

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

VIRGINIA THOMAS, ERIKA BROCK,)
STEVEN RILEY, TIMOTHY MASON,)
JACQUELINE LINDSEY, CLARENCE)
ANDERSON, CHRISTOPHER)
JAMIESON, HUBERT LINDSEY,)
KENNETH FOXWORTH, KAREN ELEY,)
HENRY WINTERS, DOROTHY)
COOLEY, DEBORAH JENKINS, OSCAR)
JACKSON, CARL TATE, JOHN WHITE,)
JOHNNY LEE HATTEN,)
and KEVIN EDWARDS)
Plaintiffs,)

v.)

CITY OF GULFPORT, MISSISSIPPI)

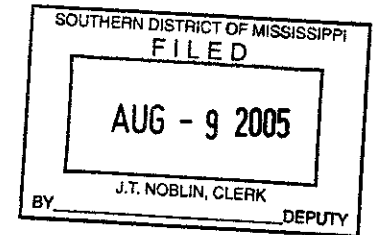
BILL ATCHISON,)
Gulfport Municipal Court Judge, in his)
official capacity,)

RICHARD SMITH,)
Gulfport Municipal Court Judge,)
in his official capacity,)

BILL MARKOPOULOS,)
Court Administrator, Gulfport)
Municipal Court, in his official)
capacity,)

WALTER EIGHMEY,)
Senior Warrants Officer, Gulfport Police)
Department, in his official capacity,)

Defendants.)



CIVIL ACTION

No. 1:05-CV-349-LG-RHW

CLASS ACTION

JURY TRIAL DEMANDED

AMENDED COMPLAINT

COME NOW Plaintiffs VIRGINIA THOMAS, ERIKA BROCK, STEVEN RILEY, TIMOTHY MASON, JACQUELINE LINDSEY, CLARENCE ANDERSON, CHRISTOPHER JAMIESON, HUBERT LINDSEY, KENNETH FOXWORTH, KAREN ELEY, HENRY WINTERS, DOROTHY COOLEY, DEBORAH JENKINS, OSCAR JACKSON, CARL TATE, JOHN WHITE. JOHNNY LEE HATTEN, and KEVIN EDWARDS (collectively, "Plaintiffs"), on behalf of themselves and the class alleged herein, by and through their attorneys, and file this Complaint against Defendants, CITY OF GULFPORT, BILL ATCHISON, RICHARD SMITH, and BILL MARKOPOULOS, and WALTER EIGHMEY (collectively, "Defendants"). In support thereof, Plaintiffs respectfully state as follows:

PRELIMINARY STATEMENT

1.

This is an action to stop Defendants, the City of Gulfport and the Judges of the Gulfport Municipal Court, from an abuse of their authority, through which they have been imprisoning indigent misdemeanants for nonpayment of fines in total disregard for the law. Due to the actions of Defendants, the Harrison County Jail in Gulfport, Mississippi has become a modern day debtors' prison. The jail is

packed with indigent men and women serving sentences for failure to pay “old fines.” Many of these people are completely destitute. Some are also mentally ill, mentally retarded, and/or physically disabled. They are unable to pay the fines imposed upon them. Over three decades ago, the United States Supreme Court held that criminal defendants may not be incarcerated for failure to pay old fines unless there is a willful failure to pay.¹ Defendants routinely disregard this clear Supreme Court mandate in their efforts to collect old fines for the City of Gulfport.

2.

The City of Gulfport employs a special force of police officers charged with patrolling the streets of Gulfport to arrest citizens who have failed to pay fines assessed by the Gulfport Municipal Court. These officers conduct periodic sweeps, during which they search the streets for people who look as though they might owe the City old fines. During these sweeps, the officers go to predominately African-American neighborhoods and stop people in the streets

¹ See Bearden v. Georgia, 461 U.S. 660 (1983) (a court cannot jail an indigent probationer for failure to pay fine unless inquiry reveals willful failure to pay); Tate v. Short, 401 U.S. 395 (1971) (a court cannot convert a fine imposed under a fine-only statute into a jail term solely because the defendant cannot immediately pay the fine in full). See also Payne v. Mississippi, 462 So.2d 902, 905 (Miss. 1984) (“a court may not first fine a defendant and then, because of his indigency, convert the fine into a jail sentence for failure of the defendant to make immediate payment of the fine.”).

without any independent reason or suspicion, but for the sole purpose of checking to see if they owe the City old fines. Those who owe fines are taken to jail.

3.

Accused debtors of the City of Gulfport often sit in jail for up to five days before they are brought before the court. Once they do see a judge, the hearing typically lasts less than one minute; many hearings last no more than thirty seconds. In violation of law, the judges of the Gulfport Municipal Court routinely fail to inquire into whether the defendant's failure to pay the fine was willful, or the result of the defendant's poverty, illness, or disability. Unless the defendant can come up with the full amount that he owes or a significant portion thereof, he is sentenced to "sit off" his fines in the Harrison County Jail, at the rate of one day for every \$25 owed.

4.

Through this pervasive practice, Defendants have caused Plaintiffs irreparable injury: to lose jobs, to leave Plaintiffs' children and elderly parents without the benefit of Plaintiffs' income and support, to miss end-of-term college examinations, and, in one case, to miss an operation to repair a painful and debilitating injury. Defendants have also cost the citizens of Harrison County countless thousands of dollars in taxes to house these non-violent, impoverished debtors at the county jail.

5.

In addition to illegally incarcerating indigent misdemeanants for failure to pay fines, Defendants routinely violate accused misdemeanants' right to counsel. No counsel was ever appointed to any of the Plaintiffs, all of whom are indigent, when they appeared as defendants before the Gulfport Municipal Court. There are no defense attorneys present at the Municipal Court proceedings conducted by the Harrison County Jail. The judges rarely, if ever, appoint counsel. Defendants routinely violate the Sixth and Fourteenth Amendments to the United States Constitution by sentencing indigent defendants to terms of incarceration without first advising them of their right to court-appointed counsel.

6.

Defendants have also denied Plaintiffs access to their own municipal court files – public records that should be available for any citizen to view. In violation of the First and Fourteenth Amendments to the United States Constitution and Mississippi's Public Records Act, officials of the Gulfport Municipal Court require payment of a \$4.75 *per page* "retrieval fee" to view public court documents. The cost to view nine clients' court files sought in conjunction with this case was \$513. This practice is unreasonable, unconscionable, and in violation of law.

7.

Defendants keep inadequate records of proceedings before the Gulfport Municipal Court. As a consequence, some Plaintiffs have been forced to serve more than one term of incarceration for an alleged failure to pay the same fines.

8.

Defendants' policies of incarcerating indigent accused debtors, denying accused misdemeanants the right to counsel, and denying Plaintiffs reasonable access to public records violate the First, Sixth, Thirteenth, and Fourteenth Amendments to the United States Constitution. Further, Defendants' practices violate Mississippi laws governing punishment for nonpayment of fines (Miss. Code Ann. § 99-37-7, § 99-19-20), adjudication of incompetent persons (Miss. Code Ann. § 99-13-3), and access to public records (Miss. Code Ann. § 25-61-1, *et. seq.*). Plaintiffs assert claims for violation of their civil rights under 42 U.S.C. § 1983, violation of Art. 3, § 14 of the Mississippi Constitution, and violation of Mississippi statutes. They seek injunctive relief and a declaratory judgment that Defendants must conform their actions to the law.

9.

Defendants' illegal conduct continues to take place on a near-daily basis and affects hundreds of people. Although some Plaintiffs may be released from the county jail before the resolution of this lawsuit, Defendants' illegal practices are

still a threat to them. Several Plaintiffs have been arrested repeatedly and jailed for old fines, in violation of law. One Plaintiff, Virginia Thomas, has, on five occasions, spent *over one month* in jail for failure to pay old fines. Plaintiffs seek prospective relief so that Defendants will not, in the future, violate their rights. Defendants' illegal practices are capable of repetition, yet evading review.

10.

Plaintiffs bring this putative class action on behalf of themselves and all other indigent persons who are: (1) facing criminal charges in the Gulfport Municipal Court and entitled to court-appointed counsel, (2) currently incarcerated by order of the Gulfport Municipal Court for failing to pay old fines, and/or (3) eligible for arrest by the Gulfport Police Department or its agents for failing to pay fines imposed by the Gulfport Municipal Court.

11.

Plaintiffs bring this action to compel Defendants to: (a) conduct an inquiry into a person's ability to pay old fines owed or the reasons for non-payment and refrain from incarcerating any person for failure to pay fines because of inability to pay; (b) inform all accused indigent misdemeanants facing jail or suspended jail sentences in the Gulfport Municipal Court of their right to court-appointed counsel; (c) provide counsel for indigent misdemeanants, as required by the United States and Mississippi Constitutions; and (d) provide misdemeanants and

accused misdemeanants reasonable access to their court files.

PARTIES

Plaintiffs

12.

VIRGINIA THOMAS, a 36-year-old African-American woman, is a resident of Gulfport, Mississippi. She is illiterate and mentally retarded. Ms. Thomas's sole source of income is a monthly disability check, which she receives from the federal government because she is too mentally disabled to work. Since 1999, Ms. Thomas has been arrested and jailed by the Gulfport police for "old fines" *nine* times. Ms. Thomas was most recently incarcerated for old fines from March 24, 2005 to June 7, 2005. Given her indigence and consistent inability to pay old fines in the past, Ms. Thomas is in danger of being arrested again and incarcerated because of her indigence. The Gulfport Municipal Court judge who sentenced Ms. Thomas made no inquiry into her ability to pay before he sentenced her to "work off" her fines in jail. Ms. Thomas has never been represented by counsel in any proceeding before the Gulfport Municipal Court. Nor has she been advised that she has the right to court-appointed counsel if she cannot afford to hire a lawyer. Defendants have deprived Ms. Thomas of her liberty without due process of law, denied her the equal protection of the law, and violated her right to

counsel. Ms. Thomas seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

13.

ERIKA BROCK, a 34-year-old African-American woman, is a resident of Gulfport, Mississippi. Ms. Brock is mentally ill and can barely walk due to injuries she sustained in a suicide attempt in December 2004. Her disabilities are apparent. Despite clear indications that Ms. Brock is not in a position to pay the \$2,000 she allegedly owes the City of Gulfport, Ms. Brock has been repeatedly incarcerated by the City of Gulfport for failure to pay. Ms. Brock is currently incarcerated in the Harrison County Jail. After her arrest on June 3, 2005, Ms. Brock appeared before the Gulfport Municipal Court on June 7 and again on June 9. She pleaded with the judges to be released, explaining that she was scheduled to have surgery to repair the broken bones in her feet. The judges did not release her. Nor did they conduct any inquiry into the reasons for her failure to pay the fines. Instead, one judge told Ms. Brock that he would release her if she produced \$1,000; otherwise she would have to "work off" her fines in jail. Ms. Brock has never been represented by a lawyer in the Gulfport Municipal Court. Defendants have deprived Ms. Brock of her liberty without due process of law, denied her the equal protection of the laws, and violated her right to counsel. Ms. Brock seeks

the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

14.

STEVEN RILEY, a 42-year-old African-American man, is a resident of Gulfport, Mississippi. In May 2005, Mr. Riley spent two weeks in jail for failure to pay \$314 in old fines. He was arrested on May 16, 2005 and jailed for two weeks even though he had already "worked off" his fines by doing community service two years earlier. Due to his two weeks of incarceration, Mr. Riley lost a job he had just started eight days before. In addition, he was unable to care for his mother, a 79-year-old woman confined to a wheelchair. Mr. Riley has never been represented by counsel in any proceeding before the Gulfport Municipal Court. Nor has he ever been advised that he has the right to court-appointed counsel if he cannot afford to hire a lawyer. Defendants have deprived Mr. Riley of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Riley seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

15.

TIMOTHY MASON, a 28-year-old Caucasian man, is a resident of Harrison County, Mississippi. At the time of his arrest on shoplifting charges, Mr.

Mason was living with his girlfriend and her three children in a trailer which lacked electricity or running water. He and his family are so poor that, at times, he has resorted to eating out of garbage dumpsters because he cannot afford food. Mr. Mason was jailed from May 11, 2005 until June 26, 2005 for failure to pay old fines. No judge made an inquiry into Mr. Mason's ability to pay the fines or whether the alleged failure to pay was "willful." Mr. Mason was not informed of his right to court-appointed counsel before his incarceration for failure to pay fines. Defendants have deprived Mr. Mason of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Mason seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

16.

JACQUELINE LINDSEY, a 46-year-old African-American woman, is a resident of Harrison County, Mississippi. Ms. Lindsey was arrested by the Gulfport Police while walking home from a restaurant on June 1, 2005. The officers who approached Ms. Lindsey asked her name and told her to wait while they checked their database to see if she owed fines. She did. Because Ms. Lindsey could not come up with the full amount she owed on the spot, Ms. Lindsey was taken to jail. Ms. Lindsey sat in the jail for nearly a week before she saw a judge. At her court appearance on June 7, 2005, Ms. Lindsey was sentenced

to 52 days in jail. She was never advised of her right to counsel. In addition, the judge who sentenced her failed to conduct an inquiry into the reason for the nonpayment of fines. If he had, the judge would have known that Ms. Lindsey was too poor to pay her fines. Defendants have deprived Ms. Lindsey of her liberty without due process of law, denied her the equal protection of the laws, and violated her right to counsel. Ms. Lindsey seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

17.

CLARENCE ANDERSON, a 20-year-old African-American man, is a resident of Gulfport, Mississippi. Mr. Anderson's only criminal convictions are misdemeanor convictions for driving without a license or insurance, "interfering with the duties of a police officer," and failing to appear in court. Mr. Anderson has a football scholarship to attend Gulf Coast Community College. As an athlete and full-time student, Mr. Anderson's only source of income is a small stipend. On May 18, 2005, Mr. Anderson was arrested and incarcerated for failure to pay fines. Judge Atchison, the Gulfport Municipal Court judge who sentenced Mr. Anderson, made no inquiry into Mr. Anderson's ability to pay. Instead, Judge Atchison said: "I'm giving you days to sit off. If you can get someone to bring half, I'll release you." Mr. Anderson was in jail for two months – until July 18,

2005. As a result, he missed final examinations and his football scholarship is in jeopardy. Mr. Anderson was not represented by counsel in any proceeding before the Gulfport Municipal Court, nor was he informed of his right to court-appointed counsel. Defendants deprived Mr. Anderson of his liberty without due process of law, denied him the equal protection of the law, and violated his right to counsel. Mr. Anderson seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

18.

CHRISTOPHER JAMIESON is a 48-year-old Caucasian Vietnam veteran who is mentally ill. Mr. Jamieson's sole source of income is a monthly disability check that he receives from the government. Mr. Jamieson has been incarcerated in the Harrison County Jail since June 19, 2005 because he is unable to pay the fines imposed upon him by the Gulfport Municipal Court. When Mr. Jamieson appeared in court on June 21, the presiding judge failed to make any inquiry into Mr. Jamieson's financial circumstances before sentencing him to jail. Mr. Jamieson was not represented by counsel in any proceeding before the Gulfport Municipal Court, nor was he informed of his right to court-appointed counsel. Defendants have deprived Mr. Jamieson of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr.

Jamieson seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

19.

HUBERT LINDSEY, JR., a 54-year-old African-American man, is homeless and unemployed. He lives in a tent. Mr. Lindsey's left eye is clouded and half-shut due to an injury. He also has a serious and visible injury to his left shoulder. Mr. Lindsey's impairments have curtailed his ability to find employment. On July 1, 2005, Mr. Lindsey was arrested for failure to pay fines. He appeared before the Gulfport Municipal Court on July 7. The presiding judge sentenced Mr. Lindsey to "sit out" \$4,780 worth of old fines, without making any inquiry into Mr. Lindsey's financial situation. Mr. Lindsey is still in jail. Mr. Lindsey has never been represented by counsel in the Gulfport Municipal Court. Defendants have deprived Mr. Lindsey of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Lindsey seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

20.

KENNETH FOXWORTH, a 36-year-old African-American man, is homeless. He is mentally disabled and has difficulty reading. At the time of his arrest, Mr. Foxworth had been unemployed for over one month. On July 7, 2005,

Smith of the Gulfport Municipal Court sentenced Mr. Foxworth to "sit out" \$685 in old fines. Judge Smith made no inquiry into Mr. Foxworth's financial circumstances other than to ask Mr. Foxworth if he was working. When Mr. Foxworth replied that he was unemployed, Judge Smith derided him for "watching TV and standing around on the street corner." Despite his indigence, Mr. Foxworth has never been apprised of his right to court-appointed counsel and has never been represented by an attorney in any proceeding before the Gulfport Municipal Court. Defendants have deprived Mr. Foxworth of his liberty without due process of law, denied him the equal protection of the laws, and violated his right to counsel. Mr. Foxworth seeks the enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

21.

KAREN ELEY, a 28-year-old Caucasian woman, has three children under the age of five for whom she is the sole caretaker. Ms. Eley receives food stamps to feed her family. In the several months preceding her arrest, she had been unemployed, but had finally found a job in June 2005. On July 2, 2005, Ms. Eley was stopped by the Gulfport police as she pulled out of a grocery store parking lot. She was then arrested for failure to pay fines previously assessed in connection with misdemeanor convictions for driving without insurance, a seat belt violation, and related offenses. Because Ms. Eley could not produce \$1000 on the spot, she

was taken to jail where she remained for five days. Ms. Eley was released on July 7 after her relative made a partial payment of the money she purportedly owed. During her five-day incarceration, Ms. Eley was forced to leave her children in the care of her teenage sister. Ms. Eley was never apprised of her right to court-appointed counsel and was never represented by an attorney in any proceeding before the Gulfport Municipal Court. Defendants have deprived Ms. Eley of her liberty without due process of law, denied her the equal protection of the law, and violated her right to counsel. Ms. Eley seeks the enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

22.

HENRY WINTERS, a 52-year-old African-American man, is a resident of Gulfport, Mississippi. He is homeless and had been sleeping in an abandoned house at the time of his arrest on May 18, 2005. The house is in disrepair, and is only periodically equipped with water and gas. Mr. Winters was arrested for old fines on May 18 and appeared before Gulfport Municipal Court Judge Bill Atchison on May 19. Although Mr. Winters obviously appeared to be indigent, Judge Atchison failed to inquire into Mr. Winters's ability to pay the fines. Instead, Judge Atchison told Mr. Winters that he owed old fines and sentenced him to nearly one month in jail. Mr. Winters, who possesses only an 8th grade

education, has never been appointed counsel in his cases before the Gulfport Municipal Court. Defendants have deprived Mr. Winters of his liberty without due process of law, denied him the equal protection of the law, and violated his right to counsel. Mr. Winters seeks enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

23.

DOROTHY COOLEY is a 41-year-old African-American woman and a resident of Gulfport, Mississippi. She is the mother of three children. Though she is employed at a nursing home, she earns less than \$9000 a year, and has been unable to pay the fines assessed for arrests for public intoxication. Ms. Cooley was arrested on July 4, 2005 and remains in jail. Ms. Cooley has never been appointed a lawyer by the court, nor evaluated to determine her capability of paying her fines. She has been sentenced to "sit off" almost \$1900 in fines, which will keep her behind bars for nearly two-and-a-half months, jeopardizing her employment. Defendants have deprived Ms. Cooley of her liberty without due process, denied her equal protection of the law, and violated her right to counsel. Ms. Cooley seeks enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

24.

DEBORAH JENKINS is an African-American woman and a resident of

Gulfport, Mississippi. She is employed at a dry cleaner where she earns approximately \$400 per month. Ms. Jenkins was arrested for old fines on June 21. The Gulfport Municipal Court did not inquire into her ability to pay her fines, or offer the appointment of a lawyer at any time during her hearings. She was released on June 24 after her daughter paid a portion of her fine. Ms. Jenkins allegedly still owes the City of Gulfport about \$2500 in fines. Because she still owes a large amount of money, and because she earns very little, she is at continued risk of further deprivation of her liberty. Defendants have deprived Ms. Jenkins of her liberty without due process, denied her equal protection of the law, and violated her right to counsel. Ms. Jenkins seeks enforcement of her rights in this Court so that she will not be subject to further unconstitutional deprivations of her liberty.

25.

OSCAR JACKSON, a 42-year-old African-American man, is a resident of Gulfport, Mississippi. He works as a bricklayer and earns approximately \$12,000 a year. Mr. Jackson was arrested on May 23 and spent nearly two months in jail for owing old fines. The Gulfport Municipal Court never inquired into Mr. Jackson's ability to pay his fines, nor offered him court-appointed counsel. Defendants have deprived Mr. Jackson of his liberty without due process, denied him equal protection of the law, and violated his right to counsel. Mr. Jackson seeks

enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

26.

CARL TATE, an African-American man, is a resident of Gulfport, Mississippi. On July 8, 2005, the Gulfport Police stopped Mr. Tate while he was walking down the street and then arrested him for owing old fines. Mr. Tate had been unable to pay his fines because he earns approximately \$120 a week, is a part-time student, and helps to support two children. Mr. Tate spent five days in jail and was released on July 12. Because he still purportedly owes the City fines, Mr. Tate is at continued risk of further deprivation of his liberty. Defendants have deprived Mr. Tate of his liberty without due process, denied him equal protection of the law, and violated his right to counsel. Mr. Tate seeks enforcement of his rights in this Court so that he will not be subject to further unconstitutional deprivations of his liberty.

27.

JOHN WHITE, a Caucasian man, is a resident of Gulfport, Mississippi. Mr. White lost his leg in a car accident in 2000. Although he was steadily employed as a sales manager for the 12 preceding years, he is now disabled and unable to work. Mr. White is a single father raising two children on an income of approximately \$146 per month in welfare assistance and \$241 per month in food