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 U.S. DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
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DOWD, J.

UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF OHIO
 EASTERN DIVISION

Lloyd Alkire,)	
)	
Plaintiff,)	CASE NO. 5:96 CV 2687
)	
vs.)	<u>MEMORANDUM OPINION</u>
)	
Jane Irving, et al.,)	
)	(Resolving Doc. No. 122)
Defendants.)	

On August 31, 2000, following a status conference in the above-captioned case, the Court granted plaintiff leave to renew his motion for class certification. Plaintiff has done so and the motion (Doc. No. 122) is now before the Court. For the reasons discussed below, the motion is denied.

I. FACTUAL AND PROCEDURAL BACKGROUND

On December 16, 1996, plaintiff Lloyd Alkire filed a complaint for declaratory and injunctive relief and for damages. The complaint was amended on January 2, 1997. (Doc. No.

Alkire v. Irving



JC-OH-0004-0001

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4). Plaintiff named as defendants Judge Jane Irving, the Holmes County Court, the County of Holmes, and Holmes County Sheriff Timothy Zimmerly. Plaintiff asserted that he, and members of a putative class, have (and will in the future) suffer deprivation of their due process and equal protection rights under the United States Constitution, in violation of 42 U.S.C. § 1983.

Plaintiff alleged that, on August 19, 1995 at about 9:00 a.m., he was arrested for driving under the influence of alcohol and was taken directly to Holmes County Jail where he was held for over 72 hours prior to his first court appearance, which was on or about August 23, 1995. On September 1, 1995, plaintiff pleaded no contest to the charge against him and was ordered to pay \$620 in fines and costs. He was permitted to pay in \$50 installments. He asserts that the fine was imposed without any specific finding that he was able to pay. Plaintiff alleges that, because he was actually indigent and unable to pay, on December 13, 1995, a warrant was issued for his arrest for contempt of court. He was arrested on this warrant and taken to jail. A contempt hearing was conducted on May 21, 1996 and he was sentenced to 30 days in jail for his failure to pay the previously ordered fees and costs. Apparently, he was also given the option of working off the amount owed. He alleges that, despite having worked off his fine through 128.4 hours of community service, another warrant was issued for his arrest for non-payment of fines. On October 23, 1996, he was arrested again and sentenced to an additional 30 days in jail for contempt of court. Plaintiff alleges that, although the "arrest and/or detention orders by Judge Irving were unconstitutional on their face[.]" Sheriff Zimmerly "arrested and/or imprisoned Plaintiff pursuant to each order, thereby rendering him liable to Plaintiff in his official capacity."

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Plaintiff also alleges that at various times he asked for appointed counsel, to no avail. He asserts that all of the above was carried out "pursuant to Judge Irving's policy or custom."

Early on in the case, the parties consented to the jurisdiction of a Magistrate Judge. Numerous motions for summary judgment were filed and remained pending on April 1, 1999 when, due to the resignation of that magistrate judge, the case was reassigned to the undersigned judge. A status conference was conducted on June 3, 1999 and the parties were strongly urged to work out a settlement. The parties unsuccessfully tried to do so over the course of a few more months.

On October 13, 1999, the Court referred the matter to Magistrate Judge Perelman for his assistance in settlement negotiations. On or about April 10, 2000, the Court was informed that a settlement had been reached and that the parties would be submitting a judgment entry for the Court's signature. This was apparently a mis-communication because it later became apparent that the matter was settled only with respect to certain aspects of equitable and declaratory relief and that the matter of damages remained for trial. See Doc. Nos. 112 and 114.

The Court directed that counsel for each party "submit in letter form to the Court, served on all opposing counsel, that party's view as to what issues remain in the case." (Doc. No. 113, p. 2, ¶3). Apparently as a response to the Court's order, on July 19, 2000, counsel for the plaintiff submitted a copy of an old letter dated June 18, 2000. See Doc. No. 115. A review of this letter shows it to be unresponsive to the Court's directive of June 30, 2000. Counsel for the defendant submitted his letter on August 7, 2000. See Doc. No. 116. That letter, although attempting to be responsive, was too obtuse to serve to clarify the issues.

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It appears to the Court that all that remains for resolution by a jury is the amount of damages suffered by the plaintiff for his allegedly unlawful detention. However, plaintiff was granted leave to renew a previously filed motion for class certification. It is that renewed motion which is presently before the Court for resolution.

II. RENEWED MOTION FOR CLASS CERTIFICATION (Doc. No. 122)

Plaintiff seeks to certify the following class under Fed. R. Civ. P. 23(a) and 23(b)(2):

1. All persons who since August 19, 1993 have been or will be arrested without warrant in Holmes County and held in Holmes County jail over forty-eight (48) hours without a court hearing;
2. All persons who since August 19, 1993 have suffered, are suffering or will suffer loss of liberty as a result of actions or inactions of the defendants, for nonpayment of fines in the absence of a previously journalized Holmes County Court order finding an ability to pay and a refusal to pay;
3. All persons who since August 19, 1993 have been suffering, are suffering or will suffer loss of liberty for nonpayment of fines or court costs without notice of and opportunity for counsel or court appointed counsel in Holmes County Court;
4. All persons who since August 19, 1993 have been threatened with or have suffered, are suffering or will suffer loss of liberty for nonpayment of court costs in Holmes County Court; and
5. All persons who since August 19, 1993 have not received monetary credit for time in jail against fines and costs of Holmes County Court.

Plaintiff makes his motion for class certification under Rule 23(a) and 23(b)(2), which provide as follows:

(a) Prerequisites to a Class Action. One or more members of a class may sue or be sued as representative parties on behalf of

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all only if (1) the class is so numerous that joinder of all members is impracticable, (2) there are questions of law or fact common to the class, (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class, and (4) the representative parties will fairly and adequately protect the interests of the class.

(b) Class Actions Maintainable. An action may be maintained as a class action if the prerequisites of subdivision (a) are satisfied, and in addition:

* * *

(2) the party opposing the class has acted, or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole[.]

In support of his request for class certification, plaintiff asserts that his counsel has examined over 100 Holmes County criminal dockets and files, along with Holmes County jail logs and jail files, and found them completely lacking in "evidence of particular proceedings or court findings and orders in the written records which would and must exist if defendants had complied with their constitutional obligations." (Doc. No. 41, p. 6). He further alleges that discovery requests have "failed to elicit written policies or forms that describe a pattern of particular actual proceedings or findings at issue in this legal action." (Id.). He therefore asserts an "inference" of a pattern, practice or policy of unconstitutional behavior on the part of defendants.

Plaintiff asserts that there is no system in Holmes County requiring that jailed criminal defendants be brought before the court within a certain time after being jailed; that there is no routine determination of a criminal defendant's ability or inability to pay fines and costs which

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may be imposed by court order and, similarly, there is no determination that a given criminal defendant has refused to pay such fines and costs; that counsel is routinely not appointed to assist criminal defendants during contempt proceedings; that criminal defendants are routinely jailed for non-payment of court courts despite no finding of ability to pay and refusal to pay; and that monetary credit for jail time is not given. He claims that these various assertions apply equally to all similarly situated criminal defendants. Although he claims that the precise number of potential class members cannot be ascertained, he asserts that there were over 10,000 cases in Holmes County from 1993 through 1997 and, of these, there were 2133 new misdemeanor and OMVI (operating a motor vehicle while intoxicated) cases. At least 93 criminal defendants were brought to Holmes County Court for show cause hearings related to contempt from November 23, 1995 through May 21, 1996.

Defendants have opposed plaintiff's request for class certification; however, the 12½ page opposition brief spends 10 pages arguing the merits of plaintiff's claims and devotes only 2½ pages to the class certification issue. Those 2½ pages cite no case law to guide the Court. Accordingly, the Court has had to rely on its own and plaintiff's legal research to resolve the matter.

Having considered Rule 23 and the parties' respective arguments, this Court is of the view that there is no need to certify a class, given the stipulated judgment entries with respect to the equitable and declaratory relief originally sought by the plaintiff. The changes that have been agreed to by the parties with respect to these matters will benefit future criminal defendants who find themselves in circumstances similar to those of the plaintiff.

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As for the damages dimension of this case, the Court is hard pressed to see how the factual scenarios of the perhaps hundreds of potential class members would not be far too diverse to warrant class treatment. There will be varying reasons for the arrests, varying lengths of stay in jail, varying financial situations, varying reasons for contempt adjudications, and so on. All of these factors would impact on the amount of damages any individual class member might be entitled to. The Court, therefore, expressly finds a lack of "common questions of fact" and "typicality" under Rule 23(a)(2) and (3).¹

In this Court's view, by way of the settlement stipulations already entered in this case, plaintiff has obtained all the relief future potential plaintiffs would want or need. Any individual who believes he has been wronged in the past in a manner similar to plaintiff can bring his or her own lawsuit where the factual details can be delineated and proven or disproven.

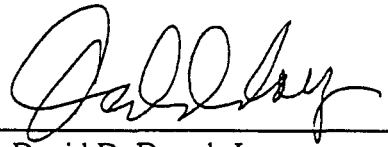
¹ It is also highly improbable that the element of "numerosity" can be established.

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Accordingly, plaintiff's renewed motion for class certification (Doc. No. 122) is DENIED. Further, given the horrendous age of this case, pursuant to Fed. R. Civ. P. 23(f), this Court expressly declines to stay further proceedings unless it is ordered to do so by the Court of Appeals.²

By separate trial order, the Court will schedule this case for trial during the two-week period beginning December 4, 2000.

IT IS SO ORDERED.



David D. Dowd, Jr.
U.S. District Judge

² Rule 23(f) provides, with emphasis added:

(f) Appeals. A court of appeals may in its discretion permit an appeal from an order of a district court granting or denying class action certification under this rule if application is made to it within ten days after entry of the order. An appeal does not stay proceedings in the district court unless the district judge or the court of appeals so orders.