

STATE OF MICHIGAN
COURT OF APPEALS

STATE TREASURER,

Plaintiff-Appellee,

v

ARCHIE SHARP,

Defendant-Appellant.

UNPUBLISHED

August 6, 1996

No. 178948

LC No. 94-031177-CZ

Before: Sawyer, P.J., and Neff and R.D. Gotham,* JJ.

PER CURIAM.

Defendant appeals from an order of the circuit court granting plaintiff's request to seize ninety percent of defendant's assets to reimburse the state for the costs of defendant's incarceration. We affirm in part and reverse in part.

Defendant is an inmate at the Riverside Correctional Facility. Plaintiff filed a complaint in circuit court seeking payment of ninety percent of approximately \$1500 in defendant's prisoner account. Defendant argued that a portion of the money represents prison wages which are exempt and that the remainder is money which he is permitted to send to his family for their support. The trial court disagreed and entered an order in favor of plaintiff.

Defendant first argues that the trial court erred in ordering a portion of the prison account forfeited which represents prison wages. We agree only in part. Defendant has made various deposits to his prison account, some from prison wages and some from outside sources. He has also made various withdrawals. On appeal, defendant argues in essence that the withdrawals should be attributed to the outside sources, with the full amount of the deposits from prison wages being treated as still on deposit and exempt from forfeiture under MCL 800.401a(a)(iv); MSA 28.1701(1)(a)(iv). Plaintiff, on the other hand, argues that because only 8.2 percent of the deposits to the account came from prison wages, then only 8.2 percent of the balance should be attributable to prison wages. Further, plaintiff

* Circuit judge, sitting on the Court of Appeals by assignment.

argues that that 8.2 percent should be considered part of the ten percent of the account which is exempt from forfeiture. MCL 800.403(3); MSA 28.1703(3). We disagree with both arguments.

First, we do agree with plaintiff's approach to calculating the portion of the account attributable to prison wages. The account commingled funds from both prison wages and other sources. There is no reason to attribute the withdrawals to either the prison wages or to the other funds. Therefore, it is reasonable, in our view, to apportion the withdrawals in the same ratio as the deposits. However, we disagree that the portion of the remaining balance of the account which is attributable to prison wages should fall within the ten percent of the assets which is exempt. The statute provides that 100 percent of prison wages are exempt as well as ten percent of other assets. Accordingly, all of the portion of the account attributable to prison wages should be exempt as well as ten percent of the remaining portion. Therefore, the trial court erred by requiring payment of more than ninety percent of the portion of the account not attributable to prison wages. On remand, the trial court shall determine the percentage of deposits to the account attributable to prison wages and exempt that percentage of the balance from payment. The trial court shall then award to plaintiff ninety percent of the remaining balance.

Defendant next argues that the money in his account should be exempt because he intends to use it to hire an attorney to pursue a federal habeas corpus claim. Defendant, however, fails to provide any authority for the proposition that the state is required to provide funds, ensure that a prisoner has access to funds, or protect a prisoner from creditors so that he will have funds, to seek habeas relief. Further, we are not aware of any such authority. Moreover, there is no indication that the purpose of the statute is to deprive prisoners of the ability to seek habeas relief, nor is there any indication that that is the purpose for plaintiff pursuing its rights under the statute in this particular case. In short, defendant is in no worse position than any other prisoner who has no assets, or who was required to pay money to any other creditor.

Next, defendant argues that he was denied his right to due process when he was denied the opportunity to appear before the trial court. Defendant's failure to attend appears to have arisen from his failure to file for a writ of habeas corpus rather than from being denied permission to attend the hearing. Thus, there does not appear to be any error committed by the trial court.

Defendant next argues that the forfeiture provision amounts to a second punishment for his crime, thus violating the prohibition against double jeopardy. It does not. See *Auditor General v Hall*, 300 Mich 215; 1 NW2d 516 (1942). Furthermore, even if it were considered a criminal penalty, it is an additional penalty, not a second penalty. See *People v Whiteside*, 437 Mich 188; 468 NW2d 504 (1991).

Defendant next argues that the trial court failed to consider his legal or moral obligations to use the money in his account to support his dependents. Defendant, however, has failed to demonstrate any evidence to support the proposition that such an obligation exists.

Finally, defendant argues that the trial court erred in failing to make any factual findings in denying defendant's motion for summary disposition. However, because defendant's motion was filed pursuant to MCR 2.116(C)(8), no findings were required.

Affirmed in part, reversed in part and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction. No costs, neither party having prevailed in full.

/s/ David H. Sawyer

/s/ Janet T. Neff

/s/ Roy D. Gotham