MINNESOTA STATE LAW LIBRARY

CASE NO. A08-0556

State of Minnesota
In Court of Appeals

ANDREW TYLER JONES,

Appellant,

vs.

STEVEN C. BORCHARDT,

Respondent.

RESPONDENT'S BRIEF AND APPENDIX

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ARGUMENT

Appellant Jones is claiming his equal protection and due process rights were violated when he was charged $25.00 per day for the time he was incarcerated at the Olmsted County Adult Detention Center. He is also claiming it was unlawful to apply the "pay-for-stay" statute to him for the time he was a pretrial detainee and because he was indigent. It is the position of Respondent Olmsted County that Mr. Jones' equal protection and due process rights were not violated. In addition, Olmsted County takes the position that it was permissible to charge Mr. Jones for the time he was a pretrial detainee and there was nothing that required Olmsted County to consider his indigent status.[1] At issue is the interpretation of Minnesota Statute §641.12. Because the case was a matter of statutory interpretation on a purely legal issue, the dispute was ripe for summary judgment. *See* Minn. R. Civ. P. 56.03. Olmsted County believes the District Court properly concluded that the statute in question was not unconstitutional and was properly applied by Olmsted County.

[1] For the purposes of the official capacity claims herein, Olmsted County is the only true Defendant at issue in this case. Baker v. McCollan, 443 U.S. 137 (1979)("A section 1983 action against a municipal official in his or her official capacity is treated as an action against the municipal entity itself"); Matthews v. Jones, 35 F.3d 1046, 1049 (6th Cir. 1994). The Respondent will be referred to as "Olmsted County" throughout this brief.

I. CONSTITUTIONAL LAW CLAIMS.

In reviewing claims of this type, Courts must follow the ordinary cannons of construction, give effect to the legislature's intent, and avoid an interpretation leading to absurd results. Ittel v. Pietig, 705 N.W.2d 203, 206-07 (Minn. Ct. App. 2005); Minn. Stat. §645.17 (2006) (the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature). Courts abide by the "well-established principle that statutes will be interpreted to avoid constitutional difficulties." *See* Webster v. Reproductive Health Servs., 492 U.S. 490, 514 (1989); Frisby v. Schultz, 487 U.S. 474 (1988). Here, the District Court applied those principles and properly determined that the statute was constitutional.

The relevant portion of the statute is as follows:

> Subd. 3. Inmate payment of room and board.
>
> (a) A county board may require that an offender convicted of a crime and confined in the county jail, workhouse, or correctional or work farm pay the cost of the offender's room, board, clothing, medical, dental, and other correctional services. The board shall establish a schedule to charge offenders under this subdivision. The costs may be collected at any time while the offender is under sentence or after the sentence has been discharged. During the period of confinement, the costs may be deducted from any money possessed by the offender or any money deposited with the local correctional or law enforcement agency on the offender's behalf. The board, or local correctional agency or sheriff with authority over the jail, workhouse, or farm, may use any available civil means of debt collection in collecting costs under this subdivision.

(b) The chief executive officer of the local correctional agency or sheriff may waive payment of the costs under this subdivision if the officer or 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 waiver of the costs.

(c) If an offender has been ordered by a court to pay restitution, the offender shall be obligated to pay the restitution ordered before paying the costs under this subdivision. However, if the offender is making reasonable payments to satisfy the restitution obligation, the local correctional agency or sheriff may also collect costs under this section."

Minn. Stat. §641.12 (2006).

The statute requires two conditions to be satisfied before Olmsted County may request payment. One, the offender must be convicted of a crime, and two, the offender must be confined in the Olmsted County Jail. Minn. Stat. §641.12, subd. 3(a) (2006). Here, both conditions existed for repayment of costs. Jones was convicted of three counts of aggravated robbery. Jones was confined in the Olmsted County Adult Detention Center for a total of 286 days. Therefore, Olmsted County legally applied its policy to Jones under Subdivision 3 of Minnesota Statute §641.12.

A. THE APPLICATION OF MINN. STAT. SEC. 641.12 DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE.

Equal protection of the laws is guaranteed by the Fourteenth Amendment to the United States Constitution, which provides, in relevant part:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive

> any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

U.S. Const. Amend. XIV, § 1. 3.

The Supreme Court has stated that the Equal Protection Clause "is essentially a direction that all persons similarly situated should be treated alike." Cleburne v. Cleburne Living Ctr., Inc., 473 U.S. 432, 439 (1985). Equal protection principles function by "keeping governmental decision makers from treating differently persons who are in all relevant respects alike." Peoples Rights Organization, Inc. v. City of Columbus, 152 F.3d 522, 531 (6th Cir. 1998).

Equal protection analysis requires strict scrutiny of a legislatively created classification only if it impermissibly limits a fundamental right or affects a suspect class. Absent a fundamental right or suspect class, minimal judicial scrutiny is appropriate. Massachusetts Board of Retirement v. Murgia, 427 U.S. 307, 312 (1976).

Jones is not a member of a suspect class merely based on his individual financial hardship because indigence is not a suspect class. *See* Murgia, 427 U.S. at 313-314. (classification based receipt of public assistance has never been considered a suspect class); Dandridge v. Williams, 397 U.S. 471, 485-486 (1970) (receipt of public assistance is not a fundamental right). The District Court properly concluded that minimal judicial scrutiny was appropriate. Id; Clover Leaf Creamery Co., 449 U.S. at 464 (1981); Murgia, 427 U.S. at 313-314 (1976); Essling v. Markman, 335 N.W.2d 237, 239 (Minn. 1983).

Under minimal judicial scrutiny, the policy should be upheld when the record indicates that the policy is rationally related to the achievement of a legitimate

governmental purpose. Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 464 (1981). "If the statute does not involve a suspect classification or affect a fundamental right, then it will be subject to rational basis review." Lake Superior Chippewa Indians, 172 F.3d at 410; *see also* Heller v. Doe, 509 U.S. 312, 319-320 (1993).

The "rational basis" test requires the person challenging the statute to prove its invalidity. *See* Exxon Corp. v. Governor of Maryland, 437 U.S. 117, 124-125 (1978). To overcome the presumption of constitutionality, the Plaintiff must show that the legislative classification created (1) does not uniformly apply to those similarly situated; (2) the distinctions between those within the class and those excluded from the class are manifestly arbitrary and; (3) the classification does not relate to the purpose for which the law was enacted. *See* Schwartz v. Talmo, 295 Minn. 356, 362 (Minn. 1973).

Here, Jones did not meet his burden of proof in showing any of the three requirements. First, the record indicates that Olmsted County applied charges of $25.00 per day to all physically present convicted detainees. Second, Olmsted County's decision was based on whether the detainee was convicted and whether he or she was actually incarcerated at its facility. Although Olmsted County could waive costs to offenders, it never chose to do so. Last, the record indicates that the policy is attempting to redress costs of inmate incarceration. The legislative history of the Minnesota statute and case law interpretations of related "pay-for-stay" provisions have indicated these provisions were enacted specifically to allow remuneration of incarceration costs. Under the law, the county may use any available civil means of debt collection in collecting costs for

services. Id. The fees may be collected at any time while the offender is under sentence or after the sentence has been discharged. Id. Therefore, there is a rational basis for the statute, Jones cannot meet his burden of proof under the rational basis test, and his constitutional claim under the Equal Protection Clause fails. As stated by District Court Judge Joseph Chase on Page 9 of his decision: "The state has a legitimate interest in permitting counties to recover a part of their crime-related costs, including incarceration costs, from the convicted offenders responsible for those crimes and costs. The Olmsted County Sheriff's action to recover room and board costs from the Plaintiff under Minn. Stat. Sec. 641.12 does not violate Equal Protection".

Jones argues the Equal Protection Clause was violated because it treats indigent and non-indigent inmates differently. This argument should be rejected. Judge Chase thoroughly analyzed this argument on Pages 7-9 of his decision. Appellant's Appendix at pp. 11 – 13. He wrote as follows:

> As is noted above, the United States Supreme Court has addressed, as a matter of Equal Protection, state action that in effect discriminates against the poor. But it has done so only in situations in which that state action results in indigent persons being denied a fundamental right. Thus in Griffin v. Illinois, supra, the Supreme Court found that Illinois' denial to indigent defendants of a free transcript necessary for adequate appellate review denied them Equal Protection of the law... (quotes from cases excluded)
>
> The concept that official action disparately impacting the poor violates Equal Protection has not been extended beyond cases involving fundamental rights. Nor has there been any indication by the United States Supreme Court of an inclination to do so. "[Alt least where wealth is involved, the Equal Protection Clause does not require absolute equality or precisely equal advantages." Rodriguez at 24. "[T]he Fourteenth Amendment guarantees equal laws, not equal results." Personnel

> Administrator of Massachusetts vs. Feeney, 442 U.S. 256, 273 (1979). (foot note excluded).
>
> If there is an Equal Protection review to be made here, it involves neither a suspect classification nor a fundamental right. Thus the court applies the rational basis standard. Gluba at 719. The general rule is that legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. City of Cleburne, Texas v. Cleburne Living Center, 473 U.S. 432, 440 (1985). The state has a legitimate interest in permitting counties to recover a part of their crime-related costs, including incarceration costs, from the convicted offenders responsible for those crimes and costs. The Olmsted County Sheriffs action to recover room and board costs from the Plaintiff under Minn. Stat. Sec. 641.12 does not violate Equal Protection.

The Equal Protection Clause was not violated. Thus, Jones Equal Protection claims fail.

B. THE APPLICATION OF MINN. STAT. SEC. 641.12 DOES NOT VIOLATE DUE PROCESS.

Mr. Jones also claims Olmsted County violated his right to due process through its application of the statute. The Fourteenth Amendment to the United States Constitution states "no State shall...deprive any person of life, liberty, or property, without due process of law." Thus, the Fourteenth Amendment guarantees that in all cases where an individual stands to be deprived of life, liberty, or property by the government, he is entitled to due process of law. Kentucky Dept. of Corrections v. Thompson, 490 U.S. 454, 460 (1989) (*citing* Wolff v. McDonnell, 418 U.S. 539 (1974)).

The Supreme Court has generally held that this aspect of the Fourteenth Amendment requires the State to provide individuals with notice and an opportunity to be heard before the State effects a deprivation. United States v. James Daniel Good Real

Property, 510 U.S. 43, 51 (1993); Parratt v. Taylor, 451 U.S. 527, 543-44 (1981), *overruled on other grounds by* Daniel v. Williams, 474 U.S. 327 (1986).

When a law or other act of government is challenged as a violation of individual liberty under the Due Process Clause, courts today primarily use two forms of scrutiny, or judicial review. *See, e.g.*, Adarand Constructors v. Pena, 515 U.S. 200 (1995); Sugarman v. Dougall, 413 U.S. 634 (1973); Sherbert v. Verner, 374 U.S. 398 (1963). If the governmental action infringes upon a fundamental right, the highest level of review—strict scrutiny—is used. Id. In order to pass strict scrutiny review, the law or act must be narrowly tailored to a compelling government interest. Id.

When the governmental action restricts liberty in a manner that does not implicate a fundamental right, rational basis review is used. *See, e.g.* Romer v. Evans, 517 U.S. 620 (1996); City of Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432 (1985); Zobel v. Williams, 457 U.S. 55 (1982); United States Department of Agriculture v. Moreno, 413 U.S. 528 (1973). Here, a legitimate government interest is enough to pass this review. Id. This means that the government's goal must simply be something that is acceptable for the government to pursue. Id. The means used by the legislation only have to be reasonable for getting to the government's goals; they need not be the best. Id. Under a rational basis test, the burden of proof is on the challenger. Thus, it is rare that laws are overturned after a rational basis test. Id.

In the present case, Jones is not a member of a suspect class merely based on his individual financial hardship because indigency is not a suspect class. *See* Murgia, 427

U.S. at 313-314. (classification based receipt of public assistance has never been considered a suspect class); Dandridge v. Williams, 397 U.S. 471, 485-486 (1970) (receipt of public assistance is not a fundamental right). While Olmsted County's charge of $25.00 per day may be a financial constraint on Jones, it does not implicate a fundamental right. Hence, rational basis review should be used and minimal judicial scrutiny is appropriate.

As set forth in the above Equal Protection section, Olmsted County's action was reasonably calculated to meet a legitimate government concern. A rational basis existed for Olmsted County to seek reimbursement for the costs. Therefore, Jones was not "constitutionally deprived" of his $25.00 under the Due Process Clause.

Jones asserts his rights were violated because the charges resulted from his indigency, or failure to able to make bail. For purposes of his argument, Jones broadly associates an inmate's "indigent" status with bail status. He generalizes that inmates who make bail are "not indigent" and that those inmates who are incarcerated without bail or who do not make bail are "indigent." This argument fails for at least two reasons. First, a detainee's indigent status is irrelevant to whether they can be charged the $25 per day. Second, bail status is not based on the finances of the accused. Jones' argument ignores the non-monetary considerations that factor into setting bail.

The United States Supreme Court and Minnesota Supreme Court have stated that the purpose of bail is to ensure an accused's appearance and submission to the court's judgment. *See* Reynolds v. United States, 80 S. Ct. 30, 32 (U.S. 1959); State v. Brooks,

604 N.W.2d 345, 349 (Minn. 2000). Minnesota Rule of Criminal Procedure 6.02 adopts non-monetary conditions of bail and establishes a preference for pretrial release with no monetary conditions. Minn. R. Crim. P. 6.02, subd. 1. However, the imposition of additional conditions is allowed if such release will be "inimical of public safety or will not reasonably assure the appearance of the person as required." Minn. R. Crim. P. 6.02, subd. 1.

In the present case, Jones' bail was set to ensure his appearance and submission to the court's judgment. It must be assumed for purposes of summary judgment that a less-restrictive bail may have endangered public safety and that Jones was a flight risk. The undisputed facts indicate Jones was convicted of three serious felony counts. Therefore, Jones' bail status was determined by much more than his ability to pay, and Jones' argument is completely irrelevant to whether it was lawful for Olmsted County to charge detainees for time spent at the ADC. In addition, the Minnesota Supreme Court has long recognized that "in the absence of extraordinary circumstances * * * questions concerning the amount of defendant's pretrial bail are moot after conviction." State v. Arens, 586 N.W.2d 131, 133 (Minn. 1998); *see also* State v. Huber, 275 Minn. 475, 478 (Minn. 1967); State v. Jones, 311 Minn. 176, 184-85 (Minn. 1976). Thus, the fact that Jones had an allegedly high bail is moot and irrelevant as to whether Olmsted County has the right to charge him for part of the cost of his stay.

Jones asserts that Bearden v. Georgia, 461 U.S. 660 (U.S. 1983), involved similar legal issues to the present case and is somehow persuasive to his position. However, a

review of Bearden shows that the issues before that court were not similar to those present here and its holding has no application to the present case. In Bearden, the issue was whether a sentencing court could revoke a defendant's probation for failure to pay fines imposed on him for felony burglary and theft convictions. The case did not involve charge for stays in a jail. Olmsted County is not arguing that Jones must be reincarcerated in the future if he fails to reimburse Olmsted County.

A more comparable constitutional framework was set forth in Hubbard v. State, 2002 OK CR 8 (Okla. Crim. App. 2002). In Hubbard, the Oklahoma Court ruled that the assessment of incarceration costs under an identical Oklahoma pay-for-stay statute did not violate the Fourteenth Amendment guarantees of due process and equal protection.

The Oklahoma Court applied the following analysis:

> "As for the equal protection argument, Appellants must demonstrate that [the Pay-For-Stay provision] (A) either (1) impermissibly interferes with their exercise of a fundamental right, (2) operates to their peculiar disadvantage as members of a suspect class, or (3) is not rationally related to a legitimate state interest. Clayton, 892 P.2d at 654. Appellants do not claim any fundamental constitutional right on the part of incarcerated defendants to have the costs of their imprisonment and supervision paid by taxpayers. Appellants likewise have failed to show that they are members of any historically suspect class. The narrow question before this Court is whether requiring reimbursement from a convicted defendant for the costs of his incarceration bears some rational relationship to a legitimate state purpose. We believe it does...
>
> Appellants contend that because of their indigency, they are subjected to greater financial liability in a criminal prosecution than a wealthier person who can afford to post bail. However, personal financial resources are only one factor determining whether an accused is confined prior to trial. The gravity of the offense, the accused's contacts in the community, his previous record, and his ability to receive assistance from friends and family are equally important factors, and are not related to indigence. In

> some cases, bail may be denied regardless of the defendant's financial status. *See* Okl.Const. art. 2, § 8; Petition of Humphrey, 601 P.2d 103, 108." Recouping the costs of incarceration is of legitimate concern to state and local governments...
>
> We conclude that a rational basis exists for the State, and political subdivisions thereof, to seek reimbursement for these costs."

Hubbard v. State, 2002 OK CR 8 (Okla. Crim. App. 2002).

In the present case, Jones has not demonstrated any fundamental constitutional right to have the costs of his imprisonment paid by taxpayers. Jones has likewise failed to show that he is a member of any historically suspect class. Absent any fundamental right or suspect class, minimal judicial scrutiny is appropriate in this case. The Olmsted County policy must be upheld because it is rationally related to the achievement of a legitimate governmental purpose.

C. THE STATUTE ALLOWS CONVICTED DETAINEES TO BE CHARGED FEES FOR THE PERIODS OF INCARCERATION BEFORE AND AFTER THE TIME OF CONVICTION.

Jones argues that the statute does not permit a detention facility to charge fees for time spent in a detention facility prior to the time a conviction occurs. This is an erroneous interpretation of the statute. The statute requires two conditions to be satisfied before Olmsted County may request payment. One, the offender must be convicted of a crime, and two, the offender must be confined in the Olmsted County Jail. Minn. Stat. §641.12, subd. 3(a) (2006). The statute requires both conditions to exist for repayment of costs, but does not limit the repayment to time spent solely after conviction. Id. The Minnesota legislature provided that if an offender is convicted of a crime, the time spent in the county jail may be billed. Id. It does not differentiate between time spent pre-

conviction from time spent post-conviction. Id.; *See also* Roger F. Schmitz v. Morrison County Sheriff Department Sheriff Michel Wetzel, Morrison County District Court File C1-05-959. Respondent's Appendix at pp. 27 - 32.

Here, both conditions existed for repayment of costs. Jones was convicted of three counts of aggravated robbery. Jones was confined in the Olmsted County Adult Detention Center for a total of 286 days. Therefore, Olmsted County legally applied its policy to Jones under Subdivision 3 of Minnesota Statute §641.12.

Overall, the Minnesota statute clearly allows reimbursement for time Jones spent in the Olmsted County Adult Detention Center during the pendency of a criminal proceeding before conviction and after conviction. Public policy does lie in favor of reimbursement of the counties' costs, and certainly it was the intention of the Minnesota legislature to allow counties to recoup expenses for holding convicted criminals. Olmsted County believes that this Court should follow these principles when interpreting the statute. District Court Judge Chase analyzed the issue this way:

> Courts have a duty to uphold legislative enactments as reasonably certain when possible, and should resort to all acceptable rules of construction to discover a competent and efficient expression of the legislative will." State v. Enveart, 676 N.W.2d 311, 318 (Minn. App. 2004), *citing* State v. Suess, 52 N.W.2d 409, 414 (Minn. 1952). Minn. Stat. Sec. 645.17 guides the courts in ascertaining the intent of the legislature. The court is to presume that; (1) the legislature does not intend a result that is absurd, impossible of execution, or unreasonable; (2) the legislature intends the entire statute to be effective and certain; (3) the legislature does not intend to violate the Constitution of the United States or of this state; (4)when a court of last resort has construed the language of a law, the legislature in subsequent laws on the same subject matter intends the same construction to be placed upon such language; and (5) the legislature intends to favor the public interest as against any private interest. Minn. Stat. Sec. 645.17.

> This statute does not require or imply, as Plaintiff's argument suggests, that the person billed for room and board at the jail be both convicted and confined *at the same time.* In Minn. Stat. Sec. 641.12, the legislature does not distinguish between pre-conviction and post-conviction jail time. In this respect this statute is consistent with Minnesota's rule that offenders be credited against their sentence for "all time spent in custody in connection with the offense," including jail time that occurred prior to conviction. "Such time shall be automatically deducted from the sentence and the term of imprisonment." Minn. R. Crim. Proc. 27.03, Subd. 4(B).
>
> If the statute were construed in the manner Plaintiff advocates, an offender who pled guilty the day after his arrest and was sentenced to 286 days in the Olmsted County Jail could be billed by the Sheriff for 285 days of that incarceration. On the other hand, an identically charged offender who maintained a not-guilty plea, was held on bail for 286 days, changed his plea, and was then sentenced to time served, could not be billed for any part of his jail sentence. This, it seems to this writer, would be an absurd and unreasonable result. I see no basis to think that the legislature intended to require the county's taxpayers to foot the entire cost of the latter offender's incarceration, while permitting the former offender to be billed for his stay.

The position being advocated by Jones on this issue would lead to an absurd result. As stated above, Courts have a duty to uphold legislative enactments as reasonably certain when possible, and should resort to all acceptable rules of construction to discover a competent and efficient expression of the legislative will. Here, the legislature intended to allow detention facilities to charge for all stays resulting in a conviction. Jones' argument should be rejected.

D. THE STATUTE DOES NOT REQUIRE THE SHERIFF TO CONSIDER JONES' FINANCIAL STATUS.

Jones argues Olmsted County abused its discretion when it failed to consider Jones' financial condition before assessing the fees in question. In making this argument,

Jones looks at the following statutory language of Minnesota Statutes Section 641.12, Subdivision 3(b):

> The chief executive officer of the local correctional facility or sheriff **may** waive payment of the costs under subdivision if the officer or 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.

Minn. Stat. §641.12, subd. 3(b) (2006)(emphasis added).

Jones is incorrect in equating the term "may" with "must." In statutory interpretation, courts are required to follow the ordinary cannons of construction, give effect to the legislature's intent, and avoid an interpretation leading to absurd results. Ittel v. Pietig, 705 N.W.2d 203, 206-07 (Minn. Ct. App. 2005); Minn. Stat. § 645.17 (2006)("the object of all interpretation and construction of laws is to ascertain and effectuate the intention of the legislature). Here, the statute makes clear that the legislature intended to give the county sheriff discretion in applying the room and board fees. Substituting the word "must" for "may" would be contrary to the legislative intent. There is no basis to conclude a sheriff is required to waive fees when the statute expressly statutes that he "may" do so. There is simply no authority for the proposition that Jones is entitled to some relief here because his financial situation was not analyzed. There is no such requirement in the statute.

Jones also argues that Olmsted County *must* waive fees for indigents under the United States Supreme Court's ruling in Fuller v. Oregon, 417 U.S. 40 (1974). In Fuller, the Supreme Court *upheld* the constitutionality of Oregon's recoupment statute which

required the inmate to repay the state for the cost of providing him with effective representation of counsel because he was indigent at the time of the criminal proceedings but subsequently acquired the means to bear his defense costs.

Fuller does not support Plaintiff's position. First, the Fuller court affirmed a judgment that the statute requiring a petitioner to repay the state for his defense and other services *was valid.* Second, the Oregon statute is dissimilar to the Minnesota statute in question because it involved the recovery of legal defense fees. This case does not involve legal fees or the recovery of legal fees. The issue in the present case is whether detainees have to pay for part of the cost of their stay. The Fuller holding is contrary to Jones' position, or at the very least, inapplicable.

Jones also attempts to correlate the present case with State of Minnesota v. Tennin, 674 N.W.2d 403 (Minn. 2004). In Tennin, the issue was whether Minnesota's imposition of a co-payment obligation on individuals who received public defender services was an unconstitutional denial of their right to counsel. First, the issue focused on the constitutionality of Minn. Stat. 611.17, not the statute in question here. Thus, it has no application to this case. Second, the issue was whether the requirement of reimbursement of public defender fees, without exception, violated the constitutional right to legal counsel, a fundamental right. Here, neither the right to legal counsel nor any other fundamental right is at issue. Third, the statute at issue here is unlike Minn. Stat. 611.17 as it provides a waiver provision. It provides that the sheriff "may" waive payment of the costs if the sheriff deems it appropriate. A review of Tennin shows that it

was this lack of a waiver, not the idea of a co-payment that led to a finding that the statute was unconstitutional.

In the end, it must be recognized that Jones is actually seeking a holding that the statute in question is unconstitutional. Under Minnesota law, statutes are presumed constitutional and will be declared unconstitutional with extreme caution and only when absolutely necessary. State v. Larson, 650 N.W.2d 144, 147 (Minn. 2002). To meet this burden, Jones must overcome the heavy burden of showing beyond a reasonable doubt that the statute is unconstitutional. State v. Merrill, 450 N.W.2d 318, 321 (Minn. 1990). Jones has not shown free incarceration to be a fundamental right or constitutional right. He has made no showing of necessity. He has certainly not met his burden of showing the statute in question is unconstitutional beyond a reasonable doubt.

CONCLUSION

For the reasons set forth above, Respondent Olmsted County requests that the decision of the District Court to grant it summary judgment be affirmed.

Dated: May 23, 2008.

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