SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

In Re: W. Stuart Battle,	:	**Case No. 2008 CNC 526**
	:	**Calendar 6**
Respondent.	:	**Judge Brian F. Holeman**

DISBURSEMENT ORDER

Upon consideration of the Memorandum Order of this Court entered on this date, it is this 23rd day of November, 2010 hereby

ORDERED, that the Clerk of the Superior Court, through the Budget and Finance Division of the District of Columbia Courts, pay to W. Stuart Battle, known to reside at 17021 Barn Ridge Drive, Silver Spring, Maryland 20906, the amount of Five Thousand dollars ($5,000.00), in reimbursement of the fine previously paid on January 6, 2009 in 2008 CNC 526.

BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS

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SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

In Re: W. Stuart Battle,	:	**Case No. 2008 CNC 526**
	:	**Calendar 6**
Respondent.	:	**Judge Brian F. Holeman**

MEMORANDUM ORDER

This matter comes before the Trial Court upon the Order of the Trial Court dated October 14, 1010, W. Stuart Battle, M.D.'s Petition for Writ of Mandamus, filed on October 5, 2010 before the District of Columbia Court of Appeals, the Order of the Court of Appeals, dated October 26, 2010, the Response to the Petitioner's Writ [sic] of Mandamus, filed by the Trial Court on November 15, 2010, Government's Response to Petition For Writ of Mandamus, filed on November 15, 2010 and the Invited Response of the District of Columbia, filed on November 15, 2010.

Pursuant to Rule 60 of the Superior Court Rules of Civil Procedure, the Trial Court, *sua sponte,* vacates the Order dated October 14, 2010.

I. Background

The factual and procedural history of this matter is detailed in the Response filed by the Trial Court on November 15, 2010. It is incorporated herein by reference as though fully set forth. The only procedural additions have been the Responses filed by the United States and the District of Columbia, respectively, both filed on November 15, 2010.

II. Applicable Law

Rule 60(b) of the Superior Court Rules of Civil Procedure states, in pertinent part, that "the Court may relieve a party or a party's legal representative from a final judgment, order, or

proceeding . . . [for] (6) any other reason justifying relief from the operation of the judgment." The Court may grant relief *sua sponte* in the interest of justice where no motion for relief has been filed. *Estate of Bryant*, 738 A.2d 283 (D.C. 1999) (stating that "the trial court 'has power [under Rule 60] to act in the interest of justice in an unusual case in which its attention has been directed to the necessity for relief by means other than a motion.'" (citing 11 CHARLES A. WRIGHT, ARTHUR R. MILLER, & MARY K. KANE, FEDERAL PRACTICE AND PROCEDURE § 2865 (1995)).

III. Analysis

The matter that is the subject of decision is the Trial Court's interpretation of D.C. Code § 16-707 (a). The statute states:

> All fines payable and paid under judgment of the criminal division of the Superior Court of the District of Columbia shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

The Trial Court has given due deference to the clear language of the statute. *In re D.H.*, 666 A.2d 462, 469 (D.C. 1995) (stating that "[i]n interpreting a statute, we first look to the plain meaning of its language, and if it is clear and unambiguous and will not produce an absurd result, we will look no further." (citing *Citizens Ass'n of Georgetown v. District of Columbia Bd. Of Zoning Adjustment*, 642 A.2d 125, 128 (D.C. 1994)). In its Order of October 26, 2010 compelling a response to the Petition by the Trial Court and the United States, and inviting a response from the District of Columbia, the Court of Appeals specifically charged the District of Columbia to address "the effect of D.C. Code § 16-707 (a) and the refund of a fine imposed as part of a sentence once the conviction has been vacated and the charge dismissed." Despite the

specifications of this mandate, the District of Columbia's filing is so stunning in its similarity to that of the United States, the former subsumed by the latter, that it adds nothing substantive to the discussion. The District of Columbia failed to address the effect of D.C. Code § 16-707(a), notwithstanding the express mandate of the Court of Appeals.

At the time of filing the instant Order, no interested entity, whether Respondent, the United States or the District of Columbia, has addressed the application of this statute, and seem simply to disregard it. The Trial Court does not possess that latitude. *Lynchburg Inv. Corp. v. Rudolph*, 40 App. D.C. 129, 137 (D.C. 1913) (stating that "the duty of the court [is] to follow the plain mandates of the law.").

Both the United States and the District of Columbia appear to concur that there is no reported decision from the Court of Appeals that directly addresses the issue before the Trial Court. (Government's Response to Petition For Writ of Mandamus at 9; Invited Response of the District of Columbia at 4.)

Both the United States and the District of Columbia cite *Olevsky v. District of Columbia*, 548 A.2d 78 (D.C. 1988). (Government's Response to Petition For Writ of Mandamus at 9; Invited Response of the District of Columbia at 8.) *Olevsky*, a case involving the appellant's willful failure to pay earned wages upon termination and willful violations of minimum wage laws, concerned the question whether the denial of appellant's statutory right to counsel could be cured by imposition of a sentence less than the statutory maximum. 548 A.2d at 79, 86. The case did not involve analysis of § 16-707(a). The Court of Appeals did state, in *dictum*, that the "fine must be returned to [appellant] with reversal of his conviction[.]" *Id.* at 86 n.16. However, there is neither explanation of the judicial or administrative mechanics of that refund nor indication of the legal authority supporting the Court of Appeals' conclusion.

Both the United States and the District of Columbia cite *Wilson v. United States*, 424 A.2d 130 (D.C. 1980) and *District of Columbia v. Dunmore*, 749 A.2d 740 (D.C. 2000), the former involving the court's authority to order return of physical property held by a police property clerk, the latter involving institution of civil forfeiture proceedings which by statute, reposes the held property to the custody of the Mayor. (Government's Response to Petition For Writ of Mandamus at 9; Invited Response of the District of Columbia at 8.) Neither case is helpful to the analysis of the effect of § 16-707(a) in this circumstance.

Both the United States and the District of Columbia cite Superior Court Criminal Procedure Rule 41, the Search and Seizure Rule which, at subpart (g), governs court-ordered return of property "by an unlawful search and seizure or by the deprivation of property." The language of Rule 41, the history of the Superior Court Rules Committee, and the minutes of the Advisory Committee on Superior Court Rules of Criminal Procedure are not helpful to the analysis of the effect of § 16-707(a). The "deprivation of property" clause may apply to property held for use as evidence in a criminal case, but does not apply to the return of a fine.

The Trial Court has previously noted the handling of this matter by other jurisdictions. That analysis, which is found at pages five (5) through eight (8) of the Court's Response, is incorporated herein as though fully set forth. The lingering concern for the Trial Court is whether application of the clear language of D.C. Code § 16-707(a), on the facts presented, would constitute a taking of "property" without just compensation, in violation of the Fifth Amendment to the Constitution of the United States.[1]

Here, there is no demonstration that the amount paid as a fine in a criminal case, particularly where the conviction has been vacated, is "reasonably related to the costs of using

[1] The Fifth Amendment to the Constitution of the United States, states, in pertinent part, that "private property [shall not] be taken for public use, without just compensation."

the courts," and as such, the application of D.C. Code § 16-707 (a) in this circumstance, would result in an unconstitutional taking. *Arthur v. District of Columbia*, 857 A.2d 473, 491 (2004). *See also Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980) ("Neither the ... legislature by statute, nor the ... courts by judicial decree, may accomplish the result [of denying the beneficial owner accrued interest on a court registry deposit] simply by recharacterizing the principal as 'public money' because it is held temporarily by the court....[a governmental body] may not transform private property into public property without compensation, even for the limited duration of the deposit in court.")

The Trial Court is satisfied that on the specific facts presented here, where a criminal conviction is vacated and the fine previously paid is sought for refund, application of D.C. Code § 16-707(a), without other relief,[2] would effect the constitutionally proscribed taking. *See Webb's Fabulous Pharmacies*, 449 U.S. at 160, 163-64 (indicating that a taking is not unconstitutional, rather, a taking without just compensation is unconstitutional); *Gay Rights Coal. of Georgetown Univ. Law Center v. Georgetown Univ.*, 536 A.2d 1, 43 (D.C. 1987) ("The deeply rooted doctrine that a constitutional issue is to be avoided if possible informs our principles of statutory construction. We do not needlessly pit a statute against the Constitution.

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[2] As discussed in the Trial Court's Response at pages five (5) through eight (8), other jurisdictions have resolved this dilemma by statutory enactment (Delaware, New Jersey, and Arkansas), executive branch authority (Maryland), or established practice or procedure (North Carolina). *See* Del. Code Ann. tit. 11, § 4103(a) ("The State Treasurer shall remit to each person, or to the attorney of such person, who has paid a fine upon a conviction which was later set aside by a court of higher jurisdiction upon a certiorari or appeal from the lower court."); N.J. Stat. Ann. § 2A:166-13 ("When a defendant has paid a fine upon being found guilty of an offense and has taken an appeal and obtained a decision in his favor terminating the case of the State against him, the treasury of the governmental entity which received the fine shall return to such person the amount of the fine so paid."); Ark. Code Ann. § 16-96-509 ("If judgment is rendered for the defendant, any money paid into the circuit court which has been collected from the defendant on the original judgment shall be forthwith returned to the defendant."); *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 322 (4th Cir. 1994) (stating that, in North Carolina, the "customary procedure" of courts is to refund fines when a conviction has been overturned); *Delaware v. Fisher*, 106 A.2d 766, 766-67 (Del. Super. Ct., 1954) (explaining that, in Delaware, there is a "statutory right to recover the amount of a fine."); *Duncan v. State*, 190 Md. 486, 490 (1948) (stating that, in Maryland, appellants "have the right seek . . . recovery [of fines]" in view of Maryland's constitutional provision granting the Governor of Maryland the "power to remit fines and forfeitures for offences against the State.").

Insofar as its language permits, the [statute] must be construed in a manner which protects its constitutionality.")

WHEREFORE, it is this 23rd day of November, 2010, hereby

ORDERED, that the Order of this Court dated October 14, 2010 is **VACATED**; and it is further

ORDERED, that the Clerk of the Superior Court, through the Budget and Finance Division of the District of Columbia Courts, pay to W. Stuart Battle, the amount of Five Thousand dollars ($5,000.00), in reimbursement of the fine previously paid on January 6, 2009 in 2008 CNC 526, consistent with the companion Disbursement Order filed contemporaneously herewith.

BRIAN F. HOLEMAN
JUDGE

SIGNED IN CHAMBERS

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