

**IN THE COURT OF APPEALS OF IOWA**

No. 3-363 / 12-1176  
Filed May 30, 2013

**PHILIP MEARS,**  
Plaintiff-Appellant,

**vs.**

**STATE PUBLIC DEFENDERS OFFICE,**  
Defendant-Appellee.

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Appeal from the Iowa District Court for Henry County, Cynthia H. Danielson, Judge.

Philip Mears appeals from the denial of his request for court-appointed attorney fees in a criminal case. **REVERSED AND REMANDED.**

Philip B. Mears of Mears Law Office, Iowa City, for appellant.

Samuel P. Langholz, State Public Defender, and Rebecca J. Hanson, Assistant State Public Defender, Des Moines, for appellee.

Heard by Eisenhauer, C.J., and Potterfield and Tabor, JJ.

**POTTERFIELD, J.**

Philip Mears appeals from the denial of his request for court-appointed attorney fees in a criminal case. We reverse and remand, finding the State Public Defenders Office (SPD) improperly found the cost of representation in Drips's action for postconviction relief was not eligible for compensation under Iowa Code section 822.5 (2011).

**I. Facts and Proceedings.**

In May of 2012, Philip Mears was denied compensation for his work as court-appointed postconviction relief counsel for George Drips. He was appointed to represent Drips the previous May after Drips wrote to the district court requesting to receive earned-time credit against his two-year special sentence, imposed pursuant to Iowa Code section 903B.2 after his parole was revoked. In its order filing Drips's letter as an application for postconviction relief and appointing counsel, the district court wrote: "Arguably, the sentence Drips received is subject to collateral attack according to Iowa Code section 822.2(g). Drips is entitled to the cost of legal representation under Iowa Code section 822.5." The court appointed Mears "at state expense, pursuant to Iowa Code section 822.5."

On May 11, 2011, shortly after his appointment by the court, Mears wrote to the SPD inquiring as to whether the Indigent Defense Fund would pay for his services as court-appointed counsel to Drips. Mears filed an amended and substituted application for postconviction relief on June 13, 2011. He noted the application raised issues similar to two other cases in which relief was granted, one of which was on appeal. On June 23, the SPD wrote Mears notifying him

that a claim for his services as court-appointed counsel would be denied. It stated:

The postconviction action that you describe challenging the [Department of Correction]'s calculation of an estimated release date, and in particular the failure to grant earned time credit or presentence credit, does not challenge either the conviction or the sentence imposed by the district court. It challenges the application of the sentence and other statutory provisions by the [Department of Corrections].

In September 2011, this court entered a decision denying postconviction relief in the similar case, and Drips's petition was in turn denied.<sup>1</sup> In October, Mears filed his claim for fees with the SPD accompanied by a letter which noted that while "[o]rdinarily claims about earned time, that has been forfeited, do not get counsel. . . . Mr. Drips's claim, however, is not about whether earned time was forfeited. The claim is whether the type of sentence qualifies for earned time or not." The SPD denied Mears's claim for two reasons: because it was untimely and because it was not a compensable indigent defense claim.

The claim was later found to have been timely; however, the SPD maintained its position that Drips's claim was not a compensable indigent defense claim. On December 9, 2011, Mears filed a motion for court review of the SPD's denial of his fee claim. On May 21, 2012, the court denied his motion for review. The district court based its decision on our supreme court's holding in *Kolzow*, 813 N.W.2d at 731, noting the court in *Kolzow* found "the imposition of the additional two-year period of incarceration pursuant to section 903B.2 does

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<sup>1</sup> This similar case was *Kolzow v. State*, No. 11-0293, 2011 WL 3925492 (Iowa Ct. App. Sept. 9, 2011). This was partially vacated by *Kolzow v. State*, 813 N.W.2d 731 (Iowa 2012), where the Supreme Court allowed a reduction for jail-time credit under Iowa Code section 903A.5 but affirmed the denial of earned-time credit.

not constitute a 'sentence' as used in both the Kolzow and Drips applications, but is simply a 'revocation of release.'" Mears appeals from this ruling.

## II. Analysis.

"Our review of a decision by the district court reviewing the state public defender's denial of a claim for attorney's fees is for correction of errors at law." *Simmons v. State Pub. Defender*, 791 N.W.2d 69, 73 (Iowa 2010); Iowa R. App. P. 6.907. "[A]n indigent's right to counsel in a postconviction relief proceeding is statutorily based; no state or federal constitutional grounds for counsel exist in such proceedings." *Wise v. State*, 708 N.W.2d 66, 69 (Iowa 2006).

In Iowa, a court-appointed attorney who seeks compensation for his services to indigent persons must submit a claim to the SPD. Iowa Code § 815.10A(1). In a postconviction relief case, the SPD is authorized to compensate counsel for services in accordance with Iowa Code section 822.5.

This section reads, in pertinent part:

If the applicant is unable to pay court costs and stenographic and printing expenses, these costs and expenses shall be made available to the applicant in the trial court, and on review. Unless the applicant is confined in a state institution and is seeking relief under section 822.2, subsection 1, paragraphs "e" and "f", the costs and expenses of legal representation shall also be made available to the applicant in the preparation of the application, in the trial court, and on review if the applicant is unable to pay.

Iowa Code § 822.5. Mears's claim turns on the interpretation of Iowa Code section 822.2(1). This section describes seven circumstances where postconviction relief is available:

1. Any person who has been convicted of, or sentenced for, a public offense and who claims any of the following may institute, without paying a filing fee, a proceeding under this chapter to secure relief:

- a. The conviction or sentence was in violation of the Constitution of the United States or the Constitution or laws of this state.
- b. The court was without jurisdiction to impose sentence.
- c. The sentence exceeds the maximum authorized by law.
- d. There exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice.
- e. The person's sentence has expired, or probation, parole, or conditional release has been unlawfully revoked, or the person is otherwise unlawfully held in custody or other restraint.
- f. The person's reduction of sentence pursuant to sections 903A.1 through 903A.7 has been unlawfully forfeited and the person has exhausted the appeal procedure of section 903A.3, subsection 2.
- g. The conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error formerly available under any common law, statutory or other writ, motion, petition, proceeding, or remedy, except alleged error relating to restitution, court costs, or fees under section 904.702 or chapter 815 or 910.

Iowa Code § 822.2. If the Drips claim falls under subpart “e” or “f,” Mears cannot recover payment for his legal representation. Mears claims Drips’s application for postconviction relief pertained to paragraphs “a” and “c” of the statute; therefore, his representation was compensable. His challenge implicates the imposition of the special sentence by the court, and he reasons we should construe his challenge to be against that “sentence as administratively interpreted by a state agency.”

The SPD responds that the action falls squarely within subsection “e”, citing language from the original and amended applications for postconviction relief. The amended application requested the court “direct the [Department of Corrections] to apply both earned time and jail credit to the two year sentence being served” by Drips, which should result in his “being immediately released from prison.” This language, the SPD argues, shows he was claiming to be “unlawfully held in custody or other restraint” under Iowa Code 822.2(e). While

the claim may in part pertain to continued unlawful custody, the claim centrally asks the court to evaluate whether our earned-time statute (Iowa Code section 903A) applies to the revocation of release statute (Iowa Code section 903B.2). In essence, he argued the “sentence” imposed under 903B.2 exceeds the maximum authorized by our law.

In *Kolzow*,<sup>2</sup> our supreme court summarized the special sentence procedure as follows:

The offender begins this special sentence “as if on parole.” But, [Iowa Department of Corrections] can seek to revoke the offender’s parole, which these statutes refer to as “a revocation of release.” Unlike a revocation of traditional parole, the offender is not incarcerated for his remaining sentence. Instead, these special sentence statutes prescribe maximum “revocation of release” periods. An offender’s first “revocation of release shall not be for a period greater than two years.”

*Kolzow*, 813 N.W.2d at 738 (footnotes and internal citations omitted).

The special sentence behaves much like traditional parole. *See id.* The difference is that when parole is revoked under the special sentence statute, the inmate is not returned to serve the balance remaining on his sentence but is instead subject to a defined term of re-incarceration. *Id.* In *Kolzow*, our supreme court stated that “incarceration on a revocation of release is simply a different placement on the corrections continuum during the same ten-year special sentence.” *Id.* This language does not preclude the application of Iowa Code section 822.2(a) and (c) to Drips’s claim as challenging a “sentence” as intended in section 822.2. The issue is the length of time Drips is required to spend incarcerated on the term of revocation, which was part of the original “special”

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<sup>2</sup> *Kolzow* retained counsel for his postconviction application; he raised no issue regarding indigent defense payment.

sentence imposed by the court.

In interpreting [our penal code], our primary goal is to give effect to the intent of the legislature. That intent is gleaned from the language of the statute as a whole, not from a particular part only. In determining what the legislature intended . . . we are constrained to follow the express terms of the statute. . . . We also note the rule of statutory construction that penal statutes are to be strictly construed, with any doubt resolved against the State and in favor of the accused.

*State v. Anderson*, 782 N.W.2d 155, 158 (Iowa 2010) (internal citations and quotation marks omitted).

Our legislature, in enacting the special sentence statutory scheme, intended to create a revocation hierarchy of maximum revocation of release periods. *Kolzow*, 813 N.W.2d at 735. In *Kolzow*, the court emphasized the importance of the maximum terms prescribed for revocation of release and ultimately concluded that failure to apply jail-time credit to the revocation of release period exceeded the statutory authority granted to the department of corrections. *Id.* at 740. The court came to this conclusion, despite the word “sentencing” used in section 903A.5:

The State asserts *Kolzow* is not entitled to jail-time credit to reduce his prison time for a revocation of release because section 903A.5 does not expressly apply to detention pending parole-revocation or revocation-of-release hearings, only “sentencing.” . . .

The problem with the State’s position is that it permits IDOC to incarcerate offenders for a period greater than the two-year maximum for a first violation in section 903B.2. Section 903B.2 unambiguously states the offender’s revocation of release “shall not be for a period greater than two years upon any first revocation, and five years upon any second or subsequent revocation.” An offender’s release is revoked when he is detained in a jail or work-release facility awaiting his hearing. . . . *We cannot construe the plain statutory language in a manner that permits express maximum periods of incarceration to be exceeded.*

*Id.*, 813 N.W.2d at 740 (emphasis added). *Drips*, like *Kolzow*, challenged the

denial of earned time and jail credit on the ground that, without that credit, their periods of incarceration exceeded the maximum authorized by law. The court in *Kolzow* found the sentence, which included the revocation period of incarceration, to “exceed the maximum authorized by law,” unless jail-time credit was granted. See *id.*; Iowa Code § 822.2(c). This interpretation comports with the legislative intent that these revocation periods are, in fact, part of the sentence imposed by the court, which cannot be exceeded. See *Kolzow*, 813 N.W.2d at 740. Therefore, an application for postconviction relief challenging whether the denial of earned and jail-time credit results in a term of incarceration exceeding that authorized by law does address the sentence. See Iowa Code § 822.2(c). “Penal statutes are to be strictly construed, with any doubt resolved against the State and in favor of the accused.” *Anderson*, 782 N.W.2d at 158. We agree with Mears that the Drips application for postconviction relief fell under a compensable section of Iowa Code section 822.2(1)(c).

For the above reasons, we reverse the decision of the district court affirming the denial of compensation by the SPD. We remand the matter for a determination of reasonable fees.

**REVERSED AND REMANDED.**