

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

JUN 18 2008

SAMUEL SCOTT JOHNSON,

Plaintiff - Appellant,

v.

BILL SLAUGHTER, Director,
Department of Corrections; DIANA
LEIBINGER-KOCH, Chief Legal Council
for Department of Corrections; KATHY
MATSON, Crime Victim Compensation
Supervisor, Department of Justice Board
of Crime Control,

Defendants - Appellees.

No. 06-35306

D.C. No. CV-03-00069-LBE

MEMORANDUM*

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

Appeal from the United States District Court
for the District of Montana
Leif B. Erickson, Magistrate Judge, Presiding

Argued and Submitted June 5, 2008
Seattle, Washington

Before: FERNANDEZ and CALLAHAN, Circuit Judges, and GONZALEZ**,
District Judge.

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

** The Honorable Irma E. Gonzalez, Chief Judge of the United States
District Court for the Southern District of California, sitting by designation.

Samuel Johnson appeals the district court's grant of summary judgment dismissing his claim that the defendants violated his due process rights by deducting 15% of his prison wages for the Crime Victims Compensation and Assistance Program without crediting those payments to his court-ordered restitution obligations. The facts are known to the parties and need not be repeated here.

Johnson is unable to establish that he had a constitutionally protected property interest in his prison wages while he was employed in a non-federally certified program. A state may create a constitutionally protected liberty or property interest "if it places substantive limitations on the exercise of official discretion." Smith v. Noonan, 992 F.2d 987, 989 (9th Cir. 1993). Montana Code section 53-30-132 does not provide substantive limitations on the Department of Corrections' exercise of discretion when it comes to wages paid to inmates who are not employed in a federally certified program. We also find that there is no support for a traditional "old property" right in the amount of wages earned while at prison. See Schneider v. California Dep't of Corrs., 151 F.3d 1194, 1200-01 (9th Cir. 1998).

AFFIRMED.