

*In re Pers. Restraint Pet. of Pierce (Chad)*  
Dissent by Alexander, J.

No. 83731-7

ALEXANDER, J. (dissenting)—I disagree with the result the majority reaches insofar as the 2006 judgment and sentence is concerned. I do so because the Department of Corrections' (DOC) deduction of costs of incarceration from Chad Pierce's inmate trust account violates a provision in that judgment and sentence waiving costs of incarceration.

DOC contends that notwithstanding the sentencing judge's waiver of costs of incarceration, it has authority to make such deductions, and the majority has indicated its agreement with this contention. In my view, DOC and the majority are both incorrect. I say that because there is no statute authorizing DOC to overrule an order of the sentencing superior court waiving costs of incarceration. Significantly, the superior court has authority to impose payment of legal financial obligations (LFOs) if, at the time of sentencing, it determines that the defendant "has the means to pay" these costs. RCW 9.94A.760(2). Costs of incarceration are an LFO under a catchall provision in former RCW 9.94A.030(29) (2006) and DOC has authority to collect court

ordered LFOs. RCW 72.09.480(2). Because DOC may collect obligations imposed by the superior court, there appears to be no justification for DOC to make deductions for LFOs in its judgment and sentence when the sentencing court has waived such payments. To hold that DOC possesses the authority to collect costs that are waived, as the majority does, is to countenance contravention of a lawful order of the superior court.

The majority relies primarily on RCW 72.09.111 and RCW 72.09.480 as the basis for “expanding the Department’s authority to deduct funds from an inmate’s account.” Majority at 9. While these statutes permit DOC to make deductions from inmate accounts for “inmates who have [LFOs] owing in any Washington state superior court” (RCW 72.09.111(1)(a)(iv)), there is nothing in those statutes granting DOC authority to impose costs of incarceration when those costs were specifically waived by the superior court. Here, the 2006 judgment and sentence specifically provides that costs of incarceration are not owing.

In sum, if a sentencing court determines that a defendant is without such means and, therefore, should not have to pay costs of incarceration, efforts by the State to contravene that order are unlawful and void as a violation of separation of powers.

Because the majority errs in concluding that DOC may deduct costs of incarceration from Chad Pierce’s inmate trust account, notwithstanding the sentencing court’s order waiving these costs, I dissent.

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AUTHOR:

Justice Gerry L. Alexander

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WE CONCUR:

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Justice Charles W. Johnson

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