

MEMORANDUM OF DECISION

General Statutes §18-85a, et seq. allows the state to collect prison expenses from prison inmates. For this purpose the state seeks \$20,000 out of a prison bank account in the name of inmate Robert Baker. The state asks the court to freeze this money in anticipation of a judgment in its favor.

Baker objects. Baker wouldn't question the state's right to attach his \$20,000 if it were merely spending money. Baker also doesn't contest that there is probable cause for the state's claims that he owes the state money for his imprisonment. Instead, he says the money the state wants to freeze is to pay for his appellate lawyer for the appeal of his conviction. Baker says the state has no right to keep it from him even though attorneys' fees aren't among the enumerated exempt amounts listed in the costs of incarceration statute at §18-85a (b).

There is no appellate authority that says the state may take money from an inmate that is intended to pay his lawyer. The state argues instead that without any special statutory exemption Baker should be treated like any other debtor. If he is, the Supreme Court's 1988 decision *in Rosa v. Colonial Bank* says that money in any

account is subject to garnishment unless that account is a special purpose account over which the debtor has “limited dominion and control.”¹

While the account at issue isn’t a special purpose account limiting Baker’s control, Baker isn’t a normal debtor and the state is no ordinary creditor. He is an inmate who has been permitted an appeal from his conviction. He is now before the highest court in the state, seeking to overturn a verdict in favor of the very party trying to take his money. The money at issue is in fact held in trust for him by that same party: the state. Unlike an ordinary creditor—and ordinary creditors are in no way the subject of this ruling— the state is simultaneously charged with protecting Baker’s constitutional right to the effective assistance of counsel.

In General Statutes §51-197f, the state granted Baker the right to ask the Supreme Court to hear his appeal after the Appellate Court rejected it. He asked, and—most important here— the Supreme Court granted him an appeal. Once the state has granted a criminal defendant the right to be heard on appeal, the fourteenth amendment to the federal constitution guarantees him the right to the effective assistance of counsel. This is what the United States Supreme Court held in 1963 in *Douglas v. California* where the court found a constitutional right to counsel for appellate rights once they are granted by a state.² True, the mere right to *ask* for an

¹ 207 Conn. 483, 494.

² 372 U.S. 353, 356-58.

appeal doesn't rise to the same constitutional level. The United States Supreme Court said so in 1974 in *Ross v. Moffitt* where it held there was no constitutional right to counsel to *petition* for an appeal.³ But where an appeal is granted as it has been in this case, the right to effective counsel comes along with it. And at least statutorily our Supreme Court said precisely this in *Gipson v. Commissioner of Correction*.⁴ In that case the Court held that under General Statutes §51-296(a) the state must provide counsel for indigent parties in a criminal appeal at state expense.⁵

This means that if the state could take the money a criminal appellant was going to use for his attorney, the state would be stuck paying for a lawyer itself. This is not just an illogical outcome. It would restrict Baker's exercise of his constitutional and statutory rights by depriving him of the ability to hire a lawyer himself and leave him represented most likely by whomever the state chooses. These constitutional and statutory implications make this is no ordinary debtor's case calling for seizure of anything but strictly segregated funds. Therefore—without intending to say anything about other scenarios— the court holds that where it is established that funds the state seeks to seize for incarceration expenses are intended to pay attorneys' fees in an

³ 417 U.S. 600,614.

⁴ 257 Conn. 632.

⁵ *Id.* at 652.

appeal of a criminal conviction granted by the state, the state may not collect against them under General Statutes §18-85a, et seq.

Still, the state says it can freeze this money because the evidence shows it was not intended for any attorney. The money came from relatives. The state says that if the money were really meant for a lawyer the relatives would have given it to the lawyer directly and immediately. Instead, the funds sat in Baker's prison account for months.

Baker supported by written, sworn testimony admitted without objection insists the \$20,000 was for his lawyer. Baker and the five relatives who apparently raised the money say the money was sent to him because Baker "told his attorneys that they could only communicate with them regarding his case, including payment of fees." Baker referred to billing issues about a November statement and suggested he was working the issue out and planned to pay the lawyer. He provided his lawyer's statement showing a \$20,000 balance due and a lawyer's email referring to the debt.

The state says Baker's claimed plans for the money are belied by his spending. Baker sent checks from the account to pay various home related expenses for family members and spent smaller sums at the prison commissary. The state suggests this means the money was meant to spend as he wished not to pay to his lawyers. But his

account records show that this spending was outmatched by a series of deposits that left him in August 2017 with more than the \$20,000 he says was for his lawyer.

The court finds that, most likely, the money was for Baker's attorney. It's the only thing that makes sense. It would make no sense for instance to assume that in the midst of his appeal to the Supreme Court Baker's relatives would raise \$20,000 and give it to him—not for his unpaid lawyer—but to buy great heaps of incidentals at the prison commissary. Against this backdrop, the court chooses to believe Baker and his relatives' detailed statements about the money, its origins, and purpose.

But should the court believe Baker and let the state take the money anyway to punish him for where he kept it and for how long? This would send a strong message to prisoners that they should avoid the ambiguous placement of their lawyers' fees. But it would also impinge on prisoners' rights to effective legal representation, and the court finds this a more compelling interest than the state's interest in easily distinguishing money it may pursue from money it may not pursue. This doesn't mean the state was wrong for seeking the money when its purpose wasn't apparent. It merely means that once the money's use for attorney's fees in an appeal granted by the state becomes apparent then the state may not take it away to pay for prison expenses.

So under these circumstances if the money is for Baker's lawyer the money should go to his lawyer. But the only things he has provided from his lawyer are a bill

and some emails. This isn't sufficient assurance that the money will not escape and be used for some other purpose. The court will order the money released to Baker's counsel if Baker provides a sworn statement satisfactory to the court from his counsel indicating the amounts owed, to whom to pay the money, and certifying that the money will only be used to pay legal bills associated with Baker's criminal case. If the state wishes to challenge the affidavit it may subpoena the counsel signing it and any other witnesses it chooses to a hearing it may request on the matter. If Baker doesn't provide the affidavit within 60 days, the current order restraining a transfer will remain in effect pending the resolution of the state's case for collection.

BY THE COURT

Moukawsher, J.