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DISTRICT IV

January 11, 2024

To:

Hon. Nia E. Trammell
Circuit Court Judge
Electronic Notice

Steven C. Kilpatrick
Electronic Notice

Carlo Esqueda
Clerk of Circuit Court
Dane County Courthouse
Electronic Notice

Wade Swenson, #163040
Wisconsin Secure Program Facility
P.O. Box 1000
Boscobel, WI 53805-1000

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

2022AP1538

Wade Swenson v. Daniel Winkleski - Warden
(L.C. # 2021CV839)

Before Kloppenburg, P.J., Blanchard, and Taylor, 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).

Wade Swenson, pro se, appeals the circuit court's order affirming the decision by the Department of Corrections that dismissed Swenson's inmate complaint challenging the deduction of funds from Swenson's prison inmate account at a rate of 50%. 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 (2021-22).¹ We summarily reverse and remand with directions.

¹ All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Swenson filed this certiorari action in the circuit court to challenge the Department's decision that dismissed Swenson's inmate complaint regarding the rate at which funds were being deducted from Swenson's inmate account. Swenson argued that the Department was illegally deducting funds from his inmate account at a rate of 50%, contrary to Swenson's judgment of conviction, which states: "Restitution to be paid out of any available funds and prison wages at a rate of 25%."

The circuit court reversed the Department's decision to dismiss Swenson's complaint as to the deduction of prison wages from Swenson's account to pay restitution. The court determined that, under *State ex rel. Ortiz v. Carr*, 2022 WI App 16, ¶1, 401 Wis. 2d 450, 973 N.W.2d 786, the Department did not have authority to exceed the 25% deduction rate as to Swenson's prison wages, as stated in the judgment of conviction. The court also found, however, that Swenson's judgment of conviction did not contain a cap as to the deduction rate for other available funds, and therefore affirmed the Department's decision to dismiss Swenson's complaint as to the deduction rate for funds other than prison wages.

Swenson argues that the circuit court erred by affirming the Department's decision as to the rate of deduction for funds other than prison wages. He contends that his judgment of conviction plainly sets a cap for the rate of deduction for restitution payments as to all funds by stating that the payments are to be "out of any available funds and prison wages at a rate of 25%."

The State has filed a statement that no respondent's brief will be filed. The State explains that, after Swenson filed his opening brief, the Department reduced the deduction percentage for all funds in Swenson's inmate trust account from 50% to 25%. The State explains further that it believes that, based on *Ortiz*, the Department will continue to apply the 25% rate for the

deductions from all of Swenson's available funds for the purpose of restitution payments. For those reasons, the State explains, the State does not ask this court to affirm the circuit court decision.

This court accepts the State's statement as a concession that the circuit court erred by affirming the Department's decision as to the rate of deductions for available funds other than prison wages. Based on the State's concession, we summarily reverse the order and remand with directions that the circuit court grant Swenson's petition and direct the Department to reduce the deductions for restitution payments, as to all funds in Swenson's inmate account, to a rate of 25%.

Therefore,

IT IS ORDERED that the order is summarily reversed, and the cause is remanded for further proceedings consistent with this opinion pursuant to WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals