IN THE UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF IOWA

In the Matter of :

ROGER GENE VANHOFF, : Case No. 90-02940-D J

Debtor. : Chapter 7

DDED DENVING DEPTODIC MOTION FOR DETIIDN

ORDER DENYING DEBTOR'S MOTION FOR RETURN OF MONIES AND FOR A STOP AND DESIST ORDER

On April 26, 1991 the court received the debtor's "Motion for Return of Monies and a Stop and Desist order". The debtor seeks both an order requiring the Iowa State Penitentiary to return monies withheld from him in March and April 1991 and an order requiring the penitentiary to stop withholding any future money for payment of the debtor's restitution obligations.

Debtor filed a petition for Chapter 7 relief on November 13, 1990. On March 21, 1991 the court received a letter from the debtor regarding the penitentiary withholding money from his pay. The court conducted a telephonic status hearing on April 5, 1991 and entered an order requiring the debtor's account to be credited for restitution amounts withdrawn from the date the petition was filed to February 26, 1991, the date the general discharge was entered. The order was based on the fact the 11 U.S.C. section 362 automatic stay was in effect during that time period. The government neither argued that an exception under section 362(b)(5) existed nor sought relief from the stay under section 362 (d). The debtor does not contend that the government has failed to credit his account as ordered by the court.

The debtor's argument with respect to monies withheld since

the general discharge was entered appears to be based on a misunderstanding of the scope of the general discharge. 11 U.S.C. section 523(a)(7) provides in relevant part:

- (a) A discharge under section 727 of this title does not discharge an individual debtor from any debt--
 - (7) to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss,....

The United States Supreme Court has held section 523 (a) (7) automatically preserves from a Chapter 7 discharge any restitution orders a state criminal court imposes as part of a criminal sentence. Kelly v. Robinson, 479 U.S. 36, 52 (1986). The entry of the debtor's general discharge on February 26, 1991 does not preclude the Iowa State Penitentiary from subsequently withholding restitution payments from the debtor's pay.

THEREFORE, IT IS ORDERED that the debtor's motion is denied.

Dated this 2nd day of May, 1991.

LEE M. JACKWIG CHIEF U.S. BANKRUPTCY JUDGE