

IN THE COURT OF APPEALS OF IOWA

No. 6-179 / 95-0838

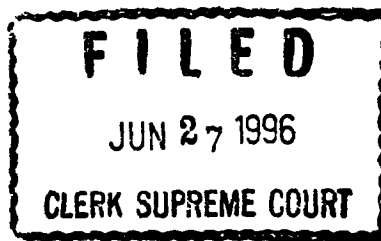
STATE OF IOWA,

Appellee,

vs.

TIMOTHY ALLEN THOMPSON,

Appellant.



Appeal from the Iowa District Court for Black Hawk County, Alan L. Pearson,
Judge.

Prison inmate Timothy Thompson appeals the district court's denial of his request to enjoin collection of restitution from funds outside of his institutional wages. **AFFIRMED.**

Mark D. Reed of Bertroche Law Offices, Des Moines, for appellant.

Thomas J. Miller, Attorney General, and Bruce Kempkes, Assistant Attorney General, for appellee.

Considered by Sackett, C.J., and Habhab and Streit, JJ.

STREIT, J.

Timothy Thompson was incarcerated in 1982. A plan of restitution to cover court costs of \$293.29 was not entered until January 1985. According to the payment plan, Thompson would pay restitution by applying twenty percent of his institutional allowances toward court costs. In February, 1995, Thompson filed an application for an Iowa Code chapter 910 hearing regarding his restitution claiming that since 1992 the State had improperly been taking restitution out of funds from sources other than his institutional wages.

The district court held a telephone hearing. In addition to the claims in his petition, Thompson urged in oral argument that these funds were taken without due process. The district court filed an order holding Thompson had untimely challenged his 1985 restitution plan and thus waived the right to raise the issue. The district court also held chapter 904 permitted the State to apply funds from outside sources to restitution collection.

Thompson appeals claiming (1) the district court incorrectly concluded he waived his right to challenge the restitution provisions and (2) his money was illegally seized because restitution was not being deducted pursuant to a court ordered restitution plan and because deductions from outside funds were made without a predeprivation hearing.

Thompson's claim in oral argument challenging the procedures used in the 1985 restitution order is without merit. In his petition, Thompson pleaded that a "lawful restitution order was imposed." As such, the petitioner admitted a lawful order was imposed and he was bound by his pleading. *Sheerin v. Holin Co.*, 380 N.W.2d 415, 417 (Iowa 1986); *Smith v. Bitter*, 319 N.W.2d 196, 199 (Iowa 1982). The district court was correct in not considering this new challenge. We have repeatedly held that matters not properly raised in the trial court, including constitutional questions, cannot be effectively asserted for the first time on appeal. *State v. Lyon*, 223 N.W.2d 193, 194 (Iowa 1974). The only issue effectively raised at trial was whether the institution had statutory power to assess restitution against Thompson's gifts received from outside sources. As such, his appeal is limited to this issue and the first issue listed above.

We reject Thompson's argument the institution does not have power to collect from his private income sources. Restitution may be collected from prisoners' private sources of income upon notice and predeprivation hearing concerning a prisoner's individualized circumstances. *State v. VanHoff*, 528 N.W.2d 99, 100 (Iowa 1995). The question then becomes whether such notice and hearing were given in this case. Considerable discretion is lodged in the district court on matters involving sentencing, orders for restitution, or plans of restitution. *State v. Janz*, 358 N.W.2d 547, 549 (Iowa 1984). It is the plaintiff's burden to prove he was not given proper notice and

hearing. A de novo review of the record reveals no evidence establishing whether notice and a predeprivation hearing were given. That burden has not been met here.

AFFIRMED.