

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

HARRIET DELORES CLEVELAND,)
)
Plaintiff,)
)
vs.) Case No. 2:13-cv-0732-MEF-TFM
)
CITY OF MONTGOMERY,)
THE HONORABLE MILTON J.)
WESTRY,)
)
Defendants.)

AMENDED COMPLAINT

INTRODUCTION

1. Plaintiff Harriet Cleveland is an indigent woman who has been ordered¹ to be incarcerated because of her inability to pay traffic tickets, in violation of her constitutional rights

10. Plaintiff brings claims arising under 42 U.S.C. § 1983 and the U.S. Constitution, which this Court has jurisdiction over pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This Court has supplemental jurisdiction over all claims arising under the Alabama Constitution and laws pursuant to 28 U.S.C. § 1367.

11. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because this Court sits in the district and division in which the state court action was pending.

PARTIES

12. Plaintiff Harriet Cleveland is a 49-year-old resident of Montgomery, Alabama.

13. Defendant City of Montgomery (“City”) is an Alabama municipal corporation organized pursuant to Act 73-618 of the Alabama Legislature and located in Montgomery County, Alabama.

14. Defendant Judge Milton J. Westry is a resident of the State of Alabama.

STATEMENT OF FACTS

Order of incarceration

15. Plaintiff Harriet Cleveland was ordered to serve 31 days in jail because of her inability to pay fines and fees on multiple traffic tickets.

16. Plaintiff incurred these traffic tickets in 2008 and 2009, when a police roadblock

18.

When one woman said that she was unable to pay, he said that she must be jailed because of a policy that he must follow.

25. A copy of the transcript given to Plaintiff, which details the court's disposition of each of these cases,² is attached to this Complaint as Exhibit B. Each case is listed as "commuted," and Defendant Judge Westry's order to either pay the fine or spend 31 days in jail is detailed at the bottom of the order.

26. Plaintiff has been told by many others that they have similarly been incarcerated

29. The court files for the cases on which Plaintiff was jailed do not contain records of the entire amount paid to JCS towards her fines and court costs. Upon information and belief, the court files do not reflect the amounts that Plaintiff actually owes, since at least one case for which Plaintiff was jailed appears to have already been paid in full.

30. Plaintiff has been unable to find full-time work for years. Plaintiff lost her full time job at a daycare in 2009, and was able to obtain only a part time job over the next year until she was again laid off from that job.

31. Since that time, she has made some money for daily necessities by babysitting and by renting out two rooms of her home to strangers. She lost one babysitting job when she was jailed in August 2013.

32. Plaintiff was able to obtain a part-time job cleaning a daycare just before she was imprisoned. She walks to this job every weekday, as she is unable to obtain a license because of her outstanding fines and unable to afford daily bus fare. She continues to look for a full-time job or additional work.

33. After a year without full-time job, Plaintiff said she was laid off from her job in August 2013. She was unable to find a job for the next year and a half. She was laid off from her job in August 2013. She was unable to find a job for the next year and a half. She was laid off from her job in August 2013. She was unable to find a job for the next year and a half.

Policy and Practice of the City of Montgomery and Judge of the Municipal Court

34. It is the policy and practice of Defendants to offer an alternative sentence to those who have not paid outstanding fines and court costs—requiring them to either pay the amount owed immediately or “sit out” the time in jail at a rate of \$50 per day.

35. When individuals are first sentenced or plead guilty and are unable to pay fines and court costs, these individuals are assigned to probation with JCS, under general practice and the Municipal Court’s standing orders. Individuals must make monthly payments to JCS that include monthly supervision fees of \$40. When these individuals fail to make their payments, JCS reports back to the Municipal Court, triggering further proceedings in the Municipal Court to collect what is owed.

36. The Municipal Court does not conduct indigency determinations or explain how an individual may claim indigency if s/he is unable to pay the amount owed. tpa

36.

least \$150 (or 10% of what was owed, if greater) to pay towards their fines. Mr. Nixon publicly acknowledged that the arrests probably scared others from participating.

39. Mr. Nixon warned that, following the Amnesty Program, the City would be even stricter about arresting people with outstanding warrants. Later that same month, Plaintiff received a letter from the district attorney regarding her nonpayment. It threatened arrest, without informing her that she may not be jailed if

CLAIMS

COUNT I

Declaratory Judgment of Violation of Plaintiff's Rights under the Fourteenth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)

43. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 42.

44. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to her incarceration for her inability to pay traffic tickets violated the rights to due process and equal protection contained in the Fourteenth Amendment of the United States Constitution.

45. The U.S. Supreme Court has consistently held that the Fourteenth Amendment

COUNT II

Declaratory Judgment of Violation of Plaintiff's Rights under the Sixth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)

48. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 47.

49. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to her incarceration violated the right to counsel contained in the Sixth Amendment of the United States Constitution.

50. Defendants violated Plaintiff's right to counsel through their actions, policies, and practices that led to the failure to appoint counsel to represent her in her proceedings before the Municipal Court. Plaintiff was actually imprisoned, and did not knowingly, intelligently, or voluntarily waive her right to counsel.

51. Defendants' actions in violating Plaintiff's constitutional rights also constitute violations of 42 U.S.C. § 1983. Defendants were acting under color or law when their actions, policies, or practices caused Plaintiff's confinement.

52. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if she is required to serve the remainder of her sentence. Defendants have not vacated the order confining Plaintiff or promised not to enforce it, but instead have agreed to stay the remainder of the incarceration period and other post-conviction collections until this Court has ruled on this case.

COUNT III

Common Law Certiorari

53. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 52.

54. Plaintiff requests review in the nature of certiorari to determine whether the order of incarceration violated Plaintiff's rights under the U.S. and Alabama Constitutions and Alabama law.

55. Defendants violated Plaintiff's constitutional rights to due process, equal protection, and counsel as explained in the preceding paragraphs, including the equivalent protections under the Alabama Constitution, Ala. Const. art. I, §§ 1, 6, 22. Their actions, policies, and practices also violated her rights to an examination into her ability to pay before incarceration and not to be incarcerated as an indi

Dated this 12th day of November, 2013.

12

NAME: [REDACTED]

DOB: [REDACTED]

SSN: [REDACTED]

STATE: [REDACTED]

RT05505410 COMMITTED ON \$10.00
INSURANCE

2009

NO PROOF OF

500RT020302

COMMITTED ON \$179.00

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