

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PA

JERARD BRADLEY,	:	
Plaintiff	:	
	:	
v.	:	No. 90-10,292; 90-10,935
	:	
LYCOMING COUNTY COLLECTIONS	:	
OFFICE,	:	
Defendant	:	

OPINION and ORDER

This case involves the defendant’s request to stop the Department of Corrections from deducting 20% of any amounts of money deposited into his inmate account. The deducted funds had been forwarded to the Lycoming County’s Cost Clerk’s Office for the purpose of paying the defendant’s unpaid fines and costs.

The defendant contended that such deductions may not be made without an ability-to-pay hearing, pursuant to 42 Pa.C.S.A. § 9730(b)(3) and Boofer v. Lotz, 797 A.2d 1047 (Pa. Commw. 2002). After a hearing regarding the defendant’s ability to pay, this court issued an order directing SCI Huntingdon to stop deducting the funds from the defendant’s inmate account. The Commonwealth filed a motion to reconsider.

Upon reconsideration, it appears the court erred in granting the defendant’s request to terminate the deductions. Appellate cases which have been decided since Boofer make it clear that such deductions are permitted without an ability-to-pay hearing. See George v. Beard et al., 824 A.2d 393 (Pa. Commw. 2003); Harvey v. Department of Corrections, 823 A.2d 1106 (Pa. Commw. 2003); Harding v. Superintendent Stickman et al., 823 A.2d 1110 (Pa. Commw. 2003).

The above cases distinguish Boofer on two different bases. Harvey states that the Boofer deductions were made from the inmate’s wages rather than his prison account. Harding and George state that the Boofer deductions were prompted by a

letter from the Clerk of Courts, rather than a court order assessing fines, costs, and restitution. Neither of these arguments are very convincing to justify departing from Boofer, which leads this court to believe the Commonwealth Court was going out of its way to render Boofer virtually ineffective, rather than outright overruling the case. We also note that allocatur has been granted on Boofer, and suspect the case may be overruled by the Supreme Court.

This court finds that Boofer makes little sense in light of 42 Pa.C.S.A. §9728(b)(5), which specifically gives the Department of Corrections authorization to make monetary deductions based on an order of court assessing costs, fines, and restitution. Section 9730(b)(3), which addresses the ability-to-pay hearing, takes effect only upon the default of fines, court costs, or restitution, and appears to be designed to prevent incarceration, or an additional period of incarceration, when the defendant is unable to pay the amount due. Even §9730(b)(3), however, merely permits the court to then impose an installment schedule in place of immediate repayment in a single remittance. And if the defendant proves he or she cannot meet the repayment schedule, the court may impose community service as an alternative. This section clearly is not meant to apply to prisoners.

ORDER

AND NOW, this ____ day of August, 2003, for the reasons stated in the above opinion, this court's order of July 21, 2003 is hereby vacated.

BY THE COURT,

Clinton W. Smith, P.J.

cc: Dana Jacques, Law Clerk
Clinton W. Smith, P.J.
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