

Appendix D
Case Law Summary

Ability to Pay Case Law Summary

Bearden v Georgia, 461 US 660 (1983).

The defendant was indicted for felonies of burglary and theft by receiving stolen property and pled guilty to these offenses. The Georgia trial court did not enter a judgment of guilt, but deferred further proceedings and sentenced the petitioner to three years on probation for the burglary charge and a concurrent one year on probation for the theft charge. As a condition of probation, the trial court ordered the defendant to pay \$500 fine and \$250 in restitution. The defendant was ordered to pay \$100 the day of sentencing, \$100 the next day, and the \$550 balance within four months. The defendant borrowed money from his parents and paid the first \$200. However, defendant was subsequently laid off from his job. Defendant had a ninth grade education, could not read, and repeatedly tried to find other work but was unable to do so. Defendant had no income or assets. The defendant notified the probation office shortly before the balance was due that he was going to be late with his payment because he could not find a job. The State subsequently filed a petition to revoke petitioner's probation because he failed to pay the balance. The trial court revoked the defendant's probation, entered a conviction, and sentenced the defendant to serve the remaining portion of his probationary period in prison. The Georgia's Court of Appeals rejected the defendant's claim that imprisoning him for inability to pay the fine violated the 14th Amendment relying on earlier Georgia Supreme Court cases. The Georgia Supreme Court denied review. The U.S. Supreme Court held that the sentencing court could not properly revoke a defendant's probation for failure to pay a fine and make restitution absent evidence and findings that he was somehow responsible for the failure and that alternative forms of punishment would be inadequate to meet the State's interest in punishment and deterrence. The State cannot subject a certain class of convicted defendants to a period of imprisonment beyond the statutory maximum solely because they are too poor to pay a fine. The State cannot impose a fine as a sentence and then automatically convert it to a jail term solely because the defendant is indigent and cannot forthwith pay the fine in full. Only when a probationer has willfully refused to pay the fine or restitution when he has the means to pay will the state be perfectly justified in using imprisonment as a sanction to enforce collection.

Turner v Rogers, 131 S.Ct. 2507 (2011).

The petitioner, Michael D. Turner, was incarcerated six times between 2003 and 2010 for accumulated child support payment arrears. The duration of incarceration ranged from one day to eight months. Turner claimed that he was entitled to counsel at his hearing. The Court held that a state is under no obligation to provide free counsel to indigent defendants in civil contempt cases. However, state courts are under an obligation to provide alternative procedures to ensure a fair determination of the questions at hand. The Court held that Turner did not have clear notice that "ability to pay" would be the "critical question" in this proceeding, nor was he provided with information or forms that would have allowed Turner to disclose such information. The Court stated the following:

Solicitor General points out, there is available a set of "substitute procedural safeguards," *Mathews*, 424 U.S., at 335, 96S.Ct. 893, which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty. They can do so, moreover, without incurring some of the drawbacks inherent in recognizing an automatic right to counsel. Those safeguards include (1) notice to

Ability to Pay Case Law Summary

the defendant that his “ability to pay” is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (e.g., those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. *Turner v. Rogers*, 131 S.Ct. 2507, 2519 [11] (2011)

People v Music, 428 Mich 356 (1987).

The defendant was originally charged with larceny in a building but pled guilty to a reduced charge of attempted larceny in a building. The defendant was sentenced to, among other terms of probation, pay costs by making installment payments. The probation order further provided that “failure to pay any monthly installment when due shall constitute a violation of the terms of this Order of Probation.” The defendant argues that he was unlawfully ordered to pay such costs and that the sentencing judge failed to satisfy MCL 771.3(5)(a). The Court held that 1) in imposing restitution or costs as part of sentence of probation, the court need not inquire regarding defendant’s ability to pay, absent an assertion of inability by defendant, and 2) defendant who does not timely challenge amount of costs waives right to challenge on appeal order imposing costs that appears on its face to be reasonable approximation on costs permitted. The Court further held that a probationer is free to ask the sentencing judge to reduce the amount of restitution or costs, and it is clear that a probationer cannot be punished for failure to pay restitution or costs that the probationer cannot afford¹. A hearing before the court may be necessary if the issue of defendant’s ability to pay as outlined in the statute becomes apparent to the court, the probation department, or the defendant. A defendant who feels unable to pay must be afforded the right to seek relief at any time during the probationary period, just as the probation department is free to bring the matter before the court in the event a defendant does not pay.

People v Jackson, 483 Mich 271 (2009).

The defendant was charged with several crimes for criminal actions involving assault, home invasion, and theft. As a result of his indigency, he was appointed a court-appointed attorney who negotiated a plea of first-degree home invasion, assault with intent to rob while unarmed, and tampering with telephone lines. Defendant was sentenced to an 8 year minimum prison term and the court imposed various costs and fines, including \$725 for “initial defense costs” (his court-appointed attorney’s fee). The trial court did not articulate whether it evaluated the defendant’s foreseeable ability to pay the attorney fee. The trial court further issued an order to remit prisoner funds for fines, costs, and assessments to allow the DOC to begin taking money from the prisoner’s account to satisfy the various fees and costs imposed by the trial court. Defendant requested appellate counsel and SADO was appointed. SADO motioned the trial court to correct the defendant’s sentence by arguing that the court imposed the attorney fee without considering defendant’s ability to pay it. The trial court denied the motion, which was appealed to the Court of Appeals by delayed application which was also denied. The Michigan Supreme Court granted leave. Defendant challenged the constitutionality of the procedure used

¹ The statute, MCL 769.1a, no longer requires the court to consider the defendant’s ability to pay when determining the amount of restitution owed. *People v Collins*, 239 Mich App 125 (1999).

Ability to Pay Case Law Summary

to impose and enforce a fee for his court-appointed attorney. The Court held that 1) presentence determination of a defendant's ability to pay for court appointed attorney is not constitutionally required; 2) trial courts should not entertain challenges based on ability to pay until enforcement has begun; 3) trial courts should focus on whether the prisoner's indigency has ended and whether payment at the level ordered would cause manifest hardship; 4) statute on collection of payment from prisoner was not made unconstitutional by lack of requirement of an ability-to-pay analysis; and 5) trial courts are only required to amend remittance order when presumption of nonindigency is rebutted with evidence that enforcement would impose manifest hardship on prisoner or immediate family. The Court further held that the defendant has no constitutional right to an assessment of their ability to pay before the imposition of a fee for a court-appointed attorney. However, when a trial court attempts to enforce its imposition of a fee for a court-appointed attorney, the defendant has a due process right to be advised of this enforcement action and be given an opportunity to contest the enforcement on the basis of indigency. Once enforcement has begun for payment of attorney fee for court-appointed attorney and a defendant has made a timely objection based on claimed inability to pay, trial courts should evaluate the defendant's ability to pay.

In re Lampart/People v Lampart and Alexandroni, 306 Mich App 226 (2014).

In 2007, Lampart, a juvenile at the time, entered a plea of admission to arson. Restitution was ordered in amount of \$28,210. The trial court subsequently ordered Alexandroni, the parent to Lampart, to pay restitution on behalf of Lampart in the amount of \$250 per month. The trial court entered an order withholding wages in the amount of \$62.50 per week to satisfy the restitution obligation. In September of 2009, Alexandroni suffered a heart attack, which left her unemployed due to the resultant heart condition. The wage garnishment was terminated due to her unemployment status. The trial court held a reimbursement hearing in April of 2011. Alexandroni stated in an affidavit that she was unemployed and that her only source of income was \$730 per month in SSDI benefits. Alexandroni argues that pursuant to 42 USC 407(a), which provides for an anti-attachment provision for social security benefits, the SSDI benefits were exempt from attachment, garnishment, or other court imposed obligation. The trial court did not agree and concluded that enforcing a restitution order under the Juvenile Code did not constitute "execution, levy, attachment, garnishment, or other legal process" and that it could consider Alexandroni's SSDI benefits as income. Alexandroni did not appeal this order. In 2012, Alexandroni filed a motion for relief from judgment pursuant to MCR 2.612(C)(1)(d) and/or (f) seeking to modify or cancel the obligation to make restitution payments. The trial court denied the motion. Alexandroni appealed this order. The Court held that the defendant's ability to pay is irrelevant when it comes to ordering restitution; only the victim's actual losses from the criminal conduct is to be considered. The Court held that it agreed with the trial court's decision not to cancel or modify the restitution obligation since Alexandroni may have assets, or may in the future have sources of income from which her restitution obligation can be satisfied. However, the Court did not agree with the trial court's decision that the court can still enforce the collection of restitution even if the only source of income is SSDI. The Court stated that the protection afforded to money received as social security benefits extends before and after the benefits are received...even after a recipient receives SSDI benefits and deposits them into a bank account, the SSDI benefits are still protected by 42 USC 407(a). Further, the Court stated that when a state court order attaches to social security benefits in contravention of 42 USC

Ability to Pay Case Law Summary

407(a), the attachment amounts to a conflict with federal law, and such a conflict is one “that the [s]tate cannot win.”