

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

| | | |
|--------------------------------|---|------------------------|
| ORA LEE HURLEY |) | |
| Petitioner, |) | |
| |) | |
| v. |) | CIVIL ACTION NO. _____ |
| |) | |
| MELVIN HINTON, Superintendent, |) | HABEAS CORPUS |
| Gateway Diversion Center, |) | |
| in his official capacity, |) | |
| |) | |
| Respondent. |) | |
| |) | |

PETITION FOR A WRIT OF HABEAS CORPUS

Ora Lee Hurley, who is being held in the custody of the Department of Corrections because of her inability to pay a \$705 fine imposed in 1990, petitions this Court for a writ of habeas corpus pursuant O.C.G.A. §9-14-1 *et seq.* ordering her immediate release. On August 30, 2005, the Superior Court of Sumter County ordered Ms. Hurley committed to a Department of Corrections Diversion Center and conditioned her release on payment of a \$705 fine. Ms. Hurley has been confined at the Gateway Diversion Center in Atlanta for nearly one year. Although Ms. Hurley diligently works, she is unable to pay the fine because she makes only \$6.50 per hour and virtually all her income goes to pay her room and board at the Diversion Center. Her continued confinement violates the

constitutional principles established in Bearden v. Georgia, 461 U.S. 660 (1983) and Tate v. Short, 401 U.S. 395 (1971), which prohibit imprisoning a person whose poverty makes it impossible to pay a fine.

STATEMENT OF FACTS

1. On August 7, 1990, Ms. Hurley pled guilty to possession of cocaine and marijuana in the Superior Court of Sumter County, Georgia.¹ She was sentenced to ten years of probation on the cocaine possession charge, one year of probation on the marijuana possession charge, and a \$750 fine. Ms. Hurley paid \$45 toward her fine. She failed to report to probation, however, and a warrant for her arrest was issued on February 11, 1991.
2. Nearly fifteen years later, on July 12, 2005, Ms. Hurley was arrested in Americus, Georgia for failure to report to probation, failure to pay \$705 of the \$750 fine, and possession of a small amount of cocaine.² She has been in custody since July 12, 2005.
3. On August 30, 2005, Judge R. Rucker Smith revoked Ms. Hurley's probation and committed her to the custody of a Georgia Department of Corrections

¹ See Petition for Modification/Revocation of Probation and Order, August 30, 2006 (Exhibit 1).

² The possession of cocaine charge has yet to be resolved. Ms. Hurley is being held on a \$5,000 bond that she cannot pay. The case cannot be resolved until she is returned to Sumter County.

Diversion Center “until he/she successfully completes the Diversion Center Program as determined by the Center Superintendent.”³ Judge Smith further ordered that the “minimum stay at the Diversion Center will be 120 days.” Finally, the Court ordered that Ms. Hurley must stay at the Diversion Center “until \$705.00 in Court-ordered monies [is] paid in full.”⁴

4. On October 18, 2005, Ms. Hurley was transferred from the Sumter County Jail to the Gateway Diversion Center in Atlanta. Ever since, she has worked five days a week at K & K Soul Food restaurant on Donald L. Hollowell Parkway, making \$6.50 per hour. She has worked at the restaurant every week since her arrival except for one week at Thanksgiving. Every two weeks, she turns over her paycheck to the Gateway Diversion Center. Ms. Hurley has maintained employment and paid her room and board charge of \$20 per day.
5. In addition to maintaining employment, Ms. Hurley has completed all of the other requirements of the Diversion Center program, including community service and participation in weekly Narcotics Anonymous classes. Ms. Hurley has also faithfully performed her daily housekeeping duties in the

³ See Special Conditions ordered by Judge R. Rucker Smith, August 30, 2005 (Exhibit 2).

⁴ See Order Granting Petition for Modification/Revocation of Probation, August 30, 2006, p. 2 (Exhibit 1).

Diversion Center's administrative offices. These include cleaning toilets, removing trash, dusting, sweeping, and assisting staff as needed.

6. Ms. Hurley's daily schedule is as follows: Tuesday through Saturday, Ms. Hurley is required to rise at 4:45 a.m. She attends to her cleaning detail at the Diversion Center in the morning. She leaves for work at approximately 10:30 a.m. Travel time from the Diversion Center to her place of employment takes between 45 minutes and one hour. Ms. Hurley works from 12:00 p.m. until between 6:15 p.m. and 7:00 pm. She is required to be back at the Diversion Center at 8:30 p.m.
7. The minimum term of Ms. Hurley's incarceration – 120 days – was completed on February 15, 2006.
8. Ms. Hurley remains incarcerated at the Diversion Center only because she is unable to pay her fine.
9. Ms. Hurley's income from K & K Soul Food just barely exceeds the cost of room and board at the Diversion Center. She earns on average \$700.22 per month after taxes. Room and board at the Diversion Center is \$600 per month. She must pay \$52 per month for a MARTA card to get to work and back. Laundry costs \$4 per month and she must pay for two meals per week at approximately \$5 each. The Diversion Center imposes a \$1 per month

financial processing fee on all inmates' accounts. This leaves Ms. Hurley with a total of \$33.22 per month for both personal items and payment of her fine.

She has no assets.

10. In the ten months of her incarceration, Ms. Hurley has earned over \$7,000.

She has turned all of that money over to the Diversion Center. While Ms. Hurley is provided with a list of her deposits and withdrawals, she is not given any documents to show how much of her earnings go toward her fine.

11. Although Ms. Hurley has maintained employment consistently since her incarceration began, due to the room and board charges, the amount that she owes has gone up instead of down. According to Ms. Williams' counselor at the Diversion Center, as of August 25, 2006, Ms. Hurley owed \$1,103.90 – several hundred dollars more than she owed when she came to the Diversion Center a year ago.

12. If Ms. Hurley was a person of means, she would have paid her fine and been released in February 2006. She has spent an additional seven months and apparently will remain at the Diversion Center for the foreseeable future because of her inability to pay \$705. Despite diligently working at a restaurant for nearly a year, turning her check over to the GDC, performing her housekeeping duties, and fulfilling all of the other requirements imposed

by the diversion center, Ms. Hurley is still in custody. She is being held at the Diversion Center because of her poverty.

CLAIMS FOR RELIEF

A. Violation of Equal Protection Clause and Due Process Clause

13. Ms. Hurley is imprisoned because of her inability to pay her fine in violation of the equal protection and due process clauses of the United States and Georgia Constitutions. See Bearden v. Georgia, 461 U.S. 660 (1983); Tate v. Short, 401 U.S. 395 (1971); Williams v. Illinois, 399 U.S. 235 (1970). In Tate, the Supreme Court held that imprisoning a defendant who was unable to pay a fine violated the equal protection clause of the Fourteenth Amendment. The Court applied Tate to a conviction from Georgia in Bearden, and held that to “deprive a probationer of his conditional freedom simply because, through no fault of his own he cannot pay a fine . . . would be contrary to the fundamental fairness required by the Fourteenth Amendment.” 461 U.S. at 672-673. See also Gaither v. Inman, 253 Ga. 484, 322 S.E.2d 242 (1984) (affirming grant of habeas corpus relief where no Bearden hearing conducted before trial court imposed sentence of five years to be suspended upon payment of \$15,000 fine); Massey v. Meadows, 253 Ga. 389, 321 S.E.2d 703

(1984) (affirming grant of habeas corpus relief where defendant committed to jail for failure to pay fine).

14. The law is clear: in Georgia, a court may not continue to incarcerate an indigent person solely because the person cannot afford to pay for his release. In an analogous case, *Hughes v. Dep't. of Human Resources*, 269 Ga. 587, 587-588, 502 S.E.2d 233, 234 (Ga. 1998), a trial court found a parent in civil contempt for failure to pay child support and committed the parent to jail. Two months later, the defendant filed a petition for release from incarceration because he did not have funds or property with which to pay the purge fee. The trial court denied the petition. The Supreme Court reversed, finding that "[a] trial court . . . may not continue incarceration for civil contempt when the respondent lacks the ability to purge himself." 269 Ga. at 588, 502 S.E.2d at 234. The court added that "[t]he moment it appears that there is inability [to pay], it would clearly be the duty of the judge to discharge the party." *Id.* See also *Corriher v. McElroy*, 209 Ga. 885, 76 S.E.2d 782 (1953) (same).
15. Courts have a mandatory duty under Tate, Bearden and their progeny to refrain from imprisoning a person simply because that person cannot afford to pay a fine.

PRAYER FOR RELIEF

WHEREFORE, for the foregoing reasons and such other reason as may appear to the Court, Ora Lee Hurley respectfully requests that the Court:

(a) bring her immediately before this Court and conduct a hearing and grant the writ of habeas corpus and discharge her from her unconstitutional confinement and restraint;

(b) grant such other, further, and/or alternative relief as law and justice require.

This ____ day of September, 2006

Respectfully submitted,

SARAH ELISABETH GERAGHTY
Georgia Bar No. 291393
83 Poplar Street, NW
Atlanta, GA 30303
(404) 688-1202

Counsel for Ms. Hurley

By _____