

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

ROBERTO VEGA-TORRES)	
)	
v.)	Case No.
)	
JANINE QUIGLEY¹)	
)	
_____)	

EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS

Petitioner Roberto Vega-Torres, by his undersigned attorneys, hereby petitions this Honorable Court for immediate release from the custody of the Berks County Prison on a Writ of Habeas Corpus, and as grounds therefor avers as follows:

I. Background

1. This Petition challenges the unconstitutional and unlawful incarceration of Mr. Vega-Torres. Magisterial District Judge Alvin B. Robinson ordered Mr. Vega-Torres to be jailed until February 16, 2020, merely because Mr. Vega-Torres has not paid in full fines and costs arising out of eleven² summary traffic cases (he has paid three others in full).³ While Mr. Vega-Tores has paid \$1,688, he still owes approximately \$3,658 from these cases.

2. The District Court’s decision to jail Mr. Vega-Torres occurred without *any* court hearing

¹ Ms. Quigley, as warden of the Berks County Prison, is named here as Respondent only in his official capacity as the individual currently detaining Mr. Vega-Torres. Mr. Vega-Torres does not allege any wrongdoing by Ms. Quigley.

² The dockets are: MJ-23105-TR-0000253-2018, MJ-23105-TR-0000254-2018, MJ-23105-TR-0000255-2018, MJ-23105-TR-0000256-2018, MJ-23105-TR-0000257-2018, MJ-23105-TR-0000258-2018, MJ-23105-TR-0000259-2018, MJ-23105-TR-0000260-2018, MJ-23105-TR-0000261-2018, MJ-23105-TR-0000262-2018, MJ-23105-TR-0000263-2018, MJ-23105-TR-0000264-2018.

³ While not germane to the merits of this Petition, the District Court also overcharged Mr. Vega-Torres by approximately \$4,471.34 in violation of Pa.R.Crim.P. 453(B), which permits the court to charge only one set of court costs for offenses arising out of the same incident. All of these cases arose out of the same incident. Moreover, it is unlawful to charge a defendant with server fees or other constable costs if the defendant is indigent. *See* 44 Pa.C.S. § 7161(g)(16).

whatsoever, let alone one that involved the constitutionally mandated inquiry into his ability to pay or a finding that he is willfully refusing to pay. As a result, Mr. Vega-Torres has been denied essential due process of law.

3. The District Court further erred by failing to ensure that Mr. Vega-Torres was afforded his right to counsel.

II. Facts

4. Mr. Vega-Torres is unemployed and indigent. Although he had been making payments while employed as a landscaper, he was laid off in the fall and has been looking for work since then.
5. Knowing that he had fallen behind on payments, Mr. Vega-Torres voluntarily appeared at the District Court on February 3, 2020, with his wife, to seek a new payment plan. Judge Robinson told him to wait in the vestibule. The court clerks and constables then told Vega-Torres that there were fourteen outstanding bench warrants and that he was being jailed for fourteen days—one day per bench warrant.
6. At no time did Mr. Vega-Torres have a hearing with Judge Robinson or even any discussion with the judge regarding his financial circumstances.
7. At no time did Judge Robinson inform Mr. Vega-Torres of his right to counsel, nor did the judge conduct a proper colloquy to effectuate a waiver of counsel.
8. At no time did Judge Robinson inform Mr. Vega-Torres that the sentence of incarceration must be stayed for 30 days so that he could file an appeal, nor was Mr. Vega-Torres informed of the right to appeal.
9. Mr. Vega-Torres and his wife are raising three minor children. They receive food stamps through the Supplemental Nutrition Assistance Program, as well as medical care through

Medicaid.

10. The nonpayment of fines and costs is a result not of Mr. Vega-Torres's refusal to pay, but instead of his inability to do so; while he is looking for work, he simply lacks the financial resources necessary to pay the costs and fines.
11. Absent emergency action by this Court, Mr. Vega-Torres will remain incarcerated until February 16, at which point he will still be unable to afford to pay his fines and costs in these matters.
12. The ongoing detention of Mr. Vega-Torres constitutes irreparable harm—the illegal deprivation of liberty—for which there is no adequate remedy at law, thereby justifying and requiring emergency relief.

III. Argument

A. Mr. Vega-Torres' imprisonment is unlawful because there was no hearing and court determination that he was able to pay and willfully refusing to do so.

13. 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).
14. These constitutional protections 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.” *Commonwealth v. Eggers*, 742 A.2d 174, 176 (Pa. Super. Ct. 1999). Pennsylvania statutes reflect these constitutional imperatives, prohibiting criminal courts from jailing defendants unless, at a hearing, the court “determines that the defendant is financially able to pay the fine or costs.” 42 Pa.C.S. § 9730(b)(1). *See also* Pa.R.Crim.P. 456(D).

15. The Superior Court recently issued *three* published opinions invalidating unlawful court collections practices that jailed defendants without prior inquiry into ability to pay, in violation of the Constitution and Pennsylvania law. In *Commonwealth v. Mauk*, 185 A.3d 406, 411 (Pa. Super. 2018), the court explained that “[e]very time a defendant appears for failure to pay,” the court must “inquire into the reasons for” nonpayment. That is because the key question is whether the nonpayment was “willful.” Thus, “the finder of fact must examine the totality of the defendant’s life circumstances. If one’s effort to secure the funds owed was made in good faith, any nonpayment is excused. In other words, contempt has a *mens rea* element of specifically intending to defy the underlying court order, and impossibility of performance of the court-ordered act is an absolute defense.” *Id.*
16. Similarly in *Commonwealth v. Diaz*, 191 A.3d 850, 866 (Pa. Super. 2018), and *Commonwealth v. Smetana*, 191 A.3d 867, 873 (Pa. Super. 2018), the Superior Court invalidated findings of contempt and jail sentences because “the trial court failed to make any findings of fact on Appellant’s ability to pay prior to imprisoning him.”
17. The District Court’s actions were clearly in violation of *Mauk*, which requires that trial courts consider the reasons for nonpayment *each and every time* that a defendant appears. As the *Mauk* court explained, this inquiry “must be done every time someone appears or

reappears for a costs-and-fines proceeding, because the person's financial situations may have changed since the last time she or he was before the court." *Mauk*, 185 A.3d at 411.

18. Ms. Vega-Torres's detention is plainly unconstitutional because the District Court did not conduct a hearing to ascertain his ability to pay and did not make any findings as to whether his nonpayment was willful.

B. The District Court violated the Rules of Criminal Procedure by not staying the order of incarceration for 30 days.

19. To preserve a defendant's fundamental constitutional right to a *de novo* appeal, guaranteed by Article 5, Section 9 of the Pennsylvania Constitution, the Rules of Criminal Procedure specify that any order of incarceration must be stayed for 30 days. Per Rule 461(A), in "all summary cases in which a sentence of imprisonment has been imposed, execution of sentence shall be stayed until the time for appeal expires." This is reiterated in Rule 456(D)(3), which specifies that any order of imprisonment is automatically stayed for 30 days and that the District Court must therefore give the defendant a date certain for the execution of his sentence.
20. That process did not occur in this case, as the District Court immediately incarcerated Mr. Vega-Torres without giving him a 30-day window to appeal the order incarcerating him. The resulting incarceration is unlawful as it violates the Rules of Criminal Procedure and Mr. Vega-Torres fundamental right to an appeal.

C. Mr. Vega-Torres's imprisonment is unlawful also because he was not provided with counsel.


21. Mr. Vega-Torres's incarceration also violates his right to counsel under Rule 122 of the Rules of Criminal Procedure, which requires that defendants be provided with counsel in hearings before magisterial district courts involving imprisonment

for nonpayment of fines and costs. *See Commonwealth v. Farmer*, 466 A.2d 677, 678 (Pa. Super. 1983) (Rule 122 (then numbered Rule 316) requires appointment of counsel for summary offenses prior to imprisonment for nonpayment of fines and costs).

22. The Superior Court recently explained that the fundamental right to counsel is also required by the Due Process clause of the Fourteenth Amendment, ruling that when “there is a likelihood of imprisonment for contempt and that the defendant is indigent, the court must appoint counsel and permit counsel to confer with and advocate on behalf of the defendant at a subsequent hearing.” *Diaz*, 191 A.3d at 862.
23. The failure to provide Mr. Vega-Torres with counsel, or to conduct the requisite waiver colloquy, renders his subsequent imprisonment illegal, regardless of ability to pay.

WHEREFORE, Petitioner respectfully requests that this Honorable Court either issue the writ of habeas corpus forthwith and order Mr. Vega-Torres released or hold a hearing on this matter forthwith, at which Mr. Vega-Torres is present, has counsel, and is allowed to present evidence. *See* 42 Pa.C.S. § 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). Any delay in holding such a hearing would only further violate Mr. Vega-Torres’s fundamental rights.

Respectfully submitted,



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February 11, 2020

VERIFICATION

I, Andrew Christy, attorney for the Petitioner in this matter, hereby verify that the statements set forth in the foregoing Petition 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.

Dated: February 11, 2019



*Signed with permission of Petitioner, who is incarcerated and unable to sign given the emergency nature of this Petition, although he will be prepared to testify to the same at a hearing on the matter.

CERTIFICATE OF COMPLIANCE

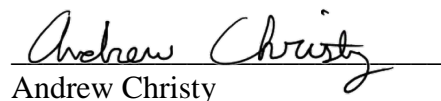
I certify that this filing complies with the provisions of the Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts that require filing confidential information and documents differently than non-confidential information and documents.

CERTIFICATE OF SERVICE

I hereby certify that the foregoing document was served upon the following parties via e-mail:

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Andrew Christy

Date: February 11, 2020

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ROBERTO VEGA-TORRES

v.

JANINE QUIGLEY⁴

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Case No.

ORDER ISSUING WRIT OF HABEAS CORPUS

Upon consideration of the Petition in the above-captioned case, it is on this _____ day of
December, 2019, ORDERED that

1. The Petition for a Writ of Habeas Corpus be, and hereby is, GRANTED; and
2. The Petitioner is hereby ORDERED TO BE RELEASED FROM THE BERKS
COUNTY PRISON, on his recognizance, FORTHWITH.

BY THE COURT:

Judge, Court of Common Pleas

⁴ Ms. Quigley, as warden of the Berks County Prison, is named here as Respondent only in his official capacity as the individual currently detaining Mr. Vega-Torres. Mr. Vega-Torres does not allege any wrongdoing by Ms. Quigley.