefendants or the DOC's ability to collect the award from Holm's prison paychecks. To the extent that the amended judgment of conviction contains new provisions related to the apportionment and collectability of the restitution award, Holm had no prior opportunity to challenge those provisions. Therefore, *Escalona-Naranjo* does not bar Holm's arguments on apportionment and collectability.

Regarding apportionment, Holm acknowledges the circuit court has already amended his judgment of conviction to reflect joint and several liability for the restitution award. Holm does

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<sup>3</sup> The State treats Holm's arguments regarding the permissible percentage of his wages that can be withheld for restitution as a challenge to the DOC's administration of the restitution order. Because we construe Holm's argument primarily as a challenge to the amended order itself, we do not address the State's contention that Holm failed to exhaust his administrative remedies.

not appear to understand how joint and several liability works, however. Holm seems to mistakenly view joint and several liability as requiring an equal apportionment of the total amount of restitution among all of the codefendants, resulting in reduced amounts owed by each codefendant. Joint and several liability, however, means that when “two or more defendants jointly cause harm, each defendant is held liable for the *entire amount* of the harm; provided, however, that the [injured party] recover only once for the full amount.” *Honeycutt v. United States*, 137 S. Ct. 1626, 1631 (2017) (emphasis added). Therefore, the court properly refused to reduce the amount of Holm’s restitution award to some designated portion of the total in conjunction with it designating the award joint and several.

Contrary to Holm’s assertions, the amended judgment does not authorize the victims to be paid twice, and the allegation that Holm’s brother has already paid more than a fifth of the total restitution amount does not signify that the victims are going to receive “double restitution.” Rather, consistent with the amount of restitution set forth in the original judgment and the joint and several liability designation in the amended judgment, Holm is liable for up to \$8456.96 in restitution, minus any payments that have been or will be made by other codefendants, without regard to how much of the total restitution is ultimately paid by each codefendant, until the victims have been made whole. Unless and until the combined total of the restitution payments collected from all the codefendants exceeds the total amount of restitution for which they share joint and several liability, any claim that Holm has overpaid is not ripe.

As to collectability, the State contends that Holm forfeited the right to challenge the DOC’s authority to determine what percentage of his prison wages may be withheld to pay restitution by failing to raise the issue in the circuit court. We note, however, that nothing in the record explains how the additional language giving the DOC authority to determine what

percentage of Holm's prison wages would be applied to restitution came to be added to the amended judgment. That being the case, we are not persuaded Holm had any meaningful opportunity to address any issues arising from the new language in the amended judgment regarding the DOC's ability to collect restitution from Holm's prison wages before the order was issued. We therefore decline to apply the forfeiture rule here.

The new language in the amended judgment regarding the DOC's ability to collect restitution from Holm's prison wages mirrors the wording of WIS. STAT. § 973.20(11)(c). Holm first contends this statutory provision—and thus the circuit court's language—should not be applied to him because it was not enacted until after he was sentenced. However, the amendment to the restitution statute merely codified existing common law, which already permitted DOC officials to take funds for restitution from an inmate's prison account. *State v. Williams*, 2018 WI App 20, ¶2, 380 Wis. 2d 440, 909 N.W.2d 177. The fact that prison officials had not previously been making deductions for restitution from Holm's account related to this case does not mean that they could not have done so.<sup>4</sup> Therefore, the new language did not retroactively change the effect of the judgment of conviction.

Holm also argues that the new language in the amended judgment authorizing the DOC to determine what amount or percentage of his wages “is reasonable” conflicts with WIS. STAT. § 973.05(4)(b). That statute authorizes a court to issue an order directing prison officials to assign “not more than 25 percent” of an inmate's prison wages to satisfy unpaid court fines,

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<sup>4</sup> We note that one of the documents Holm submitted to the circuit court indicated that Holm owed restitution on more than one case. We are unable to determine from the record before us whether prison officials were deducting restitution payments from Holm's account on another case prior to this one.

surcharges, costs, or fees. *Id.* However, restitution is not a fine, surcharge, cost or fee. *See* WIS. STAT. §§ 973.05 (fines), 973.06 (costs, fees and surcharges) and 973.20 (restitution). Therefore, § 973.05(4)(b) does not apply to restitution orders, and the language in the amended judgment at issue here does not conflict with § 973.05(4)(b).

Finally, to the extent that Holm may also be seeking to challenge the reasonableness of the DOC deductions from his prison wages, or its accounting of how much restitution has already been paid by the combined codefendants, the circuit court properly directed Holm to seek redress from prison officials through the inmate complaint review system. *See Williams*, 380 Wis. 2d 440, ¶¶1-5.

Therefore,

IT IS ORDERED that the amended judgment of conviction and order denying reconsideration are summarily affirmed under WIS. STAT. RULE 809.21(1).

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*