

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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LEE SIMMONS,

Petitioner,

v.

KENNETH MORGAN, LINDA MORGAN,  
CHRIS ELLERD, SGT. ALDANA,  
CCA/PCF ADMINISTRATION,

Respondents.

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ORDER

00-C-380-C

Petitioner is an inmate at the Corrections Corporation of America Prairie Correctional Facility in Appleton, Minnesota. In an order dated June 19, 2000, I gave petitioner until July 19, 2000, in which to submit an initial partial payment of \$12.17. Instead of submitting the payment as directed, petitioner wrote to request an order directing Wisconsin prison officials to pay the full \$150 fee from his release account funds. The motion was denied in an order dated July 20, 2000. I noted that although the state had agreed to put the federal law requiring inmates to pay initial partial payments of their federal court filing fees ahead of the state law forbidding use of release account funds prior to an inmate's release, the state was not

required under the Supremacy Clause to conform its law to federal law any more than the federal law required. In the past, this has meant that where, as here, a petitioner has no money in his regular account but some money in a release account, and where he has been assessed an initial partial payment as required by 28 U.S.C. § 1915, the state would defer to the federal law under the Supremacy Clause and allow the assessment to be paid from the inmate's release account. However, as I advised petitioner in the July 20 order, the Supremacy Clause would not apply where an inmate decides on his own that he prefers to pay more than the assessed amount from his release account.

Now petitioner has written to the court to advise it that he is being denied access to his release account funds to pay the \$12.17 initial partial payment assessed to him. Attached to petitioner's letter is a copy of a letter sent to petitioner by Jackie Bovee, a financial specialist for Contract Jail Facilities with the Wisconsin Department of Corrections at P.O. Box 661 in Waupun, Wisconsin. In her letter, Ms. Bovee states:

Dear Mr. Simmons:

This is in response to your letter dated 7-24-00 in which you request to have \$12.17 paid to the US District Court from your inmate account.

First of all you only have a release account and this money cannot be withdrawn until you are released. In the court order it also states the motion to have money taken from your release account is denied.

I am enclosing a copy of the memo to all inmates regarding their release accounts.

Petitioner also has supplied the court with a copy of the memo Ms. Bovee has distributed to various Wisconsin inmates. It reads in relevant part:

Attention: Wisconsin Inmates

The Contract Jail Facility is the custodian for all Wisconsin inmate bonds, release accounts, savings accounts and segregated accounts while an inmate resides in a contracted correctional or jail facility. While the Administrative Code Chapter 309 does not apply to you or your release account (see Sec. 301.21(2m)(b), Wis. Stats.), the Wisconsin Department of Corrections is still using parts of that chapter as a guideline.

Any attempts to access your release accounts will be denied. This includes attempts to grant Power of Attorney. The Wisconsin Department of Corrections has the statutory right to control inmate accounts.

You will be returned to Wisconsin prior to your release from prison. At that time, you will need and receive your inmate release funds. These funds will no doubt assist you in successfully reintegrating yourself into society. . . .

Ms. Bovee's memorandum and response to petitioner's request for payment of the initial partial payment in this case suggests that she misunderstands this court's July 20 ruling and is unaware of the position the State of Wisconsin has taken with respect to the use of release account funds in other cases filed by Wisconsin state prisoners in this court. Perhaps the state has changed its position or perhaps the state's position has not been made clear to Ms. Bovee or other persons administering contract jail facilities for it. In either event, clarification is necessary before I can determine whether to rescind the assessment imposed upon petitioner. Therefore, through a copy of this order to Assistant Attorney Charles Hoornstra, I am

requesting that no later than September 11, 2000, Mr. Hoornstra advise the court, in writing, either 1) that he has arranged for the payment of petitioner's \$12.17 initial partial payment from petitioner's release account funds or 2) that the state has withdrawn from its position that the Supremacy Clause applies to allow initial partial payments required under 28 U.S.C. § 1915 to be paid from inmate release account funds where there are insufficient funds in an inmate's regular account to pay the fee.

Entered this 22nd day of August, 2000.

BY THE COURT:

BARBARA B. CRABB  
District Judge