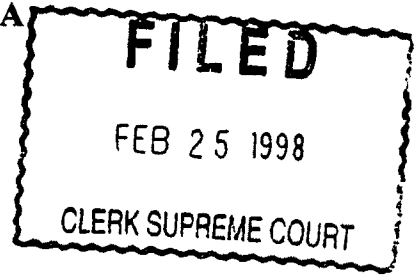


000533

IN THE COURT OF APPEALS OF IOWA

No. 7-727 / 96-1315
Filed February 25, 1998



STATE OF IOWA,
Appellee,

vs.

JEFFREY LYNN WINTERS,
Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, John S. Mackey,
Judge.

Jeffrey Winters appeals from the district court's denial of his motion for
contempt filed against the State. **AFFIRMED.**

Jeffrey L. Winters, Fort Madison, pro se.

Thomas J. Miller, Attorney General, and Layne M. Lindebak, Assistant
Attorney General, for appellee.

Considered by Cady, C.J., and Huitink and Mahan, JJ.

HUITINK, J.

This is an appeal from an inmate claiming the district court should have granted his motion to find the State in contempt for failing to reimburse certain funds to him. We affirm on appeal by memorandum opinion pursuant to Iowa Supreme Court Rule 9.

Jeffrey Winters was convicted of a criminal offense and ordered to pay restitution for court costs. On June 20, 1994, the district court entered an order on his application prohibiting the Iowa Department of Corrections from seizing any portion of gifts Winters received from outside sources.

Winters filed a request for reimbursement of \$25 which had already been seized. On January 2, 1996, the court entered the following order:

IT IS THEREFORE ORDERED that the \$25 previously seized by the State from the defendant's outside sources, and currently being held in escrow, shall be returned to the defendant's inmate account. The State may then proceed with whatever predeprivation hearing that may be required to seize those funds.

The State subsequently gave Winters notice it intended to deduct restitution from money he received from outside sources. Winters was given an opportunity to respond in writing, which he did. The Warden approved the deductions from his accounts.

On April 1, 1996, Winters filed a motion to find the Department in contempt for failing to obey the court's order of June 1994. He claimed the Department was

improperly deducting restitution from gifts he received, in violation of the June 1994 order. The district court found the June 1994 order had been modified by the order of January 1996. The court also found Winters had been given a sufficient hearing on the matter as required by *Walters v. Grossheim*, 525 N.W.2d 830, 833 (Iowa 1994) (*Walters I*). Winters' motion for contempt was dismissed. He now appeals.

Contempt must be established by proof beyond a reasonable doubt. *State v. Ltpcamon*, 483 N.W.2d 605, 606 (Iowa 1992). Contempt will lie only where disobedience to an order was willful. *Ervin v. Iowa District Court*, 495 N.W.2d 742, 744 (Iowa 1993).

We determine Winters has failed to show beyond a reasonable doubt the Department willfully disobeyed a court order. The January 1996 order specifically gave the State the ability seize Winters' funds after a "predeprivation" hearing. Winters did not appeal the January 1996 order, and cannot now complain of the terms of that order.

We recognize the procedure outlined in the January 1996 order was subsequently determined improper by the supreme court in *Walters v. Grossheim*, 554 N.W.2d 530, 531 (Iowa 1996) (*Walters II*). However, as noted above, because Winters did not appeal the January 1996 order, he cannot object to its terms.

Winters raises several other issues, but these issues were not raised below and are not preserved for our review.

000536

We affirm the decision of the district court denying Winters' motion for contempt. Costs of this appeal are assessed to Winters.

AFFIRMED.