

## Prisoner s Attorneys Fee Award Must First Come From The Judgment

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[James N. Markels](#)

[Murphy v. Smith](#)

Under 42 U.S.C. sec. 1997e(d)(2), a prisoner who prevails in a civil rights suit, and receives an attorneys fee award, has a portion of his judgment, not to exceed 25 percent, applied to that award. When Charles Murphy won his suit against two prison guards, the district court ordered that Murphy pay ten percent of his attorney s fee from his judgment, and the guards the remainder. The Seventh Circuit reversed, holding that the statute required that fully 25 percent of the judgment be used toward the fee before the defendants could be responsible for anything further. The Court, in a 5-4 opinion by Justice Gorsuch resolving another circuit split, affirmed, holding that the plain language of the statute required the district court to apply the judgment with the purpose of fully discharging the fee award, up to 25 percent of the judgment amount, and rejecting the argument that district courts had any discretion in the matter. Justice Sotomayor, joined by Justices Ginsburg, Breyer, and Kagan, dissented, arguing that the statute s language did allow a district court discretion in applying less than 25 percent of a judgment toward a fee award.