

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

COMMONWEALTH : No. CR-2045-2017
vs. :
:
TYREE MOY, : Order re Defendant’s Petition to Stop Deductions
Defendant : and AG’s motion to Dismiss

OPINION AND ORDER

AND NOW, this ___ day of June 2019, the court DIRECTS the Clerk of Courts to forward a copy of Defendant’s “Petition to Stop 20% Deduction for Court Costs, Fines and Restitution from Gifts from Family and Friends, and the Return of Money Pursuant to 42 Pa. C.S.A. §8127” to the District Attorney and Donald Martino, counsel for Defendant. See Pa. R. Crim. P. 576.

Rule 576 states that when a defendant “is represented by an attorney and submits for filing a written motion, notice or document that has not been signed by his attorney, the clerk of courts shall accept it for filing, time stamp it with the date of receipt and make a docket entry reflecting the date of receipt, and place the document in the criminal case file. A copy of the time stamped document shall be forwarded to the defendant’s attorney and the attorney for the Commonwealth within 10 days of receipt.” Pa.R.Cr.P. 576(A)(4). The comment to Rule 576 of the Rules of Criminal Procedure, however, explains that the requirement that the clerk time stamp and docket the document only serves to provide a record of the filing, and “does not trigger any deadline nor require any response.”

Furthermore, Defendant filed a similar motion in February, which the court dismissed because this court lacks jurisdiction over claims to stop Act 84 deductions. Such a challenge must be filed with the Commonwealth Court, Pennsylvania Judicial Center, 601 Commonwealth Ave, Suite 2100, P.O. Box 69185, Harrisburg, PA 17106. Although

Petitioner listed the Commonwealth Court on the caption of his petition, he filed it in the Court of Common Pleas of Lycoming County.

To the extent Petitioner challenges the actions of the court or the clerk of courts as unlawful or lacking statutory authority, the court notes the following:

Contrary to Petitioner's assertions, section 8127 of the Judicial Code, 42 Pa. C.S.A. §8127, does not bar the deductions from Petitioner's inmate account. The Commonwealth and its agencies, such as the Department of Corrections (DOC), are excluded from the operation of section 8127(a). *United States v. Chiolo*, 560 F. Supp. 279, 282 (M.D. Pa. 1983). Furthermore, fines, costs, and restitution are an exception to the garnishment bar. 42 Pa. C.S.A. §8127(a)(5).

On each count that the court sentenced Petitioner to incarceration, the court ordered that "the Defendant pay the costs of prosecution." Even if the court had not made such a statement, however, Petitioner would still be required to pay the costs of prosecution. Section 9721(c.1) specifically states:

(c.1) Mandatory payment of costs.--Notwithstanding the provisions of section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties) or any provision of law to the contrary, in addition to the alternatives set forth in subsection (a), the court shall order the defendant to pay costs. **In the event the court fails to issue an order for costs pursuant to section 9728, costs shall be imposed upon the defendant under this section. No court order shall be necessary for the defendant to incur liability for costs under this section.**

42 Pa. C.S.A. §9721(c.1)(emphasis added). Section 9728(b)(3) requires the clerk of courts to transmit to the DOC all costs imposed, including costs imposed pursuant to section 9721(c.1). 42 Pa. C.S.A. §9728(b)(3). The law also authorizes the DOC to make monetary deductions from inmate personal accounts for the purpose of collecting restitution or any

other court-ordered obligation or costs imposed under 9721(c.1). 42 Pa. C.S.A. §9728(b)(5). The DOC may make deductions from any funds in the inmate's account, including gifts from family and friends. *Bundy v. Wentzel*, 184 A.3d 551, 556 (Pa. 2018).

The court is not required to conduct an ability to pay hearing prior to imposing costs or restitution; such a hearing by the court is only required prior to the court sanctioning Petitioner for a failure to pay. Pa. R. Crim. P. 706(a); *Commonwealth v. Childs*, 63 A.3d 323, 325-326 (Pa. Super. 2013). Petitioner has not been committed to prison for a failure to pay his costs. He is currently incarcerated as punishment for his crimes.

Petitioner's due process claim is against the DOC and must be filed in Commonwealth Court. This court lacks jurisdiction to grant Petitioner a hearing or any relief on this claim or any claim or request to stop the deductions and refund the monies already taken. Accordingly, these claims are dismissed without prejudice to Petitioner filing them in the Commonwealth Court.

To the extent Petitioner claims his sentence is illegal as it includes restitution to the state as a victim of crime, Petitioner should discuss this claim with his PCRA counsel. This claim must be asserted in a PCRA petition. As Petitioner is represented by counsel for his PCRA and counsel has not signed this petition, the court cannot take any action on this claim at this time. Petitioner is not entitled to hybrid representation. Petitioner should discuss this claim with his PCRA counsel so that counsel can review the claim and, if it has merit, counsel can amend the PCRA petition to include it.

Finally, the court notes that the matter scheduled for July 8, 2019 is a conference on Defendant's PCRA petition related to requests for the reinstatement of his post sentence and appeal rights; it is not a hearing on his petition to stop Act 84 deductions.

By The Court,

Marc F. Lovecchio, Judge

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