IN THE COURT OF APPEALS OF IOWA

No. 9-234 / 97-1889
Filed October 27, 1999

FILED
OCT 27 1999
CLERK SUPREME COURT

THOMAS LEE EICHOLTZ,
Plaintiff-Appellant,

vs.

IOWA DISTRICT COURT FOR LINN COUNTY,
Defendant-Appellee.

Appeal from the Iowa District Court for Linn County, Kristin L. Hibbs, Judge.

Eicholtz appeals from the district court's denial of his petition to modify his restitution plan. He claims the court erred in ruling on the petition without granting him a hearing. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and Patricia Reynolds, Assistant State Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Martha E. Boesen, Assistant Attorney General, Denver D. Dillard, County Attorney, and Jerry Vander Sanden, Assistant County Attorney, for appellee.

Considered by Huitink, P.J., and Mahan and Hecht, JJ.

HECHT, J.

Thomas Lee Eicholtz appeals from the district court's denial of his petition to modify his restitution plan. He claims the court erred in ruling on the petition without granting him a hearing. We affirm the district court.

I. Factual Background and Proceedings. Thomas Lee Eicholtz pled guilty to conspiracy to commit theft in the second-degree. As part of his sentence entered on March 9, 1995, he was ordered to pay restitution. A restitution plan was filed November 8, 1995, pursuant to which Eicholtz was ordered to pay twenty percent of all credits to his institutional account to reimburse victims of his crime, pay court costs, and defray fees for the services of the public defender. On July 21, 1997, Eicholtz filed a "Petition For Restitution/Plan Payment Modification"[1] alleging, among other things, changed circumstances in his ability to pay restitution. On August 20, 1997, the district court, without hearing, entered an order denying the relief requested by Eicholtz.

II. Standard of Review. We review restitution orders for errors of law. *State v. Petrie*, 478 N.W.2d 620, 622 (Iowa 1991); *State v. Brewer*, 547 N.W.2d 15, 16 (Iowa App. 1996).

III. Entitlement to Hearing. Eicholtz claims he was wrongfully denied a hearing on his petition to modify the restitution order which was entered pursuant to

---

[1] Eicholtz also filed an "Application For Injunction" and a "Motion To Correct Illegal Sentence." He assigns no error with respect to the district court's rulings on the application and motion.

Iowa Code section 910.7 (1997). The purposes of restitution are protection of the public and rehabilitation of offenders. *State v. Kluesner,* 389 N.W.2d 370, 372-73 (Iowa 1986). An inmate does not have a constitutional right to prison wages. *Hrbek v. Farrier,* 787 F.2d 414, 416 (8th Cir. 1986); *State v. Love,* 589 N.W.2d 49, 51 (Iowa 1998). Any property interest of the inmate in prison wages is granted, and its limits are defined, by the grace of the legislature. *Hrbek,* 787 F.2d at 416. The Iowa statutory provisions governing prison allowances vest considerable discretion in the director of the department of corrections to determine whether to pay them, and if they are paid, what deductions may be made from them. A defendant who seeks to upset a restitution order has the burden to demonstrate either the failure of the court to exercise discretion or an abuse of that discretion. *State v. Kaelin,* 362 N.W.2d 526, 528 (Iowa 1985); *State v. Storrs,* 351 N.W.2d 520, 522 (Iowa 1984).

In order to obtain a hearing upon a challenge to a restitution order, a defendant's pleading must plead sufficient facts (such as a claim of inadequate income or a change in income, expenses, or other circumstances) to demonstrate the request for a hearing is not frivolous. The legislature has determined the district court should serve as a gatekeeper with the discretion to grant a hearing only when it appears warranted from the face of the petition. *State v. Blank,* 570 N.W.2d 924, 927 (Iowa 1997). In this case, Eicholtz does allege a post-sentencing change of circumstances in his petition. He claims, generally, he now must pay for some medical and dental expenses, clothing, and personal hygiene items; and, as a result,

the payments he is required to make pursuant to the restitution order exceed his ability to pay. He fails, however, to allege the amounts of those payments. Likewise, he fails to allege specifically the amount of credits to his institutional account from which the restitution payments are to be made. Under the circumstances, the district court did not err in ruling on the petition without a hearing. We affirm the district court's denial of a hearing pursuant to 910.7.

AFFIRMED.