

STATE OF NEW HAMPSHIRE

GRAFTON, SS

SUPERIOR COURT

Superior Docket No. _____

(from 2nd Circuit – District Division – Littleton No. 454-2013-cr-00550)

RICHARD VAUGHAN

v.

STATE OF NEW HAMPSHIRE

PETITIONER RICHARD VAUGHAN’S VERIFIED EMERGENCY PETITION FOR WRIT OF HABEAS CORPUS REQUESTING (I) HIS IMMEDIATE RELEASE AND (II) THE SCHEDULING OF AN ABILITY-TO-PAY HEARING TO TAKE PLACE AT A LATER DATE

INTRODUCTION

Pursuant to RSA 534:1, Petitioner Richard Vaughan (“Petitioner”) hereby petitions on an emergency basis for a writ of habeas corpus and requests (i) his immediate release from the Grafton County Jail, and (ii) the scheduling of an ability-to-pay hearing to be held within 120 days. *See* RSA 534:1 (“A person imprisoned or otherwise restrained of his personal liberty, by an officer or other person, except in the cases mentioned in the following section, is entitled of right to a writ of habeas corpus according to the provisions of this chapter.”); RSA 534:3 (“Application for the writ shall be made to the superior court in the county in which the person is imprisoned, by a person so imprisoned or restrained, or by some person in his behalf.”).

In this petition, Petitioner seeks immediate release from the Grafton County Jail and reversal of the decision made three (3) days ago—on Tuesday, July 8, 2014—by the Littleton 2nd Circuit District Court (Cyr, J.) jailing Petitioner for eighteen (18) days because he was unable to pay an outstanding fine of \$895. The Circuit Court’s July 8, 2014 Order reads as follows: “The [Defendant] is to serve one day for each \$50 of fine owed. Balance owed is \$895.00.” *See* Ex. E

(Adult Order of Confinement and Written Order). Prior to issuing this Order, the Circuit Court never made findings, as is constitutionally required, that Petitioner had the ability to pay the remaining fine obligation. With one day in jail equating to each \$50 of the fine imposed, Petitioner is slated to be jailed until Saturday, July 26, 2014. This is the case even where Petitioner was only convicted of a Class B misdemeanor—an offense where jail is not an authorized punishment.

The Circuit Court's order is unconstitutional and must be immediately vacated because Petitioner is financially unable to pay the fine obligation (which has since been reduced to \$695),¹ as he is indigent and is therefore not wilfully failing to pay this fine. Petitioner's indigent status is evidenced by the attached financial affidavit executed today, and Petitioner was represented by a public defender in the underlying case that resulted in the fine. *See* Ex. F (July 11, 2014 Financial Affidavit); Ex. B (Oct. 15, 2013 Financial Affidavit Securing Public Defender counsel). Indeed, Petitioner has approximately \$15 to his name and no checking account. *See* Ex. F. The United States Supreme Court has made clear that the United States Constitution prohibits jailing individuals who are unable to pay fines and fees assessed against them. *See Williams v. Illinois*, 399 U.S. 235 (1970); *Tate v. Short*, 401 U.S. 395 (1971). Moreover, the Circuit Court failed to appoint counsel for Petitioner during the proceeding on July 8, 2014. As Petitioner was confronted with judicial action that immediately threatened his liberty, he was entitled to formal appointment of counsel to satisfy procedural due process. *See Stapleford v. Perrin*, 122 N.H. 1083, 1088 (1982).

Mr. Vaughan is struggling to get by, as he has been out of work since May (he previously worked at a Subway in Littleton for approximately six months) and has been looking for work

¹ At least \$200 has been deducted from the fine obligation because he is on his fourth day in jail.

ever since. He is a hard worker and has made substantial progress in his job search. This progress will only be impeded by being compelled to spend the next two weeks in jail. In fact, this past Monday (the day before he was jailed), Petitioner had an interview at Pizza Hut, and he had an interview at a restaurant located in Littleton just last week. He has also applied to Applebee's Restaurant and Abbott Rental. Mr. Vaughan accepts full responsibility for his actions and has every intention to pay his fine obligation (which was only imposed no less than 4 months ago), but he simply needs additional time to satisfy this debt to the Circuit Court. Moreover, Mr. Vaughan's last payment was no less than 2 months ago—a modest delay that can hardly be deemed willful and justify the deprivation of one's liberty. Simply put, jailing Mr. Vaughan is a waste of Grafton County Department of Correction resources, especially where he is not a threat to anyone and he is only trying to get his life back on track.

This petition has been filed on an emergency basis because, as every minute passes by, Petitioner is losing his liberty as a result of the Circuit Court's unconstitutional order. The Grafton County Attorney's Office, the Office of the Attorney General, and the Grafton County Jail Superintendent have received a copy of this petition and are aware of the relief it seeks.

FACTS

On July 29, 2013, Petitioner—a 25-year-old man who is indigent—was charged with the following: (Charge 1)—DUI driving while intoxicated (Class A misdemeanor); (Charge 2)—DUI driving while intoxicated (Class B misdemeanor); and (Charge 3)—reckless operation of a motor vehicle (violation level). On July 30, 2013, the State filed a notice of intent to seek Class A misdemeanor penalties, thereby entitling Petitioner to counsel. Because of his indigent status, Petitioner was appointed a public defender, Attorney Joe Garrison, in the underlying action. A copy of the case summary is attached. *See* Ex. A (Case Summary); Ex. B (Oct. 15, 2013

Financial Affidavit Securing Public Defender Counsel).

On March 25, 2014, the case was disposed of. The first charge for DUI (Class A misdemeanor) was nolle prossed. The third charge for reckless operation of a motor vehicle (violation level) was placed on file without a finding, with the condition that Petitioner be on good behavior for one year. Petitioner pled guilty to the second charge of DUI (Class B misdemeanor). His sentence for this charge consisted of (i) a fine of \$930 (with additional fees, equaling \$955), (ii) participation in the impaired driver care management program, (iii) license revocation for 12 months, and (iv) interlock device ordered for 12 months.

In partial satisfaction of the outstanding \$955 obligation, Petitioner made a counter payment of \$60 on May 13, 2014, leaving \$895 outstanding. However, at or around this time, Mr. Vaughan was forced to leave his job at a Subway restaurant in Littleton (where he worked for approximately 6 months) because he lost his housing in Littleton. He then moved in with his mother and sister in Twin Mountain, but he could no longer work at the Subway because he is unable to drive to Littleton from Twin Mountain due to his loss of license. Given his new unemployed status, Petitioner diligently submitted a payment plan to the Court on May 13, 2014 requesting that he be allowed to pay \$25 per month. *See* Ex. C (May 13, 2014 Motion for New Payment Schedule). Unfortunately, because Petitioner was unable to secure a permanent job in May and June, he was still unable to make future payments.

A fine payment hearing was scheduled for June 10, 2014, and Petitioner received notice of this hearing by mail. Petitioner, however, failed to appear because he wrote the court date incorrectly in his calendar. *See* Ex. D (Notice of Hearing, Bond, and Bail Conditions documents). During the afternoon of June 10, 2014, having realized his mistake, he promptly called the Circuit Court to see what he needed to do. The Court informed him to come to the

courthouse, which he did. Petitioner posted the \$250 bond (which he obtained from his mother), was released, and was ordered to appear in court on Tuesday, July 8, 2014.

Petitioner attended the fine repayment hearing scheduled for Tuesday, July 8, 2014 before the Circuit Court (Cyr, J.). Petitioner was not represented by counsel, as the hearing took place post-plea after public defender representation had ceased. Petitioner informed the Court that he had not made payments on the outstanding \$895 fine since May and was currently unable to pay the fine because he had no money and was unemployed. He apologized for missing his June 10 court date and promised to not miss a court date ever again. He also apologized for not having any money and stated that he wanted to “make right” with his obligation. He noted that he had only “had a few bad months” since May, and that he would not be late on payments when he secured employment. He also explained how he had a Pizza Hut interview on Monday, that he had applied to Applebee’s, and that he had been aggressively applying for jobs (Mr. Vaughan is not on government assistance). He said “he was praying to get a job shortly” and that he was “hitting three or four places a day” with applications. The Circuit Court explained that there was “another way” to satisfy this obligation, meaning jail time. Petitioner said he preferred to get a job to pay off the fine. Of course, Petitioner has every intention of paying the fine. He just needs additional time because this fine is a substantial burden, and he needs to secure employment to satisfy this obligation.²

The Circuit Court stated that it had heard “nothing concrete” and, in error, that Petitioner had “done very little on this.” Petitioner apologized once again. Because Petitioner was unable to pay the fine, the Circuit Court then ordered in writing that he “serve one day for each \$50 of fine owed”—*meaning that he would serve 18 days in jail following a conviction for a Class B*

² Undersigned counsel has listened to the tape of the July 8, 2014 hearing and can represent that this description is accurate.

misdemeanor where jail is a prohibited form of punishment. See Ex. E (Adult Order of Confinement and Written Order).

The Circuit Court did not make a finding, as is constitutionally required, that Petitioner had the means to pay this \$895 fine and therefore had wilfully failed to pay this obligation. The Circuit Court also did not—though it was not formally requested—appoint counsel for Petitioner, leaving Petitioner unrepresented during the July 8, 2014 hearing where his liberty was at stake.

Because Petitioner had no ability to pay the \$895 fine, he reported to the Sherriff on July 8, 2014. Since he has been jailed in Grafton County Jail for the last 3 days, Mr. Vaughan has not been able to take his medication for anxiety disorder—which he is required to take three times a day—as he did not have the medication in his possession when he reported to the Sheriff, and he does not have the money to pay for the medicine while in jail (Mr. Vaughan had a panic attack just last night). With one day in jail equating to each \$50 of the fine imposed, Petitioner’s current outstanding fine obligation is at most \$695—excluding the \$250 to which he is entitled to a credit for posting bond in June—and he is slated to be in jail until Saturday, July 26, 2014—fifteen (15) days from today.

ARGUMENT

The Circuit Court’s order jailing Petitioner for failing to pay the \$895 fine, without a formal finding that the failure to pay was wilful, is clearly unconstitutional and must be immediately vacated. Petitioner must be immediately released from jail.

The United States Constitution prohibits jailing individuals who are unable to pay fines and fees assessed against them. *Williams v. Illinois*, 399 U.S. 235 (1970) (holding that a state may not under the Equal Protection Clause subject a certain class of convicted Petitioners to a

period of imprisonment beyond the statutory maximum solely by reason of their indigency); *Tate v. Short*, 401 U.S. 395 (1971) (holding that U.S. Constitution prohibits states from imposing a fine as a sentence and then automatically converting the fine into a jail term solely because the Petitioner is indigent). Indeed, while courts are permitted to incarcerate those who willfully refuse to pay fines and fees, those who lack the resources to meet their court-imposed financial obligations cannot be incarcerated for failing to do so. To jail those who cannot afford to pay fines and fees would produce an “impermissible discrimination that rests on ability to pay” forbidden by the Equal Protection Clause of the Fourteenth Amendment. *Williams*, 399 U.S. at 241, 244. Accordingly, the United States Supreme Court has made clear that no individual may be incarcerated for failure to pay fines and fees unless the court first “inquire[s] into the reasons for the failure to pay.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983) (holding that, if a probationer has willfully refused to pay the fine or restitution when he has the resources to pay or has failed to make sufficient bona fide efforts to seek employment or borrow money to pay, the State is justified in using imprisonment as a sanction to enforce collection). Unfortunately, the American Bar Association Journal recently noted that, although the “Supreme Court has unambiguously held that criminal Petitioners can’t be jailed for inability to pay through no fault of their own . . . [,] state courts across the country routinely ignore that command and send people to jail without the required hearing to determine whether a Petitioner is indigent.”³

These constitutional principles have been acknowledged by the New Hampshire Supreme Court, and are even embodied in the Circuit Court rules. *See State v. Fowlie*, 138 N.H. 234 (1994) (citing *Bearden*, and holding that the trial court erred when it based its decision to impose a criminal sentence on a presumption of ability to pay restitution at the time of the original

³ John Gibeaut, Get Out of Jail—But Not Free: Courts Scramble to Fill Their Coiffers by Billing Ex-Cons, A.B.A. J., July 2012, at 52.

sentence, rather than on Petitioner's actual ability to pay at any time during the existence of the order to pay); *State v. Morrill*, 123 N.H. 707, 711 (1983) (noting that "[t]he Petitioner acknowledges that he could not be imprisoned if his indigency rendered him unable to pay the fine imposed"); N.H. Circuit Court R. 2.7(d) ("Conduct which amounts to willful failure to pay any fine or perform community service as ordered, may be punishable as contempt of court or through the provisions of RSA 618:9.") (emphasis added); RSA 618:10 ("Whenever a person under conviction for a criminal offense and confined in a county correctional facility is unable to pay the fine, the superior court, upon petition of the prisoner or the superintendent and satisfactory proof of such inability, may order the prisoner to be discharged upon such terms as they may think proper."). Indeed, as the New Hampshire Supreme Court has held, Part I, Articles 1 and 2 of the New Hampshire Constitution embody equal protection principles that are at least coextensive with the Fourteenth Amendment's Equal Protection Clause. *In re Sandra H.*, 150 N.H. 634, 637 (2004) ("We have held, in accordance with the United States Supreme Court, that the equal protection guarantee" in the State Constitution "is 'essentially a direction that all persons similarly situated should be treated alike.'") (quoting *Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439 (1985)).

As is evidenced by Petitioner's prior public defender representation and the attached financial affidavits, Petitioner is indigent and is unable to pay his remaining \$695 fine obligation. *See* Ex. F (July 11, 2014 Financial Affidavit); Ex. B (Oct. 15, 2013 Financial Affidavit securing public defender counsel); Ex. C (May 13, 2014 Motion for New Payment Schedule). His mother is not able to loan him the money to pay the fine, and his sister is unemployed. Mr. Vaughan has been out of work since May, prior to which time he worked at a Subway in Littleton for approximately 6 months. He is trying to secure housing in Littleton, and he has been aggressive

in his job search, including recent job interviews at Pizza Hut and Abbott Rental. In the meantime, he simply has little more than \$15 to his name. Given his economically disadvantaged status, he is not willfully failing to pay this obligation, especially where he only seeks additional time to find work and satisfy this fine obligation. As a result, any order jailing Petitioner for failing to pay this fine discriminates against him because he is poor in violation of the Fourteenth Amendment and Articles 1 and 2 of the New Hampshire Constitution. Thus, the Circuit Court erred in jailing Petitioner because he was unable to pay his fine obligation. This order should be vacated immediately, and Petitioner should be released from Grafton County Jail.

Additionally, the Circuit Court's failure to appoint counsel at the hearing on July 8, 2014 violated Petitioner's due process rights. As Petitioner was confronted with judicial action that immediately threatened his liberty, he was entitled to counsel under both the Fifth Amendment and Part I, Article 15 of the New Hampshire Constitution. As the New Hampshire Supreme Court has made clear, "when the court retains the power to impose incarceration at a later time the Petitioner has been afforded liberty, albeit conditional, which may not be revoked without due process." *See Stapleford v. Perrin*, 122 N.H. 1083, 1088 (1982). Indeed, that Court has found that "a significant liberty interest exists which is worthy of due process protection ... when some condition set by the court has not been met and incarceration is the proposed remedy." *Id.* Under this circumstance, one of the procedures that must be followed is "representation by counsel, to be appointed by the court if the Petitioner is indigent." *Id.* Accordingly, the Circuit Court erred in not appointing counsel at the July 8 hearing where Petitioner's liberty was in jeopardy. Attorney Leonard D. Harden is prepared to represent Petitioner in future proceedings with respect to his fine payment obligation, including any ability-to-pay hearing held under

Circuit Court Rule 2.7(d).

REQUEST FOR RELIEF

WHEREFORE, Petitioner respectfully requests the following relief:

- a) That this Emergency Petition for a writ of habeas corpus be granted;
- b) That Petitioner be immediately released from Grafton County Jail;
- c) That the Circuit Court's order jailing Petitioner as a means of satisfying his outstanding fine obligation be immediately vacated;
- d) That an ability-to-pay hearing be scheduled to take place before this Court in 120 days (a time frame that will give Petitioner time to potentially pay off some of the fine);
- e) That \$50 be reduced from Petitioner's remaining fine obligations for every day he stays in jail pursuant to the Circuit Court's unconstitutional order;
- f) That \$250 be reduced from Petitioner's remaining fine obligation in light of the bond he posted in June, which has not been returned even though Petitioner made his appearance on June 8, 2014; and
- g) Any such other and further relief that this Court deems just and proper.

Respectfully submitted,

RICHARD VAUGHAN,

By his attorney,

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Dated: July 11, 2014

VERIFICATION

STATE OF NEW HAMPSHIRE
COUNTY OF GRAFTON

On this 11th day of July, 2014 before me, I swear under oath that the within instrument is true to the best of my knowledge and belief.

RICHARD VAUGHAN

CERTIFICATE OF SERVICE

I hereby certify that a copy of forgoing was served this 11th day of July, 2014 by email on the following parties:

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