

IN THE CIRCUIT COURT OF THE
11TH JUDICIAL DISTRICT IN AND
FOR QUITMAN COUNTY, MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff,

vs.

STATE OF MISSISSIPPI,
KIRK FORDICE in his official capacity
as GOVERNOR and MIKE MOORE in his
official capacity as ATTORNEY GENERAL,

Defendants.

Civil Action No. 99-0126

COMPLAINT

Plaintiff, by its attorneys, brings this action for declaratory and injunctive relief:

NATURE OF THE CASE

1. The right to the effective assistance of counsel in criminal cases is a vital component of each individual's fundamental right to life and liberty. This right is fundamental not only to a person accused of a crime: it is essential to the well being of all citizens and to a fair and efficient system of justice in the State of Mississippi. The prompt appointment and effective assistance of counsel for indigent defendants is necessary to ensure that the innocent are not wrongfully convicted and that those found guilty by due process of law are incarcerated in a timely manner in the State's custody, rather than languishing for long periods in county jails awaiting indictment or trial as now occurs. The creation of a fair and efficient indigent defense system will benefit crime

Quitman Co. Circuit Clerk
Eranda A. Wiggins

victims, taxpayers, law enforcement officials and everyone else with an interest in the criminal justice system.

2. The State of Mississippi has a duty, under Article 3, Section 26 of the Mississippi Constitution and other provisions of state law, to provide effective assistance of counsel to Mississippi's indigent criminal defendants and to provide an efficient funding mechanism for delivering effective assistance of counsel to its indigent criminal defendants. In breach of its duty, the State improperly and unfairly has shifted the State's obligation to provide and pay for representation of indigent defendants to the counties of Mississippi.

3. Although the State pays for the criminal prosecution expenses of Mississippi state courts and state prosecutors, the State provides no funds for resource-starved county indigent defense efforts. The State's imposition of these defense costs on counties amounts to an unfunded mandate. The consequences for Quitman County and its taxpayers, and the consequences for other small, poor counties and their taxpayers, have been devastating.

4. The State's unfunded mandate is inherently arbitrary because of the unpredictability of crime on a county-by-county basis. For example, Quitman County faces possible financial ruin because of the costs of defense for two individuals, Robert Simon and Anthony Carr, who have no connection with Quitman County except that they are accused of committing a crime here. To pay for the hundreds of thousands of dollars the trials and initial appeals cost, Quitman County had to raise taxes for three consecutive years and take out a large bank loan that required three years to repay. Quitman County now has been ordered to pay for new appeals for Simon and Carr, which could cost

hundreds of thousands of dollars more. Quitman County may have to raise taxes again, incur additional debt or cut needed services.

5. The State recognized the shortcomings of the existing indigent defense efforts when it enacted the Mississippi Statewide Public Defender System Act of 1998. This statute provided for much needed reforms. However, the Legislature has not appropriated funds to carry out these reforms, and the Attorney General has taken the position that the state Public Defender Commission -- created by statute to oversee indigent defense programs in Mississippi -- does not exist. Thus, because of the dire straits in which it finds itself, Quitman County and its taxpayers have no choice but to seek judicial relief so that the State will fulfill its legal duties.

Parties

6. Quitman County brings this action in its own name and on behalf of its taxpayers to vindicate important public rights. Quitman County and its inhabitants have a vital interest in the provision of an adequate State-funded system of indigent representation. This action has been duly authorized by the Quitman County Board of Supervisors.

7. Defendant State of Mississippi is constitutionally and statutorily obligated to provide and fund adequate representation of indigent criminal defendants.

8. Defendant Kirk Fordice is sued in his official capacity as Governor. The Governor is charged with the obligation to see that the laws are faithfully executed.

9. Defendant Mike Moore is sued in his official capacity as Attorney General. The Attorney General is the chief legal officer for the State of Mississippi.

Jurisdiction and Venue

10. The Court has original jurisdiction of this action. The causes of action asserted herein accrue in Quitman County. Venue is proper under Miss. Code Ann. § 11-11-3.

THE STATE'S FAILURE TO PROVIDE EFFECTIVE ASSISTANCE OF COUNSEL TO INDIGENT DEFENDANTS

11. The Mississippi Constitution guarantees every accused in a criminal proceeding the right to be heard by counsel. Miss. Const. Art. 3, § 26. More than thirty-five years ago, the Mississippi Supreme Court recognized the obligation of the State to provide effective counsel to indigent defendants as fundamental and essential to a fair trial. Conn v. State, 170 So. 2d 20 (1964). In so doing, the Court relied on the landmark decision of the United States Supreme Court in Gideon v. Wainwright, 372 U.S. 355 (1963), holding that the State has an obligation to provide effective counsel to indigent defendants under the United States Constitution. The Mississippi Supreme Court subsequently called on the Legislature to adopt a statewide public defender system and provide state funds for the representation of indigent defendants. Wilson v. State, 574 So. 2d 1338, 1340 (1990); Mease v. State, 583 So. 2d 1283, 1285 (1991).

12. However, instead of complying with its obligation, the State enacted and its executive body relied upon statutory provisions that purport to impose the costs of indigent defense on counties. Miss. Code Ann. §§ 25-32-7, 99-15-17. To the extent these statutes purport to impose the fiscal obligations to provide defense counsel on counties, they contravene the clear language in Conn and Gideon that the responsibility to pay for or otherwise provide defense counsel to indigent persons is an obligation of the State.

13. Mississippi is virtually alone in imposing the burden of paying for the defense of indigents accused of crimes on counties. In the last decade, Arkansas, Tennessee and Georgia have adopted state funding of public defender systems.

14. The State's refusal to provide funds and its imposition of the financial burden on resource-starved counties has had dire consequences for the provision of indigent defense services in Mississippi. Studies prepared for a committee of the Mississippi Bar Association in the 1990s found:

- Funding for indigent defense is totally inadequate (amounting to \$3.24 per capita, far less than any other state);
- The lack of adequate resources for indigent defense services results in poor quality services and representation that falls beneath the minimum standards of representation required by the Mississippi Constitution; and
- There is no statewide oversight of indigent defense, which leads to a hodgepodge, county-by-county approach to providing defense services.

15. The State's lack of involvement in the provision of indigent defense and the inadequate resources available to such indigent defense means that constitutional requirements for the effective assistance of counsel often are not met. Studies conducted for the Mississippi Bar Association found:

Resources are not sufficient to provide adequate representation even in felony cases, particularly in those counties using the contract public defender system. Every aspect of defense representation is compromised. Specifically, there is very little: early representation provided, investigation conducted, attorney/client contact, or use of experts. There is a low trial rate in felony and misdemeanor cases. The

requirement for contract defenders and assigned counsel to handle their own appeals, often with no additional compensation, creates a disincentive for taking cases to trial. Case preparation is often late, and frequently preliminary hearings are waived and defendants are held in jail three to six months without counsel until arraignment in circuit court. The overall situation has led to an insufficient number of qualified attorneys willing to take court appointments in indigent cases or to seek contract public defender positions.

16. The State recognized the grave shortcomings of existing indigent defense efforts and the need for major reforms by enacting the Mississippi Statewide Public Defender System Act of 1998. The Act acknowledges that current efforts do not protect the State's "defense interest" of "guaranteeing to each accused person the effective assistance of competent, loyal, and independent counsel, and assuring that each such person is prosecuted and punished only as may be found consistent with the due process of law." Miss. Code Ann. §§ 25-32-33(1)(c), (2). Nor do they secure the State's "justice interest" of "administration of its criminal justice system, so as to secure the just, fair, speedy, and efficient adjustment and final adjudication of each charge formally made, to protect the innocent, and to punish offenders." Miss. Code Ann. §§ 25-32-33(1)(d), (3). Current efforts also fail to serve the State's "budgetary interest" in "holding the cost of administration of its criminal justice system to its optimal level, consistent with the fair and efficient provision of the services reasonably necessary to advance the state's other interests in the premises." Miss. Code Ann. §§ 25-32-33(1)(f), (3).

17. The Statewide Public Defender System Act provides that the statewide public defender system created by the Act "shall be funded by appropriations made by the Legislature" and repeals existing statutes purporting to impose the obligation to pay for indigent defense on counties. Miss. Code Ann. §§ 25-32-65(1) (emphasis added), 25-32-21. The Act creates a state Public Defender Commission and directs the

Commission to "implement and ensure the enjoyment of the right to counsel and the right to the effective assistance of counsel secured by the Constitution of the United States of America and the Constitution of the State of Mississippi." Miss. Code Ann. §§ 25-32-37, 25-32-39(c), 25-32-41(a). To accomplish this, the Act mandates that there shall be a district defender in each Circuit Court district and directs the state Public Defender Commission to appoint district defenders. Miss. Code Ann. §§ 25-32-39(i), 25-32-43(1). The Act provides that district defenders are to be compensated at the same level as district attorneys and further mandates that district defenders are to be given staff and other resources substantially equal to the district attorneys. Miss. Code Ann. §§ 25-32-43(3), 25-32-63(1)(a).

18. The Statewide Public Defender System Act provides that it is to be broadly and liberally construed to promote the State's defense, justice, budgetary and other interests. Miss. Code Ann. §§ 25-32-35. The Act specifically directs all officers and personnel of the criminal justice system of the State and its political subdivisions to cooperate with the Public Defender Commission and the district defenders in the exercise of their powers and the discharge of their duties. Miss. Code Ann. § 25-32-35.

19. Defendants have ignored the statutory mandates of the Statewide Public Defender System Act of 1998. The Legislature has failed to appropriate funds for the programs and services mandated by the Act. The Attorney General has taken the position that, because the Legislature has not appropriated funds, the statutorily-created state Public Defender Commission has expired.

20. In sum, defendants have failed and refused to provide and pay for indigent defense in breach of their constitutional and statutory obligations. In contrast, every year

the State provides many millions of dollars in state funds to district attorneys and law enforcement officials to pay for prosecution of criminal defendants, notwithstanding the express provision of Article 14, Section 261 of the Mississippi Constitution that “[t]he expenses of criminal prosecution shall be borne by the county in which such prosecution shall be begun.” The law and fundamental fairness require that the State also provide and pay for effective representation of indigents charged with crimes.

21. The State has adequate funds to comply with its constitutional and statutory obligations. The State has a budget surplus. The State is receiving millions of dollars every year in revenue from the gaming industry. The State is receiving what eventually will amount to billions of dollars in revenue from the settlement of tobacco litigation.

HARM TO PLAINTIFF

22. Defendants’ breach of their duties has harmed Quitman County and its taxpayers (as well as other counties and taxpayers) in several ways:

(a) The defendants have imposed enormous and unpredictable indigent defense costs on Quitman County and its taxpayers. As a result, financial resources available to fund schools, hospitals, local law enforcement and the traditional health, safety and welfare obligations of county government have been substantially reduced.

(b) Defendants’ imposition of indigent defense costs on counties has disproportionately increased tax burdens on counties with small populations but significant crime problems -- often from non-residents -- such as Quitman County, and has led to unequal tax burdens.

(c) Chronic underfunding of indigent defense has resulted in constitutional requirements for effective assistance of counsel often not being met and has adversely affected the administration of justice in Mississippi.

(d) There have been numerous post-conviction challenges to the adequacy of counsel provided to indigent defendants tried for felonies in Quitman County in the past. These challenges are expensive for Quitman County and its taxpayers. Moreover, the overturning of convictions on appeal and subsequent retrials undermines confidence in the administration of justice and results in an unduly wasteful, inefficient and expensive justice system.

(e) Lack of defense counsel and excessive caseloads promotes pretrial delay. Counties pay much of the cost associated with incarcerating defendants prior to trial and/or conviction. Accordingly, excessive pretrial delays have caused Quitman County to spend its own funds to hold defendants in county custody, even though those costs properly should be borne by the State.

First Cause of Action

23. Paragraphs 1-22 are incorporated herein by reference as though they were pleaded in full.

24. By imposing the obligation to fund indigent defense on counties, defendants have breached their duties under Article 3, Section 26 of the Mississippi Constitution to provide and fund adequate representation for indigent criminal defendants.

25. Defendants' breaches of their duties have caused and will cause serious harm to Quitman County and its taxpayers.

Second Cause of Action

26. Paragraphs 1-22 are incorporated herein by reference as though they were pleaded in full.

27. Defendants have breached their duties under the Mississippi Statewide Public Defender System Act of 1998 to provide a statewide, state-funded public defender system in conformity with the provisions of the Act.

28. Defendants' breaches of their duties have caused and will cause serious harm to Quitman County and its taxpayers.

PRAYER FOR RELIEF


WHEREFORE, plaintiff respectfully requests the following relief:

- (a) Entry of a declaratory judgment that:
 - (i) Defendants are in breach of their duties under Article 3, Section 26 of the Mississippi Constitution;
 - (ii) Defendants are in breach of their duties under the Mississippi Statewide Public Defender System Act of 1998;
 - (iii) Statutory provisions purporting to impose obligations on counties to pay for the defense of indigents accused of crimes, including Miss. Code Ann. §§ 25-32-7 and 99-15-17, are void and of no effect; and
 - (iv) Defendants are required to establish a statewide, state-funded system of defense for indigents accused of crimes that complies with the Mississippi Constitution and the United States Constitution.

- (b) Issuance of preliminary and permanent injunctions that:
- (i) Direct defendants to provide a statewide, state-funded system of defense for indigents accused of crimes that complies with the Mississippi Constitution and the United States Constitution; and
 - (ii) If there is not compliance with subparagraph (i) within a reasonable period of time, prohibit defendants from providing state funds to district attorneys or law enforcement officials for the prosecution of criminal defendants.
- (c) The award to plaintiff of costs and attorneys' fees.
- (d) The granting of such other and further relief as this Court deems necessary

or proper.

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