

IN THE COURT OF COMMON PLEAS
FOR COUNTY NAME COUNTY

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)
)
 v.) Case Nos. #####
)
 JOHN DOE)
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PETITION FOR WRIT OF HABEAS CORPUS

Petitioner JOHN DOE, by his undersigned attorneys, hereby petitions this Honorable Court for immediate release from the custody of the CORRECTIONAL FACILITY NAME on a Writ of Habeas Corpus, and as grounds therefor avers as follows:

I. Background

1. As a result of prior criminal convictions, Mr. DOE currently owes \$#AMOUNT in #CASE NUMBER. The court docket reflects that his overdue amount is \$#OVERDUE AMOUNT in #CASE NUMBER. Mr. DOE has been incarcerated since DATE: he was held on \$BAIL AMOUNT bail until DATE, which he was unable to pay, and he has been held since DATE because he lacks the \$#AMOUNT necessary to pay a purge amount for a contempt entered that day for unpaid fines and costs.
2. EMPLOYMENT AND HOUSING HISTORY
3. ABILITY TO PAY
4. PREVIOUS COURT HEARINGS
5. OTHERS' ABILITY TO PAY
6. Mr. DOE lacked the ability to pay the purge amount on the day of the hearing and has no ability to pay the purge amount set by the Court. As a result, he has remained

incarcerated since DATE.

7. If asked, Mr. DOE could have established that he had no income or other means aside ATTEMPTS, had been receiving public benefits, and was entirely dependent on financial support from NAMES OF SUPPORT because he was unemployed and has been unable to maintain a job. EMPLOYMENT HISTORY

II. Argument

A. Mr. DOE's imprisonment is unlawful because there was no proper finding that he was able to pay and willfully refusing to do so.


8. Both the United States and Pennsylvania Supreme Courts have explicitly held that defendants who have defaulted on their fines and costs “must be given the opportunity to establish that they are unable to pay the fine. Upon a showing of indigency, [they] should be allowed to make payments in reasonable installments.” *Com. ex. Rel. Parrish v. Cliff*, 304 A.2d 158, 161 (Pa. 1973) (granting a writ of habeas corpus for four defendants who were jailed for failure to pay fines and costs). The right to due process prohibits imprisoning a defendant for failure to pay court fines, costs, or restitution without first “inquir[ing] into the reasons for the failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).
9. These constitutional provisions require that courts affirmatively inquire “into the reasons surrounding the [defendant’s] failure to pay, followed by a determination of whether the [defendant] made a willful choice not to pay.” *Eggers*, 742 A.2d at 176. Courts are prohibited from jailing defendants “unless it appears after [a] hearing that the defendant is financially able to pay the fine or costs.” Pa. R. Crim. P. 706(A); 42 Pa. Cons. Stat. § 9730(b).

B. Mr. DOE's imprisonment is unlawful because he cannot pay the purge amount.

10. A court can only find a defendant guilty of civil contempt for nonpayment if it finds “[b]eyond a reasonable doubt, from the totality of the evidence before it,” that the defendant was capable of paying the purge amount at the time that he was found in contempt. *Barrett v. Barrett*, 368 A.2d 616, 620-21 (Pa. 1977). The foundation of a civil contempt order is the principle that the defendant holds the key to his own release: if he cannot, in fact, effect his own release, then the sentence is the same as a criminal sentence, but without the “safeguards of criminal procedure.” *Id.* at 621. That violates the law.
11. None of the evidence adduced at the hearing of DATE supported a finding that Mr. DOE had any present ability to pay his outstanding court debt. Indeed, all of the evidence available to the Court suggested the opposite. The Court may have disbelieved Mr. DOE when he explained that he had no money or income, but there was no evidence before the Court to support a finding “[b]eyond a reasonable doubt, from the totality of the evidence” that Mr. DOE was capable of paying the purge amount at the time that he was found in contempt. *Barrett*, 368 A.2d at 620-21 (“ . . . the crucial question is not whether he willfully and contemptuously violated the original orders, but whether he had the present ability to comply with the conditions set by the court for purging himself of his contempt.”). In fact, as Mr. DOE’s declaration sets forth, he has not had the means to meet his own basic needs, much less pay his court debt.
12. That Mr. DOE has been represented by the office of the public defender and has received public assistance “invite the presumption of indigence.” *Eggers*, 742 A.2d at 176 n.1. The Court did not make the required determination that Mr. DOE was able to pay the \$#AMOUNT purge amount set by the Court despite the apparent indicia of indigence. In

fact, that Mr. **DOE** was held since **DATE** on **\$#AMOUNT** bail and was unable to pay even that bail amount further underscores his inability to pay the purge amount, which—at **\$#AMOUNT**—was more than twice the amount of bail that he could not afford to post.

C. Mr. **DOE's imprisonment is unlawful because he was not provided with counsel.**

13. Mr. **DOE**'s incarceration also violates his right to counsel under the Due Process clause of the Fourteenth Amendments of the United States Constitution. In *Turner v. Rogers*, 564 U.S. 431 (2011), the United States Supreme Court approved alternatives to counsel in civil contempt proceedings for failure to pay child support when the opposing party is an unrepresented parent,¹ but its ruling expressly did not apply to “civil contempt proceedings where the underlying child support payment is owed to the State,” as “[t]hose proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative.” *Id.* at 446-47, 449. In such instances, due process requires that the court provide counsel to the defendant.
14. In addition, Rule 122 of the Rules of Criminal Procedure requires that defendants such as Mr. **DOE** be provided with counsel in hearings before the Court involving imprisonment for nonpayment of fines and costs.  *Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. Ct. 1983) (analogous provision in Rule 122 (then numbered Rule 316) addressing summary offenses requires appointment of counsel prior to imprisonment for nonpayment of fines and costs).

15. Thus, both the United States Constitution and the Rules of Criminal Procedure required



¹ Those alternatives are (1) notice to the defendant that his “ability to pay” is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. *Turner*, 564 U.S. at 446-48. None of these procedural safeguards, other than notice of the nature of the hearing, were afforded to Mr. **DOE**.

counsel for Mr. **DOE** in the April 24, 2017 hearing. The failure to provide him with counsel renders his subsequent imprisonment illegal, regardless of his ability to pay.

* * *

16. As a result of the **DATE** hearing, Mr. **DOE** remains unlawfully imprisoned in the **PRISON/JAIL NAME**. This Court should either issue the writ of habeas corpus forthwith and order Mr. **DOE** released or require a response and hold a hearing on this matter, at which Mr. **DOE** is present, forthwith. *See* 42 Pa. Cons. Stat. § 6504; *Balsamo v. Mazurkiewicz*, 611 A.2d 1250, 1253 (Pa. Super. Ct. 1992) (hearing must be held if petitioner has made a prima facie case entitling him to habeas relief).

WHEREFORE, Petitioner respectfully requests that this Honorable Court schedule this matter for a hearing forthwith and/or grant a writ of habeas corpus ordering his release from confinement forthwith.

DATED: **DATE**

Respectfully submitted,

[signature block]

VERIFICATION

I, **JOHN DOE**, the Defendant in this matter, hereby verify that the statements set forth in the foregoing Motion are true and correct to the best of my knowledge, information, and belief. I understand that false statements made herein are subject to the penalties of 18 Pa. Cons. Stat. § 4904, relating to unsworn falsification to authorities.

Date: **#DATE#**

JOHN DOE

IN THE COURT OF COMMON PLEAS
FOR **COUNTY NAME**

CRIMINAL DIVISION

COMMONWEALTH OF PENNSYLVANIA)	
)	
v.)	Case No. #####
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ORDER ISSUING WRIT OF HABEAS CORPUS

Upon consideration of the Petition in the above-captioned case, and there being no question the Defendant does not have the means to pay the purge amount set by the court, who therefore cannot be jailed for failure to make that purge, *Barrett v. Barrett*, 368 A.2d 616, 620-21 (Pa. 1977), it is on this _____ day of _____, 20____, ORDERED that

1. A Writ of Habeas Corpus be, and hereby is, GRANTED; and
2. The Defendant be, and hereby is, ORDERED TO BE RELEASED FROM THE
[County name] COUNTY PRISON, on his recognizance, FORTHWITH.

BY THE COURT:

Judge, Court of Common Pleas