

A080556

State of Minnesota
IN COURT OF APPEALS

ANDREW TYLER JONES,

Appellant,

v.

STEVEN C. BORCHARDT,

Respondent.

APPELLANT'S BRIEF

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Table of Contents

Table of Authorities.....ii

Legal Issues.....1

Statement of the Case.....3

Statement of the Facts.....4

Standard of Review.....6

Argument.....7

I. The Sheriff violated Jones, constitutional rights to equal protection and due process because he charged Jones, an indigent inmate, for his confinement at the county jail, but did not charge a similarly situated, but non-indigent inmate.....7

II. Minn. Stat. § 641.12 permits the county to charge convicted offenders for their confinement following a conviction, but the Sheriff erroneously charged Jones for the costs of confinement that accrued before his conviction.....11

III. The Sheriff was required to consider Jones’ financial status before requiring Jones to pay for the costs of his confinement.....14

Conclusion.....16

Table of Authorities

Statutes:

Minn. Stat. Sec. 641.12 (2008).....3, 5, 6, 7, 11, 12, 13, 14

Cases:

Bearden v. Georgia, 461 U.S. 660 (1983).....8, 9

Connelly v. Northwest Publications, Inc., 448 N.W.2d 901 (Minn.App. 1989)6

Fuller v. Oregon, 417 U.S. 40 (1974).....15

Griffin v. Illinois, 351 U.S. 12 (1956) (plurality opinion).....7

State of Minnesota v. Tennin, 674 N.W.2d 403 (Minn. 2004).....15

State v. Curtis, 353 N.W.2d 262 (Minn. Ct. App. 1984).....15

Secondary:

Wald, *Pretrial Detention and Ultimate Freedom: A Statistical Study*, 39 N.Y.U.L.Rev. 631 (1964).....8

Legal Issues

1. Minn. Stat. § 641.12 authorizes the Sheriff to charge convicted offenders fees for their time in jail. In this case, the Sheriff charged Jones for his stay in jail because he could not afford to make bail, but did not charge similarly situated inmates who were financially able to make bail. Did the Sheriff violate Jones constitutional rights to due process and equal protection by charging Jones for his time in jail?

The trial court held that the Sheriff did not violate Jones' constitutional rights.

Relevant authority:

Minn. Stat. § 641.12 (2008).

Bearden v. Georgia, 461 U.S. 660 (1983).

Griffin v. Illinois, 351 U.S. 12, 19 (1956)

2. Minn. Stat. § 641.12 authorizes the Sheriff to charge an offender if the offender has been “convicted of a crime and confined in the county jail.” In this case, the majority of the time that the defendant charged Jones was for time where Jones was waiting for trial, was presumed innocent, and had not been convicted of a crime. Did the Sheriff erroneously apply section 641.12 to Jones?

The trial court held that the Sheriff properly applied the statute.

Relevant authority:

Minn. Stat. § 641.12 (2008).

3. At the time the Sheriff assessed the fees in this case, Jones was indigent and incarcerated. Nonetheless, the Sheriff did not consider Jones' financial status before assessing the fees. Did the Sheriff abuse his discretion by not considering Jones' financial status before assessing the fees?

The trial court held that the Sheriff had the discretion to impose the fees on Jones.

Relevant authority:

Minn. Stat. §. 641.12 (2008).

Fuller v. Oregon, 417 U.S. 40 (1974).

State of Minnesota v. Tennin, 674 N.W.2d 403 (Minn. 2004).

Statement of the Case

The appellant in this case, Andrew Jones, was incarcerated in the Olmsted County Jail for several months while awaiting his trial because he could not make bail. The respondent in this case, Steven C. Borchardt, the Olmsted County Sheriff, (the Sheriff) charged Jones for the cost of his confinement in the Olmsted County Jail. The fees were imposed pursuant to Minn. Stat. § 641.12, which allows the assessment of correctional costs upon an offender convicted of a crime and confined in the county jail. As a result of his stay at Olmsted County jail, the Sheriff charged Jones \$7,150.

Jones filed a complaint in Olmsted County alleging that by charging Jones for the costs of his confinement the Sheriff violated the Minnesota and United States Constitution and erroneously applied Minn. Stat. § 641.12 to Jones. Jones and the Sheriff respectively moved for summary judgment. On January 25, 2008, the Honorable Joseph F. Chase denied Jones' summary judgment motion and granted the Sheriff's summary judgment motion. Jones appeals the trial court's denial of his summary judgment motion.

Statement of the Facts

On March 31, 2004, Andrew Jones was arrested and charged in Olmsted County with three counts of aggravated robbery. (Stipulation,¹ ¶ 3). Following his arrest, Jones was held in the Olmsted County Jail . The court set bail at \$100,000 or, in the alternative, \$50,000 with conditions. (Stipulation, ¶ 4). While Jones wanted to make bail, he was indigent and unable to do so. As a result, he remained in jail until the charges against him were resolved. (Stipulation, ¶ 5).

On November 22, 2004, Jones pled guilty to three counts of aggravated robbery. (Stipulation, ¶ 6). On January 3, 2005, Jones was sentenced to 78 months in prison and was transferred from jail to the Minnesota Correctional Facility – St. Cloud on January 10, 2005. (Stipulation, ¶ 7).

The Sheriff charged Jones \$7,150 for his stay in the Olmsted County Jail, \$25 for each day from March 31, 2004, to January 10, 2005. (Stipulation, ¶ 8). On August 8, 2005, Jones received a final notice from Olmsted County's Finance Office indicating that Jones' bill would be sent to Revenue Recapture which intercepts state tax refunds, lottery winnings, or other state refunds. (Stipulation, ¶ 9).

Jones brought this lawsuit, alleging that the Sheriff violated Jones' constitutional rights under the Minnesota and United States Constitution and erroneously applied Minn. Stat. § 641.12 to Jones. Jones and the Sheriff

¹ The parties stipulated to the facts at issue; the Stipulation is attached at appendix pages 1-2.

independently moved for summary judgment. The Honorable Joseph Chase denied Jones' summary judgment motion and granted the Sheriff's summary judgment motion. *See* Order and Memorandum, attached at appendix pages 3-19.

Jones is appealing the trial court's granting of summary judgment to the Sheriff.

Standard of Review

When reviewing an appeal from summary judgment, this Court is “limited to determining whether there are any genuine issues of material fact and whether the trial court erred in its application of the law.” *Connelly v. Northwest Publications, Inc.*, 448 N.W.2d 901 (Minn.App. 1989) *citing* *Betlack v. Wayzata Condominium*, 281 N.W.2d 328, 300 (Minn. 1979). There are no genuine issues of material fact in this case because the parties stipulated to the facts. Since there are no issues of fact, the only issue is whether the trial court erroneously applied the law. As a result, this Court reviews the trial court’s ruling *de novo*. *Id.*

Argument

1.

The Sheriff violated Jones' constitutional rights to due process and equal protection under the Minnesota and United States Constitutions because he charged Jones, an indigent inmate, for his confinement at the county jail but did not charge a similarly situated, but non-indigent, inmate.

After Jones was charged, the court set bail at \$100,000. Because he was indigent, Jones was unable to make bail and stayed in jail until the proceedings against him were resolved. The Sheriff charged Jones for his confinement in the county jail, but the Sheriff would not have charged a similarly charged non-indigent defendant because the non-indigent defendant would have made bail. The Sheriff violated Jones' constitutional rights to due process and equal protection under the Minnesota and United States Constitutions.

The courts have long been sensitive to the treatment of indigents in the criminal justice system. The United States Supreme Court has declared that "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." *Griffin v. Illinois*, 351 U.S. 12, 19 (1956) (plurality opinion).

Due process and equal protection principles converge in the Supreme Court's analysis in these cases. *See Griffin v. Illinois*, 351 U.S. at 17.² The Court generally analyzes the fairness of relations between the criminal defendant and the

² Although the trial court analyzed the case under the constitutional clauses separately, the court acknowledged that the analysis of cases under the Equal Protection and Due Process Clauses "converge to such a degree that it is difficult to determine where one stops and the other starts." Memorandum, page 1.

State under the Due Process Clause, while they approach the question whether the State has invidiously denied one class of defendants a substantial benefit available to another class of defendants under the Equal Protection Clause. *Bearden v. Georgia*, 461 U.S. 660, 665 (1983). Under either analysis, Jones' constitutional rights were violated.

In this case, the State violated the Equal Protection Clause because it “invidiously” denied one class of defendants, indigent inmates, a substantial benefit available to another class of defendants, non-indigent inmates. Non-indigent inmates are not charged for their confinement because they are able to make bail and therefore are not confined before trial. Indigent inmates, such as Jones, who are not able to make bail,³ are confined before trial and then charged for their confinement.

The trial court rejected this argument, holding that the Sheriff did not violate the Equal Protection Clause under the rational basis test because the state has “a legitimate interest in permitting counties to recover a part of their crime-related costs, including incarceration costs, from convicted offenders responsible for those crimes and costs. Memorandum, page 9.

But the issue in this case is not whether the State has a legitimate interest in permitting counties to recover a part of their crime related costs (it clearly does). The issue is whether there is a rational basis for differentiating between indigent

³ See Wald, *Pretrial Detention and Ultimate Freedom: A Statistical Study*, 39 N.Y.U. L.Rev. 631, 634-36 (1964) (poverty is generally accepted as the main reason for pretrial detention).

and non-indigent defendants in recovering those costs. Because there is no rational basis to do so, the Sheriff has violated Jones' constitutional right to equal protection.

The Sheriff also violated Jones' constitution right to due process because he only charged non-indigent defendants for staying in the jail. The United States Supreme Court considered a similar issue in *Bearden v. Georgia*, 461 U.S. 660 (1983). In *Bearden* the issue was whether a sentencing court could revoke a defendant's probation for failure to pay the imposed fine and restitution where the defendant did not have the ability to pay. The Court concluded that the court could not revoke probation under those circumstances because "[t]o do otherwise would deprive the probationer of his conditional freedom simply because, through no fault of his own, he cannot pay the fine. Such a deprivation would be contrary to the fundamental fairness required by the Fourteenth Amendment." *Bearden*, 461 U.S. at 672-73.

Similarly in this case, the Sheriff violated Jones constitutional right to due process by charging him for the confinement simply because, through no fault of his own, he did not have the resources to make bail. The trial court rejected this argument, concluding that, while it would be unreasonable to jail a man who through no fault of his own could not make bail, the fees charged Jones were not unreasonable because the fees were not unreasonable. Memorandum, page 10.

But the trial court misses the point. The fees the Sheriff charged Jones in this case were unreasonable not because they were too high, but because the fees

were only charged because Jones was indigent and unable to make bail. This is fundamentally unfair and violates Jones' constitutional right to due process of law.

The Sheriff violated Jones' constitutional rights to due process and equal protection under the Minnesota and United States Constitutions because he charged Jones, an indigent inmate, for his confinement at the county jail but did not charge a similarly situated, but non-indigent, inmate.

Minn. Stat. § 641.12 only permits the county to charge convicted offenders for the cost of confinement following a conviction, but the Sheriff erroneously charged Jones for the costs of his confinement that accrued before his conviction.

Minn. Stat. § 641.12 (2008) permits a county board to charge “an offender convicted of a crime and confined in county jail” to offset the costs of correctional services. Minn. Stat. § 641.12, subd. 3 (2008). The Sheriff misinterpreted, and erroneously applied, this statute because the Sheriff charged Jones for time spent in the county jail before his conviction.

Subdivision 3(b) of section 641.12 states that a “county board may require that an offender convicted of a crime and confined in county jail” to pay the costs of the offender’s room and board. Jones was incarcerated at Olmsted County jail from March 31, 2004 to January 10, 2005. (Stipulation, ¶ 8). During most of this time, Jones was not “an offender convicted of a crime” because Jones was not convicted until January 3, 2005, when he was sentenced.⁴ (Stipulation, ¶ 7).

Jones only spent seven days, between his sentencing hearing (January 3, 2005) and his transfer to MCF – St. Cloud on January 10, 2005, in Olmsted County Jail as “an offender convicted of a crime”; yet, the Sheriff charged Jones for his entire stay at Olmsted County Jail. Because Jones had not been “convicted of a crime” during the majority of his confinement at Olmsted County Jail, he

⁴ In Minnesota, Jones was presumed innocent until the court sentenced him, not when he pled guilty.

cannot be charged the pay-to-stay fees pursuant to section 641.12 (3)(b). Minn. Stat. § 641.12, subd. 3(b) (2008).

The trial court rejected this argument, claiming that the statute does not require or imply “that the person billed for room and board at the jail be convicted and confined *at the same time*.” See Memorandum, at page 13 (emphasis in original). The trial court is incorrect; the statute plainly differentiates between pre and post-conviction jail time.

Minn. Stat. § 641.12 states that “[a] county board may require that an offender convicted of a crime and confined in the county jail, workhouse, or correctional work farm pay the cost of the offender’s room, board, clothing, medical, dental, and other correctional services.” Because the phrase “and confined” follows the phrase “convicted of a crime”, the statute implies that fees are to be assessed only against those were sentenced to the county jail following a conviction, not those who were in the county jail before their conviction.

This interpretation is further supported by the inclusion of the “workhouse or correctional work farm” in the statute. Both of these facilities are places to which an offender is sentenced, not facilities where a defendant is confined pending trial.⁵

⁵ The trial court claimed that this interpretation could lead an absurd and unreasonable result; that is, the amount of fees charged would differ greatly depending on when the defendant pled guilty. See Memorandum, page 13. This same difference occurs under the trial court’s interpretation of the statute: A defendant who pleads guilty immediately and is sentenced to prison would be charged much less than a defendant who is confined for a year before being convicted and sentenced to prison. Of course, the real “absurd and unreasonable result” is that the Sheriff is only charging those inmates who cannot afford to make bail

Moreover, there is a principled distinction between pre- and post-conviction jail time: the presumption of innocence. A defendant is presumed innocent until proven guilty. The legislature, by limiting the county board's ability to charge to those offenders "convicted of a crime and confined in the county jail," honored the presumption of innocence.

Minn. Stat. § 641.12 permits the county to charge "convicted" offenders for the cost of confinement following a conviction. In this case, Jones was not a convicted offender until he was convicted of the charged offense. Accordingly, the Sheriff erroneously charged Jones for the costs of his confinement that accrued before his conviction and the trial court improperly granted the Sheriff summary judgment.

3.

The Sheriff was required to consider Jones' financial status before requiring Jones to pay for the costs of his confinement.

Although Minn. Stat. § 641.12 specifically permits the sheriff to waive the fees incurred, the Sheriff did not consider Jones' financial circumstances before assessing the fees in question, despite Jones' obvious lack of financial ability to pay the fees. The Sheriff's refusal to consider Jones' financial situation was an abuse of discretion.

Subdivision 3(b) of Minn. Stat. § 641.12 states:

The chief executive officer of the local correctional facility or sheriff may waive payment of the costs under this subdivision if the officer of sheriff determines that the offender does not have the ability to pay the costs, payment of the costs would create undue hardship for the offender or the offender's immediate family, the prospects for payment are poor, or there are extenuating circumstances justifying the waiver of the costs.

The trial court held that this statute gives the Sheriff the "discretion to waive or not waive the room and board cost. He has chosen not to waive the costs, and that choice is within his discretion." Memorandum, at page 14.⁶

It may be that the Sheriff has the discretion to waive the costs incurred, but the statute clearly requires the Sheriff to at least consider the defendant's financial circumstances in determining whether to impose the fees. There is absolutely no

⁶ Although the trial court upheld the sheriff's decision to impose confinement costs, the court eloquently questioned the wisdom of doing so: "I find no constitutional or statutory violation in the Sheriff's action. Of course, the *wisdom* of charging poor people for jail stays is for the legislature and county board to decide – and they have. For what it is worth, however, I suggest that after one moves past the superficial appeal of holding offenders accountable for public costs connected with their criminal activity, a program of sending bills to penniless people is ill-considered." Memorandum at page 14, n. 9.

indication that the Sheriff even considered the defendant's financial situation before assessing the fees in this case. The failure to consider Jones' financial situation before imposing confinement costs is an abuse of discretion that requires reversal. *See State v. Curtis*, 353 N.W.2d 262 (Minn. Ct. App. 1984) (although the trial court had the discretion to determine whether or not to depart from the presumptive sentence, to properly exercise its discretion it had to actually consider the departure reasons). *See also Fuller v. Oregon*, 417 U.S. 40 (1974) (Supreme Court upheld the constitutionality of Oregon's recoupment statute because the Oregon statute provided sufficient protection against undue hardships for indigents); *State of Minnesota v. Tennin*, 674 N.W.2d 403 (Minn. 2004) (Minnesota Supreme Court ruled that the Minnesota statute allowing the state to collect public defender co-payments from indigent defendants was unconstitutional because the statute did not provide sufficient protection for indigents or for those for whom a co-payment would create undue hardships).

Minn. Stat. § 641.12 requires the Sheriff to consider an offender's financial circumstances before assessing confinement costs. Because the Sheriff did not do so, the trial court erred by granting the Sheriff summary judgment.

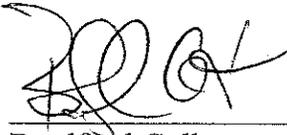
Conclusion

For all the reasons stated herein, appellant respectfully requests that this court reverse the trial court's grant of summary judgment in favor of respondent and enter judgment in favor of appellant.

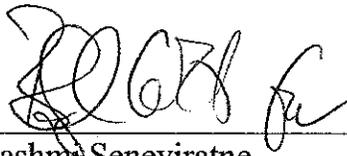
Dated: 4/25/08

Respectfully submitted,

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