

STATE OF LOUISIANA

NO. 18-KP-653

VERSUS

FIFTH CIRCUIT

JUAN REID

COURT OF APPEAL

STATE OF LOUISIANA

November 14, 2018

Susan Buchholz

First Deputy Clerk

IN RE JUAN REID

APPLYING FOR SUPERVISORY WRIT FROM THE FORTIETH JUDICIAL DISTRICT COURT, PARISH OF ST JOHN THE BAPTIST, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE EDWARD J. GAIDRY, PRO TEMPORE, DIVISION "B", NUMBER 62,822

Panel composed of Judges Fredericka Homberg Wicker,
Robert A. Chaisson, and Stephen J. Windhorst

**WRIT GRANTED; GUILTY PLEA VACATED; RELATOR
RELEASED ON HIS OWN RECOGNIZANCE; MATTER REMANDED
TO THE DISTRICT COURT FOR FURTHER PROCEEDINGS**

This application is before us on supervisory review and request for expedited consideration of a sentence imposed upon relator on November 5, 2018, by the Fortieth Judicial District Court. On October 11, 2018, relator was arrested and imprisoned on the charge of misdemeanor theft in violation of La. R.S. 14:67 A B (4). On October 15, 2018, the duty judge made a preliminary determination of indigency and appointed a Public Defender.¹ A bill of information was filed on October 30, 2018. On November 5, 2018, relator pled guilty and was sentenced to six months incarceration in the parish jail with credit for the days he already served, and was ordered to pay fines and court cost totaling \$319.50.

On November 9, 2018, Relator filed a *Motion to Reconsider Sentence* which has been set for hearing on December 3, 2018. Relator argues that the sentence, as imposed, is an abuse of discretion, transforms the parish jail into a debtor's prison, and has been declared invalid by both the United States and Louisiana Supreme Court. Relator seeks reconsideration of the November 5, 2018 sentence by the trial court, a stay of incarceration, and release pending review.

For the following reasons, we grant the relator's writ, vacate his guilty plea, and order that relator be released on his own recognizance pending trial or guilty plea.

¹ Representation by a Public Defender is presumptive evidence of indigence. See *State v. Morales*, 17-131 (La. App. 3 Cir. 5/17/17); 221 So. 3d 257, 258.

Lack of Boykin Colloquy

A guilty plea is constitutionally infirm if it is not entered into freely and voluntarily, if the Boykin colloquy is inadequate, or when a defendant is induced to enter the plea by a plea bargain or what he justifiably believes was a plea bargain and that bargain is not kept. *State v. McCoil*, 05-658 (La. App. 5 Cir. 2/27/06), 924 So.2d 1120, 1124. For a guilty plea to be valid, there must be a showing that the defendant was informed of and waived his constitutional rights of trial by jury and confrontation and the right against compulsory self-incrimination. *Boykin v. Alabama*, 395 U.S. 238, 89 S. Ct. 1709, 23 L. Ed. 2d 274 (1969); *State ex rel. Jackson v. Henderson*, 260 La. 90, 255 So. 2d 85 (1971).

Based upon the transcript of the November 5, 2018 guilty plea and proceeding provided to this Court, no Boykin colloquy occurred between the trial judge and relator before the relator pled guilty. Particularly, no discussion of relator's sentence occurred between the trial judge and relator before he pled guilty; the trial judge discussed relator's sentence with him for the first time, after relator plead guilty. After the relator pled guilty, the following exchange occurred:

The Court: You want to pay the fine or you want to do the time?

Defendant: I been in jail twenty – five days already. My lawyer advised me that I was going to pay a hundred seventy-nine dollars for court costs and –

The Court: -- one sixty-nine for court costs.

Ms. Lee: So what was discussed initially was that it was a two hundred dollar fine and six months probation suspended, of time suspended. And I know you're doing it your way, so.

The Court: Yeah. Tell you what, Mr. Reid.

The Defendant: Yes, sir.

The Court: Your going to get six months in the Parish Jail, a hundred and fifty dollar fine plus court costs, so that would be a total of three hundred and nineteen dollars. You pay the three nineteen, you can leave jail. You do six months, and I'll give you credit for the twenty-four days you already, or twenty-five days, whatever you have served.

The Defendant: So, at the time, three hundred and nineteen dollars, if I plead guilty, three hundred nineteen dollars?

The Court: And you go home.

The Defendant: So you're going to give me, my lawyer advised me, like, that I was going to get my first payment like –

The Court: -- yeah. Yeah. But the problem is, that your lawyer didn't talk to the guy with the black robe on. It's nothing wrong with Ms. Lee. That's the way they used to do it in this jurisdiction. But I do it differently. And unfortunately, I'm the guy sitting up here with the robe.

The Defendant: Yes, sir. But, sir, at the same time, could I, could I have, like a little time to pay, to start paying my fine, please?

The Court: Yeah, but you can't leave the jail until you pay your fine.

The Defendant: So I got to pay three hundred and nineteen dollars before I leave jail?

The Court: Yes, sir.

The Defendant: Oh man. That's the way it goes. [sic]

The Court: Yep, that's the way it goes. Good luck to you. The problem is, you put people in jail and we let them out, they don't pay their fine. That's the problem.

The Defendant: I'm going to pay my fine.

The Court: Well, you are because you're not going to leave jail until you pay your fine.

Based upon the transcript of this proceeding, it also appears that the sentence imposed by the trial judge did not comport with the plea agreement arrived upon between relator, his counsel, and the State of Louisiana based upon which relator pled guilty.

An indigent person may not be incarcerated simply because he is unable to pay a fine which is part of his sentence. *Bearden v. Georgia*, 461 U.S. 660, 103 S. Ct. 2064, 76 L. Ed. 2d 221(1983); *State v. Monson*, 576 So.2d 517 (La. 1991). *State v. Cox*, 2002-0333 (La. App. 5 Cir. 9/30/02); 829 So.2d 521, 524.

Relator's sentence, wherein release from incarceration is conditioned on full payments of fines, fees, and court costs in the face of his presumed indigent status does not comport with either the United States or the Louisiana Constitution. Relator's plea of guilty is vacated. The matter is remanded to the district court for further proceedings and relator is ordered released on recognizance bond pending trial or guilty plea.

Gretna, Louisiana, this 14th day of November, 2018.

**FHW
RAC
SJW**

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **11/14/2018** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY

CHERYL Q. LANDRIEU
CLERK OF COURT

18-KP-653

E-NOTIFIED

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MAILED

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