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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PASCO COUNTY, FLORIDA

STATE OF FLORIDA,
Plaintiff

vs.

CASE NO. 0501018-CF

JASON BAEZ,
Defendant.

Defendant Baez's Motion to Clarify "Inmates Objection to Florida Departments Filed Motion for Imposition of Civil Restitution Lien Judgement & Proposed Order" as a Motion for Rehearing and to Amend with New Grounds

Defendant Jason Baez, through undersigned counsel and pursuant to Rule 1.530 of the Florida Rules of Civil Procedure, moves to clarify and amend his pleading entitled, "Inmates Objection to Florida Departments Filed Motion for Imposition of Civil Restitution Lien Judgment & Proposed Order [Objection]," and filed on July 26, 2024. Defendant Baez seeks to clarify that his Objection should be construed as a Motion for Rehearing on Florida Department of Corrections' Motion for Imposition of Civil Restitution Lien Judgment, and to amend his motion to add Supremacy Clause, Statute of Limitations, and Procedural Due Process claims.

I. PROCEDURAL HISTORY

On or around May 11, 2006, Defendant Baez was adjudicated guilty of a non-capital, non-life felony offense and sentenced to imprisonment for a term of thirty years. On December 13, 2019, Defendant Baez filed a civil rights lawsuit against various prison

staff, including Florida Department of Corrections (FDC) employees, after they brutally beat and failed to medically treat him, causing him to lose an eye. *See Baez v. Inch, et. al.,* Case No. 20-cv-05591-MCR-ZCB (N.D. Fla. Dec. 13, 2019). The case was dismissed on August 2, 2022, following a settlement. In April 2024, Defendant Baez began attempting to transfer large amounts of his settlement funds from his inmate trust account to his family. Shortly thereafter, on July 11, 2024, Plaintiff State of Florida, through its agent FDC, filed a Motion for Imposition of Civil Restitution Lien Judgment under. Fla. Stats. §§ 960.291(5)(b)(1), 960.293(2)(b), 960.292, 960.297(1), and 960.297(3). The same day, the Court granted FDC's motion and imposed a civil restitution lien in the amount of $547,850. FDC then froze all the money in Defendant Baez's trust account, prohibiting him from buying anything from the prison canteen (including the postage stamps and envelopes he needs to communicate with his family).

Defendant Baez did not receive notice of FDC's motion until several days after the Court had already entered its order. But as soon as he could, Defendant Baez, acting pro se, served his Objection on July 22, 2024. To date, the Court has not ruled on his filing.

II. ARGUMENT

A. Defendant Baez Filed a Timely Motion for Rehearing Based on Equal Protection and Excessive Fines Clause Claims.

Defendant Baez's Objection should be "liberally construed" as a timely motion for rehearing under Rule 1.530(b) of the Florida Rules of Civil Procedure. *See Chancey v. Chancey*, 880 So.2d 1281, 1282 (Fla. 2d DCA 2004) (pro se litigant's pleadings "should be liberally construed"); *see also Suarez v. Orta*, 176 So. 3d 327, 328 (Fla. 3d DCA 2015)

(when a pro se filing is "improperly titled," the court should "focus on the substance of the motion."). The substance of Defendant Baez's Objection is that there are matters the court did not consider and so the order was entered in error. *See Carollo v. Carollo*, 920 So. 2d 16, 19 (Fla. 3d DCA 2004) (The purpose of a motion for rehearing is "to give the trial court an opportunity to consider matters which it overlooked or failed to consider, and to correct any error if it becomes convinced that it erred.") (internal citations omitted).

Defendant Baez's first argument should be construed as the civil restitution lien, as applied to him, violates his equal protection rights because FDC selectively enforced the lien in response to the civil rights lawsuit he filed against the prison staff who disfigured and partially blinded him. Specifically, he alleged that 1) FDC is seeking liens against only a select number of incarcerated people, including him; and 2) FDC is deliberately selecting certain individuals, including him, based on whether they exercised their constitutional right to file lawsuits against officers who abused them. *See Bell v. State*, 369 So.2d 932, 934 (Fla. 1979) ("In order to constitute a denial of equal protection, the selective enforcement must be deliberately based on an unjustifiable or arbitrary classification."); *Bondar v. Town of Jupiter Inlet Colony*, 321 So. 3d 774, 785 (Fla. 1st DCA 2021) (explaining it is "improper selective enforcement under the equal protection clause" to differentially treat individuals in response to their "exercise of constitutional rights") (quoting *Lozman v. City of Riviera Beach*, 39 F. Supp. 3d 1392, 1411 (S.D. Fla. 2014)).

Defendant Baez's second argument should be construed as the amount of the civil restitution lien against him violates the Excessive Fines Clause of the Eighth Amendment. *See Hudson v. U.S.*, 522 U.S. 93, 103 (1997) ("The Eighth Amendment protects against

excessive civil fines …"). He essentially argues that the $547,850 lien is *per se* excessive because it would deplete all his settlement funds and any other income.[1] *See Green v. State,* 998 So. 2d 1149, 1150 (Fla. 2d DCA 2008) (Altenbernd., concurring) ("I have no issue with the policy that prisoners should be liable for the costs of their imprisonment *if they can afford to pay for those costs.*") (emphasis added); *see also City of Seattle v. Long*, 198 Wash.2d 136, 168 (2021) ("The Magna Carta—from which the Eighth Amendment descended—limited the government's power to impose punitive fines by, in part, forbidding penalties 'so large as to deprive [a person] of his livelihood.'") (quoting *Browning-Ferris Indus. of Vt., Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257, 271 (1989)); *State v. Yang*, 397 Mont. 486, 498-99 (2019) (remanding a criminal fine for consideration of, *inter alia*, the defendant's "financial resources, or the nature of the burden the imposed fine would have on [the defendant]"). In addition, given that the lien requires payment for incarceration costs to be incurred in the future, "to impose 'restitution' or 'damages or losses' in favor of the State for services not yet provided takes this out of the arena of restitution or compensation and may confuse the concept of liquidated damages with that of penalty." *Green*, 998 So.2d at 1150 (Altenbernd., concurring).

Defendant Baez was required to serve his arguments for rehearing no later than 15 days after the Court filed its order imposing the lien. *See* Fla. R. Civ. P. 1.530(b) ("A motion … for rehearing must be served not later than 15 days after … the date of filing of

[1] FDC has already effectively denied Defendant Baez access to his settlement funds by freezing his inmate trust account such that he cannot even buy necessities from canteen, including stamps and envelopes to maintain contact with this family.

the judgment in a non-jury action."). Despite receiving no notice of FDC's motion before it was granted, Defendant Baez met this deadline by serving his Objection on July 22, 2024, ten days after the order was filed on July 12, 2024. Since the Court has not ruled on the Objection, it has discretion to allow Defendant Baez to amend to add the Supremacy Clause, Statute of Limitations, and Procedural Due Process claims described below. *See id.* ("A timely motion may be amended to state new grounds in the discretion of the court at any time before the motion is determined.").

B. Imposition of the Civil Restitution Lien Against Defendant Baez Violates the Supremacy Clause.

The court erred in allowing FDC to recoup the money it paid to settle Defendant Baez's Section 1983 claims through a civil restitution lien. *See Hankins v. Finnel*, 964 F.2d 853, 861 (8th Cir. 1992) (invalidating a state law that "to the extent the Act permits the State to recoup the very monies it has paid to satisfy a section 1983 judgment against one of its employees"). Under the Supremacy Clause of the United States Constitution, state courts are preempted from applying state laws in a manner that conflicts with the purpose of federal law. *See, e.g., Crosby v. National Foreign Trade Council*, 530 U.S. 363, 372-373 (2000) (explaining that preemption applies when the application of a state law "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress").

"The purpose of section 1983 is two-fold: to compensate victims and to deter future deprivations of federal constitutional rights." *Hankins*, 964 F.2d at 861. Forcing Defendant to pay back his Section 1983 settlement monies "would be inimical to the goals of the

federal statute," as it would remove "the incentive to comply with federal and constitutional rights of prisoners." *Id.; see also Smith v. Fla. Dept. of Corr.*, 27 So. 3d 124, 128 (Fla. 1st Dist. 2010) (explaining that the purpose of the civil restitution statutes is to "compensate the state for the expenses of incarcerating convicted offender[s]—rather than being used to deter prisoners from making claims against DOC."); *Green*, 998 So. 2d at 1150-51 (Altenbernd., concurring) ("I am far more troubled, however, by the State's tactic of filing a motion in the criminal court to obtain a civil restitution lien essentially to serve as a setoff against the federal judgment for the violation of the prisoner's civil rights."); *Williams v. Marinelli*, 987 F. 3d 188, 201 (2nd Cir. 2021) ("The deterrent effect of Williams's § 1983 award is eviscerated if both the constitutional tortfeasor and his employer, the State, are relieved of the bulk of the financial consequences of the violation."). So, as applied to the facts of this case, FDC should be preempted from enforcing a civil restitution lien against Defendant Baez to take back his Section 1983 settlement funds.

C. The Statute of Limitations to Impose a Civil Restitution Lien Against Defendant Baez has Expired.

The court erred in imposing a $547,850 civil restitution lien against Defendant Baez nearly 20 years after his conviction. Even though FDC filed the lien in the criminal court under Fla. Stat. § 960.292, the Court should have rejected the lien as outside the four-year statute of limitations that was applicable under Fla. Stat. § 960.297 at the time of Defendant Baez's conviction. *See Smith,* 27 So. 3d at 127 (Fla. 1st DCA 2010) (finding that for convictions dated before § 960.297 was amended in 2009, the applicable statute of

limitations for liens brought in civil court is four years accruing upon the date of conviction). That statute of applications expired over fourteen years ago, on May 11, 2010.

The legislative history of §§ 960.292 and 960.297 demonstrates why the Court should apply the same statute of limitations for both sections. At the time of Defendant Baez's conviction, § 960.292(2) stated only that the criminal court had "continuing jurisdiction over the convicted offender for the sole purpose of entering civil restitution orders," and § 960.297 included no timeframe language at all. *See* Fla. Laws 2009, c. 2009-63, §§ 15, 17. At least under § 960.297, as opposed to allowing civil courts to impose liens on convicted offenders in perpetuity, the First District Court of Appeals found that "because section 960.297(1) does not prescribe a time period within which the state must bring an action under the statute, the four-year statute of limitation [for civil actions] in section 95.11(3)(f) applies." *Smith*, 27 So. 3d at 127.[2] It follows that if a civil restitution lien filed in a criminal court remains "civil in nature," then the absence of any time period prescribed in § 960.292(2) should result in the same four-year statute of limitations for liens brought in criminal court as liens brought in civil court. *See Fla. Dept. of Corr. v Holt*, 373 So. 3d 969, 971 (Fla. 2d DCA 2023) (holding that defendants have no right to public defender representation in challenging cost of incarceration liens because such liens are "civil in nature"); *see also Am. Home Assur. Co. v. Plaza Materials Corp.*, 908 So. 2d 360, 366 (Fla.

[2] To the extent that *Smith* addresses any statute of limitations under § 960.292(2), that issue was not before the court and so is only dicta. *See Smith*, 27 So. 3d at 128 ("We recognize that our holding has the potential to limit the state's ability to recover incarceration costs from convicted offenders under section 960.297, but it does not affect the state's ability to pursue a restitution lien through the criminal court under section 960.292(2).)"

2005) ("[I]t is our duty to read the provisions of a statute as consistent with one another, and to give effect and meaning to the entirety of the legislative enactment at issue.") (internal citation omitted).

Indeed, interpreting "continuing jurisdiction" under the operative version of § 960.292(2) to literally allow FDC to file motions for costs of incarceration at any time in perpetuity—even if it were decades after someone was released from custody—would be absurd and so impermissible. *See Maddox v. State*, 923 So.2d 442, 448 (Fla. 2006) ("such a sterile literation interpretation [of a statute] should not be adhered to when it would lead to absurd results"). Nor is it reasonable to impose a four-year statute of limitations for liens filed in civil court but allow FDC to escape such limitation by filing liens in criminal court. *See Holly v. Auld*, 450 So.2d 217, 219 (Fla. 1984) (statutory interpretation should not "lead to an unreasonable or ridiculous conclusion.").

Moreover, the Court should not apply the current statute of limitations in § 960.292(2) retroactively. The Florida Supreme Court has held that "[a] statute of limitations will be prospectively applied unless the legislative intent to provide retroactive effect is express, clear and manifest." *Homemakers, Inc. v. Gonzales*, 400 So. 2d 965, 967 (Fla. 1981); *see also Kelly v. Balboa Ins. Co*., 897 F. Supp. 2d 1262, 1270 (M.D. Fla. 2012) ("Under Florida law, in the absence of any express, clear or manifest legislative intent to apply a statute of limitations retroactively, it does not apply to causes of action occurring prior to its effective date."); *Foley v. Morris*, 339 So. 2d 215, 216 (Fla. 1976) ("[T]he presumption is against retroactive application of a statute where the Legislature has not expressly in clear and explicit language expressed an intention that the statute be so

applied."). Section 960.292(2) contains no language showing that the Legislature intended this statute to apply retroactively, and there is certainly no language on retroactivity that is "express, clear and manifest." *See Homemakers, Inc.*, 400 So. 2d at 967. Instead, the current version of § 960.292(2), as amended in 2009, simply states that the criminal court "retain[s] continuing jurisdiction over the convicted offender … for the duration of the sentence and up to 5 years from release from incarceration or supervision, whichever comes later." *See* Fla. Laws 2009, c. 2009-63, § 15.

Thus, in the absence of any clearly expressed time limits in effect at the time of Defendant Baez's conviction, §§ 960.292(2) and 960.297 should be interpreted consistently to include the same four-year statute of limitations that expired on May 11, 2010. FDC filed its motion for a civil restitution lien against Defendant Baez 14 years too late.

D. Defendant Baez Must be Afforded Procedural Due Process Before Imposition of a Civil Restitution Lien.

The Court also erred in imposing a $547,850 civil restitution lien against Defendant Baez before affording him notice and an opportunity to be heard. Especially when faced with the oppressive fine of over a half million dollars, Defendant Baez should receive at least the "minimum procedural safeguards required by due process." *See, e.g., Surat v. Nu-Med Pembroke, Inc.*, 632 So.2d 1136, 1137 (Fla. 4th DCA 1994) ("The appearance of justice, alone, dictates requiring a meaningful opportunity to be heard, given the oppressive result of dismissal…"); *Torres v. One Stop Maint. & Mgmt., Inc.*, 178 So. 3d 86, 89 (Fla. 4th DCA 2015) (vacating $456,080 damages award because defendants were denied

"timely notice of the damages trial and an opportunity to be heard"); *Delgado v. Hearn*, 805 So.2d 1017, 1018 (Fla. 2nd DCA 2001) ("[D]ue process requires that courts first provide notice and an opportunity to respond before imposing this extreme sanction [of denying a litigant pro se access to the courts].").

The trial court has jurisdiction to consider Defendant Baez's legal claims, as opposed to enforcing the lien without allowing him an opportunity to challenge it. This is true even though Fla. Stat. § 960.292 provides that the court "shall enter civil restitution orders." *See State v. Abrahamson*, 696 N.W.2d 589, 592 (Iowa 2005) (interpreting "shall approve" language in a civil restitution statute "as a grant of authority to the court to resolve the merits of the claim—not a mandate that it simply sign the order as a ministerial function"). In fact, other trial courts have adjudicated defendants' legal challenges to civil restitution liens. *See, e.g., Ilkanic v. City of Fort Lauderdale*, 705 So. 2d 1371 (Fla. 1998) (rejecting trial court's decisions related to a defendant's facial challenges to the civil restitution lien statutes); *Wilson v. State*, 957 So. 2d 683, 684 (Fla. 5th DCA 2007) (noting that the trial court considered and rejected defendant's legal challenges to imposition of a lien); *see also Acosta v. Dep't of Corr.*, No. 2D23-324, 2024 WL 201951, at *1 (Fla. 2d DCA Jan. 19, 2024) (considering Acosta's challenge to the trial court's imposition of the lien and finding the record insufficient to review his claim, suggesting the trial court had the ability to make a record). Nor can the appellate court consider Defendant Baez's as-applied constitutional challenges before consideration at the trial level. *See Trushin v. State*, 425 So.2d 1126, 1129-30 ("The constitutional application of a statute to a particular set of facts … must be raised at the trial level."); *Hughbanks v. State*, 190 So.3d 1122, 1123

(Fla. 2nd DCA 2016) ("In order to properly preserve an as-applied constitutional challenge for appeal, a defendant must timely raise the issue for the trial court's consideration."). Thus, the Court should remedy the due process violations by considering the challenges raised herein.

Wherefore, Defendant Baez moves this Court to grant this motion and deny the civil restitution lien against him.

Dated: August 30, 2024

Respectfully Submitted,

/s/ Kelly Knapp

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CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing has been e-filed with the Court and furnished by email to Declan Duffy at declan.duffy@fdc.myflorida.com and certified mail to Bruce Bartlett, State Attorney's Office, P.O. Box 17500, Clearwater, FL 33762-0500 on August 30, 2024.

/s/ Kelly Knapp
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