

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

SAM STINSON, Plaintiff, on his behalf	:	
and on behalf of all persons similarly	:	
situated	:	
	:	
v.	:	CIVIL ACTION NO. 1:94-CV-75
	:	GET
FULTON COUNTY BOARD OF	:	
COMMISSIONERS, and	:	
MITCH SKANDALAKIS, in his official	:	
capacity as Chairman of the Board of	:	
County Commissioners	:	

AMENDED COMPLAINT--CLASS ACTION

Introduction

This is a class action commenced under 42 U.S.C. ' 1983, by Plaintiff Sam Stinson, on behalf of similarly situated indigent persons charged with criminal offenses in the Superior Courts of Fulton County.

The State of Georgia is required by the United States Constitution to provide indigent criminal defendants with representation at all critical stages of a criminal prosecution. A defendant will only have a fair opportunity to present his defense when such representation is thorough and continuous. The services currently provided in Fulton County do not meet these constitutional minimums.

This action seeks equitable relief, damages and attorneys fees as a result of Fulton County's failure to provide counsel for the Plaintiff Stinson and others similarly situated at critical stages of the criminal case pending against them. This failure amounts to a violation of the Plaintiffs' rights under the Sixth and Fourteenth Amendments of the United States Constitution, 42 U.S.C. ' 1983, and the Georgia Constitution,

Art. I, Section I, Paragraph XIV.

Jurisdiction

1.

This Court has jurisdiction over this action pursuant to 42 U.S.C. ' 1983 and 28 U.S.C. ' 1343.

Parties

2.

Plaintiff Sam Stinson is an indigent defendant currently incarcerated in the Fulton County Jail. He is charged in Fulton County Indictment No. Z-59277 with one count of possession of cocaine with intent to distribute. He is awaiting a trial in his case.

3.

The defendants named are the Fulton County Board of Commissioners and Mitch Skandalakis, in his official capacity as the Chairman of the Board of the Commissioners.

4.

The Fulton County Board of Commissioners is the body responsible for the funding for the operation of the courts and the operation of the indigent defense system in the Superior Court.

Plaintiff Class Action Allegations

5.

The named Plaintiff, Sam Stinson, brings this action as a class action under Fed.R.Civ.P. Rule 23 and Rule 220 of the Local Rules of this District, on behalf of himself and all persons similarly situated, and against the Defendants.

6.

The class that the Plaintiff seeks to represent consists of all individuals who are or will in the future adversely affected by the unconstitutional practices in Fulton County, specifically the denial of the benefit of counsel.

7.

The Plaintiff class meets the requirements of Fed.R.Civ.P. Rule 23(a) in that:

- a. Joinder of all anticipated class members is impracticable. Upon information and belief, numerous Fulton County defendants are implicated by the shortfalls in representation and the lack of resources and funding.
- b. The questions of law are common to all members of the class, despite some factual differences in their cases.
- c. The claim of the representative party, Sam Stinson, is typical of the claims of the Plaintiff Class.
- d. The representative party, Sam Stinson, will fairly protect the interests of the class.

8.

The Plaintiff class satisfies the requirements of Rule 23(b)(2) in that the Defendants have refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief with respect to the class as a whole.

Statement of Facts
as to Representative Plaintiff

9.

On September 15, 1993, Stinson was arrested and charged with one count of violating the Georgia

Controlled Substance Act--possession of cocaine with intent to distribute. He was detained at the Atlanta Pretrial Detention Center. After his arrest, Stinson was interviewed by an unknown individual about court appointed counsel, and at the time Stinson requested that counsel be appointed to him.

10.

On September 24, 1993, a preliminary hearing was held in Stinson's case. An attorney, presumably from the City of Atlanta Municipal Court Public Defender's Office, first met with Stinson right before the hearing. The case was bound over to Superior Court. No bond was set at that time.

11.

On or about September 27, 1993, Stinson was transferred to the Fulton County Jail. He was subsequently notified about the assignment of his case to Fulton County Defender of the Indigent (see attached Exhibit A).

12.

On Oct. 6, 1993, a bond was set in the amount of \$5000 (see attached Exhibit B); Stinson was not present for bond hearing. Attorney Jana Laschet of the Defender of the Indigent office handled the bond hearing. It is unknown if Stinson ever personally met with Ms. Laschet. Due to his lack of finances, Stinson has been unable to post this bond.

13.

On December 21, 1993, Stinson was indicted by a Fulton County Grand Jury. Stinson learned of the indictment by contacting the Office of the Georgia Indigent Defense Counsel. Except for the notices described above, from October 6, 1993 until his arraignment on January 14, 1994, Stinson had no contact with an attorney. He spoke with Fulton County Defender of the Indigent on several occasions, requesting

that his appointed counsel contact him. A notice from the Fulton County Defender of the Indigent stated that no counsel would be appointed until after indictment (see attached Exhibit C).

14.

On January 13, 1994, Stinson appeared for arraignment. LaGrant Anthony, a private attorney, met with him at arraignment and advised him that he had been appointed to his case. During this initial meeting Mr. Anthony advised Stinson to plead guilty to the charge. Stinson disagreed with this advice and requested new counsel. Ms. Teri N. Lee, a private attorney, was appointed by the Honorable Frank Hull, Judge, Superior Court of Fulton County.

15.

From January 14, 1994 until March 14, 1994, Stinson was represented by Ms. Lee. Ms. Lee filed a general discovery motion on February 2, 1994 and a Motion to Dismiss (filing date of February 22, 1994).

16.

On March 14, 1994, Ms. Lee moved to withdraw as Stinson's counsel, and Judge Frank Hull granted said motion. Stinson requested to proceed pro se, and Attorney Paul Kehir of the Georgia Indigent Defense Counsel was appointed as standby counsel in Stinson's case. Stinson waived his speedy trial demand on March 14, 1994.

17.

On March 15, 1994, with the assistance of Attorney Kehir, Stinson filed a Motion for Funds to Hire an Investigator to Aid in Preparation of the Defense, and a Motion for the Preliminary Hearing Transcript.

18.

No attorney from the Fulton County Defender of the Indigent was ever actually appointed to Stinson's case, even after the indictment.

COUNT ONE

Petition for Injunctive Relief

19.

The allegations of paragraphs one through eighteen are incorporated here in as though set out in full.

20.

Unless this Court grants injunctive relief, the Plaintiffs will be irreparably harmed. The lack of continuous representation cannot be remedied by money damages.

21.

The rights and interests of the public will be advanced by an adequately funded system of indigent representation. The current system is deficient in that it provides either no representation at critical stages of the prosecution or splintered representation by numerous offices and attorneys with no coordination of resources and information. This chaotic system is a direct result of the defendants' failure to adequately fund the Indigent Defense System in Fulton County.

COUNT TWO

Petition for relief and damages under 42 U.S.C. ' 1983 and attorneys fees under 42 U.S.C. ' 1988.

22.

The allegations of paragraphs one through twenty-one are incorporated herein as though set out in

full.

23.

The Defendants have failed to provide an indigent defense system in the Superior Courts of Fulton County consistent with the state and federal constitutional guarantees for indigent defense.

24.

The Fulton County Board of Commissioners have intentionally and persistently failed to fund the indigent defense system at a level sufficient to provide adequate and effective representation. The Plaintiffs are victims of the callous disregard by the Commissioners of their statutory and constitutional obligations.

25.

The Board of County Commissioners was put on notice of the inadequacy of their program, among other ways, by the Spangenberg Report issued in October 1990. The report pointed out in glaring detail the problems with the indigent defense program in Fulton County. Since that time, and despite their awareness of the gaps in representation, the Board has failed to take meaningful steps to improve the availability of lawyers and the continuity of representation for indigent defendants.

26.

The official policy of the Board in under funding the Indigent Defense System in Fulton County has resulted in the constitutional violations of the Plaintiffs' right to counsel guaranteed by the United States Constitution's Sixth Amendment.

27.

As a direct result of Defendant's intentional acts, the Plaintiffs have suffered damage and injury in that they are denied representation of counsel during critical stages of prosecution, specifically from the

preliminary hearing stage until after indictment.

COUNT THREE

28.

The allegations of paragraphs one through twenty-seven are incorporated herein as though set out in full.

29.

The deficiencies in funding of the Fulton County indigent defense system results in a violation of Plaintiffs' due process rights under the United States Constitution's Fourteenth Amendment.

COUNT FOUR

30.

The allegations of paragraphs one through twenty-nine are incorporated herein as though set out in full.

31.

The disparity of funding and the failure to provide funding adequate to serve the indigent criminal defendant population in Fulton County denies equal protection to those who are charged and prosecuted in the Superior Court of Fulton County.

COUNT FIVE

State Law Claims

32.

The allegations in paragraphs one through thirty-one are incorporated herein as though set out in full.

Under the facts alleged, the Defendants have violated their obligations to Plaintiffs as guaranteed to them under the Georgia Constitution Article 1, Section 1, Paragraph XIV (1983), the privilege and benefit of counsel; Art. I, Sec. I, Para. II, equal protection under the law, and under O.C.G.A. 17-7-24 and O.C.G.A. 17-12-31.

WHEREFORE, Plaintiffs pray for the following relief:

- A. That the Fulton County Board of Commissioners be required to fund the Fulton County Defender of the Indigent as well as all other offices dedicated to the representation and defense of the Indigent to a level which would allow for the uninterrupted representation of persons accused of crimes at all critical stages of the prosecution. This is necessary to assure the right to the privilege and benefit of counsel.
- B. That the Commissioners be restrained and enjoined from maintaining any lower level of funding.
- C. Plaintiffs pray that they be awarded reasonable actual and punitive damages against the defendants and reasonable costs and attorneys fees on their claims under the United States Laws and Constitution and also under Georgia laws and Constitution.

As to all counts Plaintiffs hereby demand a jury trial for those issues properly tried before a jury.

Respectfully submitted this the ____ day of May, 1994.

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