

State ex rel. Peg Swan,
Petitioner

V.

Jim Schwochert, Cathy Jess, Marquis Corp., Brad Hompe, Cindy O'Donnell, Inter alia,
Defendants

To: The Honorable _____
Dane County Circuit Court, Branch _____
215 S. Hamilton St.
Madison, WI 53703

The above-named petitioner, proceeding pro se, hereby petitions this court under §968.26, Stats., to refer this matter to the District Attorney (D.A.) with directions that the D.A. investigate the matter described herein and prosecute any crimes discovered, and, if the D.A. declines to reasonably investigate the matter or declines to prosecute the crimes discovered/revealed, the petitioner asks this court to conduct an evidentiary hearing where it considers the appropriate evidence and then directs appropriate prosecutions.

In support of this petition, the petitioner represents as follows:

1. Jim Schwochert ("Jim") is and, at all relevant times, was the Administrator for the Department of Adult Institutions (D.A.I.). Jim signed a memo dated 3 Oct. 2016, which notified all adult Wisconsin prisoners that money would be taken from prisoners' accounts for "fines, court costs, and attorney fees," "including but not limited to, loans [sic], filing fees, VWS, DNA surcharge [sic], . . . child support," A true, accurate and complete copy of this memo is attached as Exhibit 1.
2. As noted in State ex rel. Harris v. Larson, 64 Wis.2d 521,527 (1974):

". . . if the legislature did not specifically confer a power, it is evidence of legislative intent not to permit the exercise of the power."
3. Wis. Stats. §301.32(1), recently amended by Act 355, only authorizes the W.D.O.C. to take money from funds sent to prisoners by their loved ones for various "surcharges" or "restitution". Wardens do have the discretion to approve or disapprove prisoners' requests for how prisoners spend this money, but §301.32(1) does not authorize wardens or any WDOC officials to force a prisoner to spend the money in any particular way other than on surcharges or restitution.

4. Wis. Stats. §301.31 authorizes the W.D.O.C. to take money from prison wages for “other obligations” if a prisoner either “acknowledged . . . them in writing” or if the obligations “have been reduced to judgment.”
5. No doubt construing the two forenoted statutes in conjunction with §973.08(a), stats. (says that judgments of convictions—JOCs—must be delivered to prisons by the executing officer, the deputy who brings a convict to prison), as they must—see WI Bankers Assoc. v. Mutual Sav. & Loan Assoc. 96 Wis.2d 438, 454 (1980) (Related statutes must be construed together)—given that the first two statutes concern obligations enunciated in “judgments,” i.e. J.O.C.s, for over 20 years the W.D.O.C. has only enforced/imposed financial obligations identified in prisoners’ J.O.C.s, which have been delivered to prisons. See Butzlaff v. WI Personnel Com., 166 Wis.2d 1028, 1031-32 (Ct. App. 1992) (Courts defer to the “regular and repeated interpretation of [a] statute . . . over a period of time by the agency charged with the duty of administering [it]) (cites omitted).
6. Act 355, recently passed, amended §301.32(1) so that money may now be taken from funds sent to prisoners for restitution. But no other changes were made to §301.31, 301.32(1) or §973.08(1), thus there was/is no grounds for Jim or the WDOC to reconstrue these statutes to mean they may:
 - a) use a vendor (i.e. Marquis Corp.), as noted in Exhibit 1, to search for debts prisoners may owe and take prisoners’ funds to pay those debts rather than passively process J.O.C.s delivered to prisons by court officers executing the judgments or acting on judgments issued against a prisoner in civil litigation;
 - b) take money from prisoners for supervision fees, attorney fees, or other supposed debts not reduced to judgment or acknowledged by prisoners, from either prison wages and/or gift funds sent to prisoners;
 - c) take money from prisoners for fees, costs, restitution and/or other supposed debts that prisoners already paid long ago;
 - d) rely on CCCAP and/or Marquis Corp to determine what debts a prisoner has, with no J.O.C. supporting the determination;
 - e) through D.A.I. Policy & Procedure 309.45.02, signed into force by Jim and other WDOC officials, take funds from gift money sent to prisoners to pay move supposed debts than just surcharges and restitution;
 - f) per D.A.I. Policy & Procedure 309.45.02 III.c., refuse to refund improperly deducted funds, thus revealing that they expected funds would be improperly—i.e. illegally—taken from prisoners.

7. Specific examples of the illegal activity noted in ¶6, above, include but is surely not limited to these situations experienced by prisoners on one unit at the Wisconsin Secure Program Facility (W.S.P.F.):

a) as revealed in Exhibit 2, attached, which is the original Inmate Obligation Report (I.O.R.) issued to Nate A. Lindell DOC #303724 on Sept. 2016, new debts/obligations were imposed on Mr. Lindell, debts/obligations that are not based on J.O.C.s, and, as explained in “8” below, W.S.P.F. and W.D.O.C. officials are not authorized by law to collect.

b) as noted in Exhibit 3, attached, which is the original Trust Account Statement (T.A.S.) issued to Dennis E. Jones DOC #223971 on 23 Dec. 2016, Mr. Jones is being obliged to pay \$70 in court costs for Case No. 93-CF-878, which Mr. Jones recalls having paid over a decade ago, the WDOC already took that money;

c) upon information (i.e. his statement to Mr. Lindell and the John Doe Petition he filed in Grant County) and belief, Dwayne Cox DOC #84324 was obliged to pay \$100 for a Victim Witness Surcharge (VWS) in Case No. 92-CF-1662, which Mr. Cox paid off over 20 years ago—five dollars was taken from a \$10 money order Mr. Cox received on 9 Nov. '16, to pay this already paid debt; and the money wasn't refunded despite Mr. Cox writing to WSPF Business Office Supervisor Carrie Sutter and explaining the problem, then filing a complaint with the Inmate Complaint Review System (I.C.R.S.);

d) as noted in Exhibit 4, attached, which is the original T.A.S. issued to Dion Mathews DOC #254399 on 30 December 2016, which reveals that Mr. Mathews is being obligated to pay thousands of dollars in fines, along with surcharges and court costs, for which over \$13 has been taken. As explained in In The Matter of John Doe, Case No. 16-JD-13, these debts are not based on J.O.C.s delivered to the WDOC and Mathews paid some of those supposed debts years ago. Despite Mathews writing Ms. Sutter at WSPF and explaining the problem, then filing a complaint with the I.C.R.S., neither the illegally taken money was returned nor were the debts removed;

e) as noted in Exhibit 5, attached, which is the original T.A.S. issued to James A. Johnson DOC #200462 on 30 December 2016, Mr. Johnson is being obliged to pay thousands of dollars in restitution, surcharges, court costs, fines, etc., for which over \$5 has been deducted. These debts are not based on J.O.XC.s delivered to the WDOC and Johnson paid some of those supposed debts over 20 years ago. Despite Johnson writing Ms. Sutter at WSPF and explaining the problem, then filing a complaint with the I.C.R.S., neither the illegally taken money was returned nor were the debts removed;

f) attached as Exhibit 6 is the T.A.S. issued to Ashaume Marquise Davis DOC #531983 on 17 Nov. 2016, which reveals almost \$500 in surcharges for case No. 07-CF-5824 and \$480 in supervision fees that were assessed against Mr. Davis due to Jim's fore noted actions and that of his co-conspirators. No J.O.C. was delivered to the WDOC to justify imposing these debts on Mr. Davis. Attached as Exhibit 7 is the T.A.S. issued to Mr. Davis on 21 Dec. 2016, which reveals that over \$50 was taken from Mr. Davis for one of the illegal surcharges for Case No. 07-CF-5824 and 90 cents was taken for the illegal supervision fee;

8. All of the new obligations noted above, in ¶7 a)-f), were forced on the said prisoners, not based on any court judgments delivered to the WDOC, nor acknowledged by the prisoners in writing. Based on DAI P&P 309.45.02 directing prison business offices to consult CCAP in determining what debts to impose on prisoners and Jim's memo (Exhibit 1) referring to a bill-collecting company (i.e. Marquis), it appears that these new debts are not based on J.O.C.s delivered to the prison but are based on CCAP or another unauthorized source of information.
9. The WI Supreme Court clearly held in Stand v. Bonds, 292 Wis. 2d 344, 371-78 (2006) that CCAP is not a judicially noticeable source of information, nor does any statute or even an administrative code authorize the WDOC or Jim to rely on CCAP when determining what debts a prisoner owes and must pay. §§301.31 and 301.32(1), stats., make clear that only debts a prisoner has acknowledged in writing or that have been reduced to judgment by a court may be deducted from prisoners' monies/wages.
10. Attached as Exhibit 8 is a true, accurate and complete photocopy of a two-page letter sent by Mr. Lindell to Carrie Sutton at WSPF on 10 Oct. 2016. This letter clearly explains why Jim's efforts to impose new debts on prisoners like those described in ¶ a)-f) violate several criminal laws. As Ms. Sutton never replied to this letter, Mr. Lindell filed complaint #WSPF-2016-22206—co-signed by Mr. Jones, Mr. Mathews and another prisoner—on 13 Oct. 2016, a true, accurate and complete carbon copy of which is attached as Exhibit 9. To clarify how what Jim was pursuing is criminal, on 17 Oct. 2016 Lindell sent a two-page letter to the ICRS for consideration in relation to this complaint—the original version of this letter is attached as Exhibit 10.
11. Without giving consideration to the crux of Lindell's complaint (i.e. WSPF-2016-22206)—that the WDOC had no authority to take funds not declared owed in a J.O.C. delivered to the WDOC, nor to even search for J.O.C.s that weren't delivered to the WDOC on the courts' initiatives—on 20 Oct. 2016 Ellen Ray recommended the complaint be dismissed. A copy of Ms. Ray's recommendation is attached as Exhibit 11. On 26 Oct. 2016 Gary Boughton dismissed this complaint, thereby causing the fore noted illegal debts to remain on prisoners' accounts.

12. In the meantime, a memo dated 14 Oct. 2016 was issued to all adult prisoners, titled “FAQ’s-WICS obligation statements”, a copy of which is attached as Exhibit 12. This memo was a smokescreen in that:
 - a) it tries to justify billing prisoners twice for the same supposed debts by saying “the cashier’s unit may have applied your payment to the oldest case” (or someone in the cashiers’ unit embezzled the money, who knows);
 - b) it claims “The obligations in WICS are not new,” when they certainly are, or they were previously paid (see ¶7 a)-f), above)
 - c) it says we can write business office staff if we have disputes, yet Ms. Sutton didn’t reply to any of the requests from the prisoners noted earlier and prisoner Andre Tinnon DOC #306887 sent J.O.C.s to Ms. Sutton verifying debts were imposed on him contrary to his sentence, only to have Ms. Sutton “steal” the J.O.C.s and ignore Mr. Tinnon’s concerns;
 - d) it directs prisoners to “provide proof” if they already paid fees, revealing that the WDOC has no valid source of information for assessing the debts in the first place!
13. Lindell sent a request to Ms. Sutton on 12 Oct. 2016, explaining that all of the debts noted in Exhibit 2 “have long since been paid or I served jail time in place of paying . . .” This original request is attached as Exhibit 13. Note that Ms. Sutton did not even respond to it.
14. Another “FAQ’s—WICS Obligation Statements” memo dated 3 Nov. 2016 was issued to all adult prisoners, a copy of which is attached as Exhibit 14. This memo too was meant to misdirect prisoners’ valid objections to the new debts imposed on them. Note that in the memo it claims that prisoners “still owe” supervision fees, even if they were revoked, yet cites no authority for the D.O.C. to collect such fees. And the memo sidesteps the question “Where are all these new obligations coming from?” likely because they are coming from Marquis or some other illegal/unauthorized source, such as CCAP, versus J.O.C.s delivered to prisons.
15. Further evidence that the “new debts” were not based on J.O.C.s is to be found in attached Exhibit 15, which is a memo from Ms. Sutter at W.S.P.F. In this memo Ms. Sutter states, “we may have to follow up with the courts,” in response to prisoners’ complaints about “discrepancies” in debts assessed. There’d be no need to consult with the courts if the WDOC was only assessing debts based on J.O.Cs.
16. Jim issued a memo to all adult prisoners, in the name of the D.A.I., date 9 Nov. 2016, in which he states, “based on D.A.I.’s statutory authority to collect on these

obligations [e.g. supervision fees], DAI has now began to do so.” This memo is attached as Exhibit 16. There is no statutory authority for the DAI to collect supervision or any other fees not specified in §§301.31 or 301.32(1). Again, “expression unius est exclusion alterius,” State ex rel. Harris v. Larson, cited in ¶2 above.

17. Again, on 9 Nov. 2016, Lindell sent a letter to Ms. Sutter, a carbon-copy of which is attached as Exhibit 17. This letter, as you can see, states that Lindell paid the debts imposed on him (described in ¶7 a), above), that no laws authorized prison staff to take either “attorney fees” or “supervision fees” from him and asked what the source was for the conclusion that he actually owed such fees and asked what law Ms. Sutter felt permitted her to take money from him for these fees. No response to this letter was received by Lindell.
18. Lindell sent Ms. Sutter another request on 17 Nov. 2016, which is attached as Exhibit 18. As can be seen from Exhibit 18, Ms. Sutter believes that DAI P&P 309.45.02 “and referenced statutes & Adm. Codes” therein authorize taking Lindell’s and others monies for attorney and supervision fees. In fact, no statutes nor any Admin. Codes authorize taking Lindell’s or any prisoners’ monies for such fees, unless a prisoner acknowledges the debts in writing or they are “reduced to judgment.”
19. On 16 Nov. 2016 Lindell mailed a letter to D.A.I. Administrator Schwochert, a letter which carefully explained why Jim’s policy (i.e. D.A.I. P&P 309.45.02) was causing the illegal deprivation of monies from prisoners, in violation of several felony laws. See attached Exhibit 19, which is a true, accurate and complete handwritten copy of said letter. The only error in the letter is Lindell’s argument that restitution couldn’t be taken from gift funds sent to prisoners.
20. Attached as Exhibit 20 is the response Lindell received to his fore noted letter to DAI Administrator Jim Schwochert. As can be seen from this response, the D.A.I.:
 - a) meritlessly asserts that, after over 20 years of contrary statutory construction, it can take monies from gift funds sent to prisoners to “[pay] down an inmate’s lawful debt,” against the prisoners will, because §301.32(1) permits the money t be used “for the benefit of the prisoner.” This is absurd, because if DAI really believed they were so authorized they’d have been doing so for the last 20+ years, and if the legislature intended so it would have added “paying down an inmate’s lawful debt” when it created Act 355, which added “restitution” to the statute.
 - b) meritlessly believes Act 355’s creation of stat. §973.20 (11) (c) “requires individuals. . .to pay restitution. . . [and] authorize[s] the DOC to collect. . .monies. . .determined by the DOC to be reasonable payment to victims.”

In fact the statute is conditional , “if a defendant. . .is ordered to pay restitution. (emphasis added).

c) outrageously believes that “control over the care of. . .prisoner[s] is” totally up to the DOC, so they can do what they want with prisoners money.

d) meritlessly believes that because the DOC collects surcharges it may impose them on its own initiative (e.g. based on CCAP) rather than based on the JOCs it receives.

21. On 12 Dec. 2016 Lindell mailed Jim another letter, which is attached in carbon-copy form as Exhibit 21. This letter pointed out the flaws in the illogical response to Lindell’s first letter and clearly informed Jim that he and his cohorts were guilty of “state, possibly federal, racketeering” etc. No response to this letter has yet been received by Lindell.
22. Given that, as noted in Exhibit 14, page 1, the D.O.C. gets a 5% fee for every dollar it takes from prisoners for “debts,” it’s not surprising that the D.O.C. is illegally imposing debts on prisoners and making prisoners pay debts again that were paid years ago.
23. In some way Marquis Corp. is also making money from this illegal debt collection and Marquis Corp. may be kicking money back to D.A.I. or D.O.C. officials or legislatures that helped pass Act 355 and afforded a 5% fee to the DOC for all debts it collects.
24. On 28 Nov. 2016, Emily Davidson recommended Lindell’s forenoted group complaint (#WSPF-2016-22206) be dismissed, regurgitating the D.A.I.’s response attached as Exhibit 20 to justify that recommendation. Cindy O’Donnel then dismissed Lindell’s appeal on 20 Dec. 2016.
25. No doubt hundreds of other prisoners have filed similar complaints and thousands are having monies illegally taken.

Conclusion

The petitioner, based on the foregoing facts, believes that the officials (and Marquis Corp.) noted above and probably other officials and private persons are guilty of the following crimes:

- a) §943.20 Theft, sub. (b).
- b) §946.12 Misconduct in public office, sub (2)
- c) §946.68 simulating legal process, sub (1r) (i.e. Jim’s memos in the name of the DAI that falsely claimed to be authorized by law)
- d) §946.80, the Wisconsin Organized Crime Control Act (precursor crimes, §946.12, committed by an enterprise of government employees, with more than five acts stated herein, constituting “a pattern of racketeering activity.”)

The facts permit petitioner to reasonably believe these crimes are being and have been committed, thus §968.26 (2)(am) obliges this court to refer the matter to the D.A. so the D.A. can comply with sub. (2) (b), such as by reviewing prisoners' complaints, the contract between Marquis and the D.O.C., e-mails on the issue, the basis for new debts imposed on prisoners, etc.

Dated: _____

Respectfully submitted,

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