

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

MARKIS ANTWUAN WATTS,)
)
 Plaintiff,)
)
vs.)
)
CITY OF MONTGOMERY,)
THE HONORABLE MILTON J.)
WESTRY, THE HONORABLE LES)
HAYES III,)
)
 Respondents.)

Case No. 2:13-cv-00733-MEF-CSC

AMENDED COMPLAINT

INTRODUCTION

1. Plaintiff Markis Watts is an indigent man who has been ordered¹ to be incarcerated because of his inability to pay court-

Although Plaintiff told Defendant that he could not pay the full \$1,800, he was nonetheless placed in custody and taken to the Montgomery Municipal Jail.

4. The next day, Plaintiff was brought back into the Municipal Court on unrelated traffic cases and misdemeanors. Defendant, the Honorable Les Hayes III, allowed Plaintiff until the end of the year to pay fines and fees on these cases. He refused to accept a letter from Plaintiff's mother regarding Plaintiff's recent unemployment and reasons for being unable to pay in the past, but stated that Plaintiff would have to remain incarcerated based on Defendant Judge Westry's order.

5. Plaintiff challenges these collection procedures and practices and his incarceration under the due process and equal protection clauses of the U.S. and Alabama Constitutions, and the Alabama state law implementing these provisions. *ee* U.S. Const. amend. XIV; Ala. Const. art. I, §§ 1, 6, 22; Ala. R. Crim. P. 26.11. Although Plaintiff informed Defendants Judge Westry and Judge Hayes that he could not pay, Defendants failed to make a meaningful inquiry into Plaintiff's financial situation before ordering him to be jailed.

6. Plaintiff further challenges this incarceration as violating his right to counsel under the U.S. and Alabama Constitutions, as he was jailed without being provided counsel to represent him during the aforementioned proceedings or waiving that right. *ee* U.S. Const. amend. VI; Ala. Const. art. I, § 6.

7. Plaintiff therefore asks that this Court declare that this order violates the U.S. and Alabama Constitutions and Alabama law.

PROCEDURAL HISTORY, JURISDICTION, AND VENUE

8. Plaintiff filed this action in the Circuit Court of Montgomery County on August 28, 2013. Defendants removed to this Court on October 4, 2013.

9. 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.

10. 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

11. Plaintiff Markis Watts is a 22-year-old resident of Montgomery, Alabama.

12. 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.

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

14. Defendant Judge Les Hayes III is a resident of the State of Alabama.

STATEMENT OF FACTS

Order of incarceration

15. Plaintiff Markis Watts was ordered by the Municipal Court to be incarcerated in the Montgomery Municipal Jail for 30 days. seecas(n)-0.956417 Mn 0 Td73.883.15

Defendant Judge Milton J. Westry asked if Plaintiff had any prior tickets or cases. The clerk informed Defendant Judge Westry that Plaintiff had outstanding fines and fees on various cases totaling nearly \$2,736. Plaintiff told Defendant Judge Westry that he recently found employment and that he could make some payments soon. Defendant Judge Westry told Plaintiff that he would have to either pay \$1,800 immediately, or serve a 54 day sentence to satisfy the full amount owed, at a rate of a \$50 credit for each day of incarceration. Plaintiff stated that he was unable to make that payment, and was ordered to jail immediately. Defendant Judge Westry did not ask why Plaintiff was unable to pay or what efforts Plaintiff had made to obtain the money to pay in the past.

18. No lawyer was appointed to represent Plaintiff during this proceeding. Although an individual spoke to Plaintiff before he was called before the court, this individual did not tell Plaintiff that he was his attorney or represent him when he appeared before Defendant Judge Westry.

19. 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 A. Each case is listed as "commuted," and the judge's order to either pay the fine or spend 54 days in jail is detailed at the bottom of the order.

20. On August 15, Plaintiff was brought back to the Municipal Court. Defendant Judge Hayes allowed Plaintiff until the end of the year to pay fines and fees owed on other, unrelated traffic cases and misdemeanors. He again reiterated that Plaintiff would be incarcerated for 54 days if he could not pay the amount ordered by Defendant Judge Westry the previous day. Plaintiff's mother attempted to hand Defendant Judge Hayes a letter from

²

24.

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)**

35. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 34.

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

37. The U.S. Supreme Court has consistently held that the Fourteenth Amendment prohibits treating indigent criminal defendants differently than those who are able to pay or automatically converting a fine-only sentence to a sentence of imprisonment without an inquiry into their ability to pay.

38. Defendants' actions in violating Plaintiff's const98076 0.956417(s)-1.74-0.956417(g)9.06272(

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)

40. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 39.

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

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

43. 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.

44. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if he is required to serve the remainder of his 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

45. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 44.

Dated this 12th day of November, 2013.

Respectfully submitted,

/s/ Sara Zampierin
Sara Zampierin, Ala. Bar No.1695-S34H
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Montgomery, Alabama 36104
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Aorney for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2013, I have filed a copy of the foregoing Amended Complaint with the Clerk of Court by means of CM/ECF, which provides electronic copies of the foregoing to the following counsel for Defendants.

Jason Cole Paulk, Esq.
City Attorney's Office
Post Office Box 1111
iiio Montgomery, AL

THIS REPORT CREATED: 8/14/2013 2:19 PM

COMMUTED TIME RELEASE DATE: 7/1/14

REVISION #1

TRANSCRIPT PREPARED BY: T. NEELY

MONTGOMERY MUNICIPAL COURT - STATE OF ALABAMA

DATE & TIME: 8/14/2013 2:11 PM BOOKING #: 13-8030 BOOKING

ARKISANTY WIAN WATTS RACE: [REDACTED] NAME: MA

ADDRESS: 3850 GOVERNORS DR APT 355 MONTGOMERY AL 36116

COURT DISPOSITION OF CASE CHARGE DESCRIPTION

PISTOL/CHARGE 2012CRA001042 \$550.00 COMMUTED

D.D. SUSPENDED 2012TRT00932 \$62.00 COMMUTED

THEFT OF PROPERTY 2011CRA006721A \$511.00 COMMUTED

NO D.L. 2011TRT019938 \$229.00 COMMUTED

2012CRA001042 \$550.00 COMMUTED

\$25.00 COMMUTED IMP. TAIL LIGHT 2012TRT003265

\$230.00 COMMUTED D.D. SUSPENDED 2012TRT00932

MANDATORY TIME RELEASE NOTICE