

STATE OF WISCONSIN,
Plaintiff,
Vs.

Case No. _____

Defendant.

MOTION FOR ORDER TO CLARIFY MECHANICS OF SATISFYING RESTITUTION ORDER AND
PROHIBITION OF CONTRAVENTION. THEREOF

To: Judge, Circuit Court
Milwaukee County
Criminal Division
Milwaukee, WI 53233

NOW COMES THE DEFENDANT _____ pro se, moves the Court pursuant to Wis. Stats. § 802.01(2) and State v Greene, 2008 WI App 313 Wis. 2d 211, 756 NW.2d 411, to issue an order clarifying the mechanics of satisfying a restitution obligation set by this court on _____ in the matter captioned above. In support thereof the Defendant states as follows:

That Mr. _____ has a legitimate expectation of finality in sentence. If a defendant has a legitimate expectation of finality in sentence, then an increase in that sentence is prohibited by the Double Jeopardy Clause. See State v. Jones, 257 Wis. 2d 163, ¶9, 650 N.W.2d 844 (2002), quoting State v. Fogel 264 U.S. App. D.C. 292, 829 F.2d 77, 87 (D.C. Cir. 1987).

ARGUMENT

In Mr. _____ Judgment of conviction this Court set the terms on which Mr. _____ must pay fines, court costs and restitution. (Ex. A:(# of pages)). Specifically the Court stipulated:

The Court plainly states the terms in Mr. _____ Judgment of Conviction that costs, fines and restitution is to be paid pursuant to Wis. Stats. § 973.05(4)(b), which states:

"(4) If the defendant fails to pay the fine, surcharge, costs, or fees within the period under sub. (1) or (1m), the court may do any of the following:----

(b) Issue an order assigning not more than 25% of the defendant's commissions, earnings, salaries, wages, pension benefits, benefits under ch. 102, and other moneys due or to be due in the future to the clerk of circuit court for the payment of the unpaid fine, surcharge, costs, or fees. In this paragraph, "employer" includes the state and its political subdivisions."

(Wisconsin Annotated Statutes _____)

On its face, the court has set the terms upon which court costs and restitution is to be paid. Any alteration to that order and the mechanics thereupon set would constitute Double Jeopardy. See State v. Ziegler, 2005 WI App 69, ¶19, 280 Wis. 2d 860, 695 N.W.2d 895 (Double Jeopardy protection applies to restitution orders.). On July 1, 2016, the Department of Corrections, post hoc, the passage of Wis. ACT 355 (2016) which amended Wis. Stats. § 973.20 to include 973.20(11)(c) (2016), which reads:

"If a defendant who is in a state prison or who is sentenced to a state prison is ordered to pay restitution, the court shall require the defendant to authorize the department to collect, from the defendant's wages and from other moneys held in the defendant's prisoners account, an amount or a percentage the department determines is reasonable for payment to victims. (Id.)"

There is no language in Wis. ACT 355 which states such newly created amendment to Wis. Stats. § 973.20 shall apply retroactively to include those sentenced before July 1, 2016, nor could it because it would violate Due Process and implicate the Double Jeopardy Clause of both the United States and Wisconsin Constitutions. The language, "If a defendant who is in a state prison or who is sentenced to pay restitution..." cannot mean that this statute is to apply retroactively to those already confined because, the following words state "the COURT order shall require the defendant,.." and court orders are issued by the court and not the legislature, and defendants have a legitimate expectation of finality in sentence.

"If application of the Double Jeopardy Clause to an increase in sentence turns on the extent and legitimacy of a defendant's expectation of finality in that sentence. The analytical touchstone for double jeopardy is the defendant's legitimate expectation of finality in a sentence, which may be influenced by many factors, such as the completion of the sentence, the passage of time, the pendency of an appeal, or the defendant's misconduct in obtaining sentence." Jones, 257 Wis. 2d at ¶10.

"For the purpose of determining the legitimacy of a defendant's expectations, there is a distinction between one who intentionally deceives a sentencing authority or thwarts the sentencing process and one who is forthright in every respect. Whereas the former will have purposely created an error on the sentencer's part and thus can have no legitimate expectation regarding expectation that the sentence, once imposed and commenced, will not later be enhanced. Under this analysis, unless the statute explicitly provides for sentence modification, or the defendant knowingly engages in deception, a sentence may not be altered in a manner prejudicial to the defendant after he has served his sentence." Jones, supra, at ¶12, quoting United States v. Jones, 722 F.2d 632, 638-39 (11th Cir. 1983).

Mr. _____ falls in the latter category where he is blameless and thus, has a legitimate expectation that the sentence imposed and commenced for more than _____ years will not now be altered and enhanced absent a statutory invocation for sentence modification by a party with standing to do so. There is no statute that "explicitly" provides for a sentence modification in this case for the time to file for sentence modification pursuant to Wis. Stats. 973.19(1)(a) has long since passed and there are no grounds to invoke the courts "inherent power" to modify this sentence based on a "new factor" justifying sentence modification.

Wis. Stats. 973.20(11)(c) (2016) does not give the DCC the power to unilaterally modify the mechanics of a sentencing order and judgment long since issued. It does not explicitly authorize the modification of a sentence period. It gives the court the authority to impose a sentence consistent with statute at the time of sentencing.

This case is distinguishable from Greene-, 313 Wis. 2d 211, as in Greene the mechanics of that restitution order was never set, there, the court found no Double Jeopardy violation for that fact. Greene 313 Wis2d 211, 1118-20. Here, the mechanics of the order at issue was set at sentencing and according to statute and the law. Any post hoc alteration/modification of that order is in violation of Mr. _____'s Due Process Rights under the Double Jeopardy Clause. Ziegler, 2005 WI App 69, at 519.

RELIEF SOUGHT

Mr. _____ prays upon the court to Issue an order clarifying the mechanics set by this court pursuant to Wis. Stats. 973.05(4)(b) in this case relating to court costs and restitution and prohibiting the institution from withholding funds in this case inconsistent with those mechanics set at the time of sentencing. Further, to return the funds taken cost hoc in contravention and inconsistent with the Judgment of Conviction beginning July 1, 2016 to the date of service of the order.

Mr. _____ further prays upon the Court that said order be sent to
Scott Eckstein, Warden (your prison and warden)
2833 Riverside Drive
GreenBay, WI 54301

Dated this - day of 2016 in GreenBay, Wisconsin.

Respectfully Submitted,
your Name), pro se,

(Your Name & ID)
GreenBay Corr. Inst.
P.O Box 1033
GreenBay, Wis 54307-9033