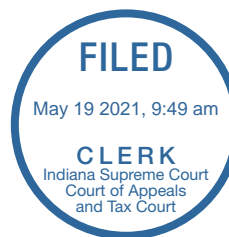


MEMORANDUM DECISION

Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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IN THE COURT OF APPEALS OF INDIANA

Aaron Isby,
Appellant-Plaintiff,

v.

State of Indiana, et al.,
Appellees-Defendants

May 19, 2021

Court of Appeals Case No.
20A-PL-2022

Appeal from the Miami Circuit
Court

The Honorable Timothy P. Spahr,
Judge

Trial Court Cause No.
52C01-2005-PL-330

May, Judge.

- [1] Aaron Isby appeals following the trial court's order dismissing, for lack of subject matter jurisdiction, his complaint that alleged the Indiana Department

of Correction impermissibly withdrew money from his prison trust account and applied the money toward a restitution sanction. We affirm.

Facts and Procedural History

[2] In 1990, Isby stabbed a correctional officer at the Pendleton Correctional Facility. The Indiana Department of Correction (“DOC”) initiated prison disciplinary proceedings against him and imposed a sanction requiring Isby to pay over \$8,000 in restitution for medical expenses the officer incurred. DOC then began intercepting deposits made to Isby’s prison trust account and applying the monies toward restitution. Following a withdrawal from Isby’s trust account in 1996, he filed a small claims suit in LaPorte Superior Court, and our Indiana Supreme Court held the LaPorte Superior Court lacked subject matter jurisdiction to consider Isby’s challenge to the withdrawal because the imposition of disciplinary sanctions and the manner of collection were agency actions not subject to judicial review. *Israel v. Ind. Dep’t of Corr.*, 868 N.E.2d 1123, 1124 (Ind. 2007).¹

[3] Thirteen years passed, and Isby initiated the instant suit on May 18, 2020. He made various filings after initiating suit, but on July 30, 2020, he filed an amended complaint.² The amended complaint alleged DOC withdrew money

¹ Isby is also known as Aaron Israel. (*See* Appellee’s Br. at 5.)

² The amended complaint named as defendants Robert Carter, commissioner of DOC; William Hyatte, warden of Miami Correctional Facility; and Miami Correctional Facility.

from his prison trust account in 2019 and 2020 toward satisfaction of the outstanding restitution balance, and Isby sought “damages, injunctive relief[,] and/or cease and desist order, to prevent the Department of Corrections [sic] . . . from continuing to remove funds from his prison trust account now and in the future[.]” (App. at 11.)³

[4] DOC moved to dismiss Isby’s complaint pursuant to Indiana Trial Rule 12(B)(1) on August 20, 2020. DOC argued that Isby’s complaint “should be dismissed because Indiana trial courts lack jurisdiction to review prison disciplinary sanctions. Moreover, even if the challenged restitution order was subject to judicial review, the amended complaint is barred by the statute of limitations.” (*Id.* at 22.) The trial court granted the motion on September 26, 2020, without holding a hearing. The trial court explained:

1. The Plaintiff devotes a significant portion of both his Amended Complaint and his Memorandum in Support of Plaintiff’s Response to Defendant’s Motion to Dismiss to setting forth reasons why he believes that the initial imposition of a disciplinary sanction of restitution by the Indiana Department of Correction in 1990 was improper. The Court notes, though, that the Indiana Supreme Court’s opinion in *Israel v. Indiana Department of Correction*, 868 N.E.2d 1123 (Ind. 2007), determined that the Plaintiff’s challenge to the Indiana Department of Correction’s withdrawal of \$2,800.17 from the Plaintiff’s trust account for restitution purposes had to be dismissed for lack of

³ Isby failed to comply with Indiana Appellate Rule 51(F) by not filing the table of contents for the entire appendix as a separate volume. Therefore, citations to the single volume appendix are to the page numbers of the pdf version of the appendix rather than to the page numbers listed at the bottom of the pages in the appendix.

subject matter jurisdiction. *Id.* at 1124. Even the dissenting opinion in that case noted that the Plaintiff was claiming that restitution was not an allowable sanction and dismissed that argument as being one seeming to have little merit. *Id.* at 1125. Even if the Plaintiff could have challenged in court the imposition of the administrative sanction for restitution, the time for doing that is long past.

2. Turning to the Plaintiff's complaints regarding the deductions from his prison trust account that have taken place on and after March 27, 2019, the Court concludes that the making of those deductions clearly constituted agency actions related to an offender within the jurisdiction of the Indiana Department of Correction. Like the very sizable deduction of funds described in *Israel v. Indiana Department of Correction, supra*, the making of the deductions described in Amended Complaint in the instant case are not subject to judicial review.

(*Id.* at 36.) Isby subsequently filed a motion to correct error, which the trial court denied without a hearing.

Discussion and Decision

[5] Initially, we note Isby proceeded before the trial court and on appeal pro se.

It is well settled that pro se litigants are held to the same legal standards as licensed attorneys. This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so. We will not become an advocate for a party, or address arguments that are inappropriate or too poorly developed or expressed to be understood.

Lowrance v. State, 64 N.E.3d 935, 938 (Ind. Ct. App. 2016) (internal citations and quotation marks omitted), *reh'g denied, trans. denied*.

[6] Trial Rule 12(B)(1) allows the trial court to dismiss an action if the court lacks jurisdiction over the subject matter of the suit. A motion to dismiss pursuant to Trial Rule 12(B)(1) tests “whether the type of claim presented falls within the general scope of the authority conferred upon the court by constitution or statute.” *Marion Cnty. Cir. Court v. King*, 150 N.E.3d 666, 671 (Ind. Ct. App. 2020), *reh'g denied, trans. denied*. Our review “is a function of what occurred in the trial court.” *Walls v. Markley Enter. Inc.*, 116 N.E.3d 479, 483 (Ind. Ct. App. 2018), *trans. denied*. Where, as here, the record before us is purely a paper record and the facts are not in dispute, we employ a de novo standard of review. *Id.*

[7] Isby argues DOC lacked the constitutional authority to impose a restitution sanction without first obtaining a civil judgment against him. However, Indiana Code section 11-11-5-3(5) provides DOC may impose restitution as a disciplinary action.⁴ While the Administrative Orders and Procedures Act governs and provides means for the review of administrative agency actions, the Act exempts “[a]n agency action related to an offender within the jurisdiction of

⁴ While Isby contends that a restitution sanction may not exceed \$250.00, he does not cite any statute, case, or DOC policy capping the amount of restitution DOC may order as part of a prison disciplinary action. Therefore, his argument is waived. See *In re Moeder*, 27 N.E.3d 1089, 1103 (Ind. Ct. App. 2015) (holding party waived argument for appellate review by failing to present citations to authority in support of her argument), *reh'g denied, trans. denied*.

the department of correction.” Ind. Code § 4-21.5-2-5(6). In *Blanck v. Indiana Department of Correction*, a prisoner incarcerated at Miami Correctional Facility brought an action in state court challenging his placement in a segregation unit as a sanction for a prison disciplinary violation. 829 N.E.2d 505, 507 (Ind. 2005). Our Indiana Supreme Court noted: “For a quarter-century, our Court has held that DOC inmates have no common law, statutory, or federal constitutional right to review in state court DOC disciplinary decisions.” *Id.* The Court examined various statutes governing prison discipline and held the statutes did not “confer subject matter jurisdiction over claims challenging judicial review of prison disciplinary decisions.” *Id.* at 510. The Court also held the Indiana Constitution did not confer a private right of action allowing judicial review of prison disciplinary decisions. *Id.* at 511.

[8] In Isby’s first lawsuit challenging the withdrawal of funds from his prison trust account, our Indiana Supreme Court held DOC’s imposition and enforcement of the order that he pay restitution for the injuries he inflicted on a correctional officer were “agency actions” not subject to judicial review. *Israel*, 868 N.E.2d at 1124. Therefore, Isby’s complaint was subject to dismissal. *Id.* Isby essentially finds himself in the same position now as when he initially challenged DOC’s restitution order and withdrawals. We are bound to follow the authority of the Indiana Supreme Court. *Hill v. State*, 122 N.E.3d 979, 982 (Ind. Ct. App. 2019), *trans. denied*. We thus hold the trial court lacked

jurisdiction over Isby's suit and properly granted DOC's motion to dismiss.⁵ See *Holmes-Bey v. Butts*, 20 N.E.3d 578, 582 (Ind. Ct. App. 2014) (holding court lacked subject matter jurisdiction over habeas corpus petition challenging DOC disciplinary sanctions).

Conclusion

[9] Isby's amended complaint challenged DOC's imposition of a restitution sanction and DOC's collection of that sanction. These are both agency actions exempt from judicial review, and the trial court lacked subject matter jurisdiction to review such challenges. Therefore, we affirm the trial court's dismissal of Isby's complaint.

[10] Affirmed.

Bailey, J., and Robb, J., concur.

⁵ In his briefs on appeal, Isby alleges DOC violated his civil rights when DOC "abandon[ed]" collection efforts in 2017 before restarting them in March 2019, and when DOC increased the amount of the outstanding restitution balance without explanation. (Appellant's Br. at 9 & Appellant's Reply Br. at 9.) However, these allegations are not properly before us. Indiana Trial Rule 8(A) requires that "[t]o state a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, a pleading must contain: (1) a short and plain statement of the claim showing that the pleading is entitled to relief," and Isby did not include these allegations in his amended complaint. See *Carmichael v. Separators, Inc.*, 148 N.E.3d 1048, 1067 (Ind. Ct. App. 2020) (choosing not to address arguments not properly before the court), *trans. denied*. In addition, Isby's argument that Indiana Code section 34-24-3-1 vests trial courts with jurisdiction to review prison disciplinary actions is misplaced because that statute does not confer jurisdiction on any court. Rather, the statute authorizes crime victims to pursue treble damages in certain civil actions.