IMPRISONMENT OF INDIGENTS FOR NONPAYMENT OF FINES

On September 30, 1968, Walter Strattman was found guilty in the Hamilton County Municipal Court of making a false police report in violation of a Cincinnati ordinance.[1] He was sentenced to the maximum term of six months in the Cincinnati Workhouse and given the maximum fine of $500 and costs. His six month term expired on March 31, 1969, but because of his indigency he was forced to begin working off the fine at the rate of three dollars a day under the provisions of Section 2947.20 of the Ohio Revised Code.[2]

On April 19, 1969, he filed a petition for habeas corpus in the First District Court of Appeals of Ohio, alleging denial of due process and equal protection in violation of the fourteenth amendment. He also alleged that the Municipal Court had abused its discretion by sentencing him to both the maximum term and maximum fine which would have to be worked off by further imprisonment. The Court of Appeals dismissed the petition, but the Ohio Supreme Court *reversed*[3] and remanded the case with instructions to allow the writ of habeas corpus.

The United States Supreme Court in *Griffin v. Illinois*,[4] stated that "[t]here can be no equal justice where the kind of trial a man gets depends on the amount of money he has."[5] The issue in the *Strattman* case was whether *Griffin* should be extended to say there can be no equal justice where the kind of punishment a man gets depends on the amount of money he has. It is important to note at the outset that *Strattman* involved the imposition of a sentence which, in effect, exceeded the maximum term of imprisonment permitted by the substantive statute. This was due to the

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[1] Cincinnati, Ohio, Code of Ordinances, § 901-f provides:
"It shall be unlawful for any person, firm or corporation to report or cause to be reported any felony or misdemeanor, or to give any information relating to such felony or misdemeanor, to the division of police or to any member of said division, by telephone, in writing or by any other communication, knowing that no such felony or misdemeanor has in fact been committed. In shall further be unlawful for any person, firm or corporation to give any information or report relating to any felony or misdemeanor, which information or report is false, and which such person, firm or corporation knows to be false. Any violation of this section shall be punishable by a fine of not to exceed five hundred dollars ($500.00) or by imprisonment for six (6) months or both."

[2] OHIO REV. CODE § 2947.20 (Page 1953), provides:
"Where a fine may be imposed in whole or in part, in punishment of a misdemeanor, including the violation of an ordinance of a municipal corporation and the judge or magistrate has authority to order that the defendant stand committed to the jail of the county or municipal corporation until the fine and costs are paid, the court may order that such person stand committed to such jail or workhouse until such fine and costs are paid or secured to be paid, or he is otherwise legally discharged. Persons so imprisoned shall receive credit upon such fine and costs, at the rate of three dollars per day."

[3] Strattman v. Studt, 20 Ohio St. 2d 95, 253 N.E.2d 749 (1969).

[4] 351 U.S. 12 (1956).

[5] *Id.* at 19.

fact that he had been given the maximum term of incarceration coupled with the additional imprisonment forced upon him to work off the maximum fine. It is therefore necessary to distinguish this situation from those involving a total term of incarceration below the maximum, or where a fine is the only permissible sentence. Whether the distinction is relevant to the issue of equality of punishment is doubtful, but the courts have found it necessary to treat each of these situations separately due to the different complications they create in terms of the possible consequences to our penal system. It should, however, be apparent that the *Griffin* rationale is most easily applied to a case like *Strattman*, where the maximum fine forces the indigent to serve a term in addition to the authorized maximum.

Whether *Griffin* should be extended at least that far has been the issue in several recent cases. In 1965, the Orange County Court of New York, in the case of *People v. Collins*,[6] held that equal protection was violated when an indigent, who had been given the maximum sentence on an assault charge, was also forced to work off a $250 fine at one dollar a day.

> To hold otherwise would add one more disadvantage which the law will place upon the indigent defendant, and one more advantage which the law will give to the defendant with the money in his pocket to pay his fine, although the quality of their conduct has been the same and although their intention to pay the fine has been the same.[7]

In a similar case, the New York Court of Appeals in *People v. Saffore*,[8] held that if a court adds to the maximum sentence a fine which the court knows cannot be paid ". . . imprisonment to work out the fine, if it results in a total imprisonment of more than a year for a misdemeanor . . . violates the defendant's right to equal protection of the law. . . ."[9]

In the more recent case of *Sawyer v. District of Columbia*,[10] the D.C. Court of Appeals held that a judge cannot impose a fine on an indigent that results in a prison term which exceeds the maximum allowed by the substantive statute. That case is not based on constitutional grounds, but rather on the theory that a judge abuses his discretion when he imposes ". . . a longer term of punishment than is permitted by law."[11] The court in *Sawyer* was able to avoid the equal protection issue by holding that the legislature had not intended the non-payment statute to be used against indigents.[12] The court however, recognized that if the statute could be used

[6] 47 Mis. 2d 210, 261 N.Y.S.2d 970 (1965).

[7] *Id.* at 213, 261 N.Y.S.2d at 973.

[8] 18 N.Y.2d 101, 218 N.E.2d 686, 271 N.Y.S.2d 972 (1966).

[9] *Id.* at 105, 218 N.E.2d at 668, 271 N.Y.S.2d at 975.

[10] 238 A.2d 314 (D.C. Cir. 1968).

[11] *Id.* at 318.

[12] *Id.*

against indigents, it "would then present the grave constitutional questions"[13] of equal protection.

In 1969, however, in the case of *People v. Williams*,[14] an indigent was convicted of theft and sentenced to the maximum term of one year and the maximum fine of $500 which he would have to work off at five dollars a day. The Illinois Supreme Court held that there was no equal protection violation, and based its decision on the following statement taken from a 1965 New York District Court case.[15]

> No different conclusion is required by the line of cases beginning with *Griffin v. People of State of Illinois*. Those decisions making review of criminal convictions available to the indigent have not yet been construed to compel government, State or Federal, to eradicate from the administration of criminal justice every disadvantage caused by indigence.[16]

The court in *Williams* then went on to distinguish *Saffore* and *Sawyer* on the ground that they had interpreted their nonpayment statutes to be applicable only to those defendants who were able but unwilling to pay.[17] The Illinois statute however, had been interpreted in the past[18] as applying also to willing indigents who were unable to pay.

Thus, Illinois decided that *Griffin* should not be extended beyond the trial and appellate areas of the law.[19] The Ohio Supreme Court faced the same question in *Strattman*. The only other Ohio case dealing with the subject was *In Re Cole*,[20] which was decided by the Cuyahoga County Court of Appeals in 1968. In that case the indigent had already served the maximum sentence and was working off a $1,200 fine at three dollars a day. In a very brief opinion, the court expressly declined to consider the equal protection issue, but demanded the indigent's immediate release on the theory that the *Sawyer* rationale controlled, and that the court below had, therefore, abused its discretion.

In view of these cases the first problem which confronted the court in *Strattman* was whether the legislature intended the nonpayment statute to apply to indigents. As the *Williams* case pointed out, the courts in *Sawyer* and *Saffore* had interpreted similar statutes as applying only to able, but unwilling defendants. In other words, the statute had the sole purpose of coercing payment, and thus could not be used against a willing indigent who could not pay no matter how great the coercion. Had the Ohio Su-

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[13] *Id.*

[14] 41 Ill.2d 511, 244 N.E. 197 (1969).

[15] U.S. *ex. rel.* Privitera v. Kross, 239 F. Supp. 118 (S.D.N.Y. 1965), *aff'd*, 345 F.2d 533 (2d Cir.), *cert. denied*, 382 U.S. 911 (1965).

[16] 239 F. Supp. at 120-21.

[17] People v. Williams, 41 Ill. 2d 511, 244 N.E. 197, 199 (1969).

[18] People v. Jaraslowski, 254 Ill. 299, 98 N.E. 547 (1912).

[19] *See generally*, 64 MICH. L. REV. 938-47 (1966).

[20] 17 Ohio App.2d 207, 245 N.E.2d 384 (1968).

preme Court interpreted Section 2947.20 in this manner, the constitutional issues could have been avoided, but instead the court attributed a dual purpose to the statute. Besides its coercive qualities, the statute had the ". . . additional objective of giving the state a method of *obtaining payment* of a fine from one who is unable to pay."[21] Superficially, this interpretation was based both on the common-law method of collecting fines and also on language contained in Section 2947.15. That statute provides that a person imprisoned for nonpayment of fines "*shall* perform labor."[22] More importantly, however, the court bases its dual purpose interpretation on the assertion that the single-purpose concept would ". . . lead to a result which denies equal protection to one who can pay, while the indigent goes unpunished"[23] if the substantive statute fails to prescribe any confinement. Although the offense for which Strattman was convicted did provide for confinement, it is important to note that the only issue at this point in the opinion is the legislative intent. The court was unwilling to ascribe to the legislature the unconstitutional purpose which would arise out of the single-purpose concept in a situation where a fine was the only permissible punishment. Obviously the legislature could not have intended to let a defendant escape punishment altogether, and therefore, they must have intended the statute to perform a dual purpose.

Since the Ohio statute has a dual purpose the defendant in *Strattman* loses his argument that the court abused its discretion by applying it to him. However, the court never faces the problem of whether it still might be an abuse of discretion to use even a dual-purpose statute to confine an indigent for a period in excess of the permissible maximum. In other words, there may be two possible abuses. In a single-purpose jurisdiction, *Saffore* implies that the judge cannot apply the nonpayment statute to an indigent even though the total term will be far below the maximum, for the simple reason that the legislature never intended it to apply to him.[24] The *Sawyer* case, however, seems to imply that even in a dual-purpose jurisdiction, the court cannot utilize the statute in the case of an indigent if it will result in a total term of incarceration which exceeds the maximum allowed, for the reason that it imposes ". . . a longer term of punishment than is permitted by law."[25] The court in *Strattman* fails to meet this problem by simply stating that the latter theory arises out of the single-purpose concept.[26]

Having determined the purpose of Section 2947.20, the court next confronted the issue of whether that purpose was constitutionally permissible. More precisely, can the amount of punishment a defendant receives de-

[21] Strattman v. Studt, 20 Ohio St.2d 95, 99, 253 N.E.2d 749, 752 (1969).

[22] *Id.* at 101, 253 N.E.2d at 753.

[23] *Id.* at 100, 253 N.E.2d at 752.

[24] People v. Saffore, 18 N.Y.2d 101, 218 N.E.2d 686, 687, 271 N.Y.S.2d 972, 973 (1966).

[25] Sawyer v. District of Columbia, 238 A.2d 314, 318 (D.C. Cir. 1968).

[26] Strattman v. Studt, 20 Ohio St.2d 95, 100, 253 N.E.2d 749, 752 (1969).

pend upon his solvency? The court, after recognizing that a *Griffin*-type discrimination is before them, states:

> We hold that Section 2947.20, Revised Code, as applied to an indigent defendant who has served the maximum incarceration authorized by the substantive statute, violates the equal protection guarantee of the Fourteenth Amendment. . . .[27]

At first glance, it *appears* that the Ohio Supreme Court has fallen in line with the *Collins* rationale by extending *Griffin* to the situation where the maximum sentence has been exceeded. The court begins its discussion by pointing out that a solvent defendant has a choice of either paying the fine or spending extra time in jail. "The indigent, however, has no choice."[28] That statement seems to be leading to the logical conclusion that *Griffin* has been violated since the indigent, because of his indigency, has no choice and is automatically given a longer jail term than the solvent defendant. That anticipated conclusion, however, does not materialize. Instead the court continued with the following:

> Because of that inability, a law which requires an indigent to work off a fine, must reasonably equate the amount of work required and the dollar amount of the fine so as not to offend our legal tradition of fundamental fairness.[29]

Thus, *Strattman* holds that the lack of choice does not violate equal protection, but it does say that because the indigent has no choice, he must be given a punishment which more closely resembles the harshness of a fine. This can be accomplished by raising the daily amount credited to the indigent, thus decreasing the number of days he will have to spend in jail working off the fine. The problem of how much of an increase in the per diem rate is required to accomplish this equality of punishment is expressly left to the legislature.[30] The Ohio Supreme Court seems to have borrowed this theory from the following statement in *Collins*:

> It is only if we equate the payment of the fine with the additional period of detention in prison that both men can be said to stand equal before the law. An equation of one day of a man's liberty in jail for every one dollar of the fine, in this enlightened era, should be examined very carefully before this form of equality of treatment is endorsed.[31]

Collins, however, talks in terms of equal protection while *Strattman* speaks of "fundamental fairness."[32] This apparent inconsistency can be explained by a reference to Judge Taft's concurring opinion. He feels

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[27] *Id.* at 99, 253 N.E.2d at 752.

[28] *Id.* at 101, 253, N.E.2d at 753.

[29] *Id.*

[30] *Id.* at 102, 253 N.E.2d at 754.

[31] 47 Misc. 2d 210, 212, 261 N.Y.S.2d 970, 973 (1965).

[32] Strattman v. Studt, 20 Ohio St.2d 95, 101, 253 N.E.2d 749, 754 (1969).

that the due process clause should be used in this case rather than the *Griffin* rationale:

> If the state takes property from its owner and pays him an inadequate amount of compensation therefor, it is obvious that the state thereby deprives the owner of his property without due process of law. Likewise, . . . if the state takes the liberty of the person convicted and fined in order to collect its fine, in making an inadequate allowance for that liberty, it thereby deprives that person of his liberty without due process of law.[33]

The majority, however, uses this theory only as an alternative in addition to the equal protection argument. *Strattman*, like *Collins*, is based primarily on equal protection since it has required that equality of punishment be accomplished via a higher per diem rate. It is important to note that not only will this solution affect the cases where the total term of imprisonment exceeds the maximum, but also where it is below the maximum and even in the situation where the statute only provides for a fine. In other words, the court has decided that *Griffin* should be extended to the area of fines, and it therefore requires that some attempt be made to equalize the amount of punishment in all cases. Perhaps the court has declared that the higher per diem rate will accomplish this objective in *every* case, however, the opinion seems to indicate that there *may* be some situations where equalization is not possible. At any rate the following statement furnishes the basis for arguing that proposition:

> In today's society, no one, in good conscience, can contend that a nine-dollar fine for crashing a stop sign is deserving of three days in jail if one is unable to pay. The effect of Section 2947.20, when applied to the indigent, denies him equal protection and punishes him *much more* severely merely because he is unable to pay. (emphasis added).[34]

Before analyzing that statement, it should be recalled that "[n]ot every discrimination is invalid"[35] and ". . . legislation may impose special burdens upon defined classes in order to achieve permissible ends."[36] The Federal District Court of Maryland has recently stated:

> The commitment of convicted defendants who default in the payment of their fines, whether from inability or unwillingness to pay, imposes a burden upon a defined class to achieve a permissible end in which the state has a vital interest, *i.e.*, that persons who are found guilty of breaking the laws shall receive some appropriate punishment to impress on the offender the importance of observing the law, in the hope of reforming him, and to deter the offender and other potential offenders . . . in the future.[37]

Since *Strattman* has extended *Griffin* to the area of fines, perhaps the

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[33] *Id.* at 104, 253 N.E.2d at 755.

[34] *Id.* at 101-02, 253 N.E.2d 753.

[35] Kelly v. Schoonfield, 285 F. Supp. 732, 736 (D.C. Md. 1968).

[36] *Id.* at 736.

[37] *Id.* at 737.

issue in future cases will be whether the amount of punishment given in a particular situation is so unfair and unequal that it outweighs the corresponding state interest. Thus, in *Strattman*, the court decides that the combination of the maximum sentence, and the maximum fine *plus* the "unreasonable" sum of three dollars a day, when applied to the indigent ". . . denies him equal protection and punishes him *much more* severely merely because he is unable to pay."[38] (emphasis added). This language may indicate that even after the legislature raises the per diem rate to a "reasonable"[39] amount an indigent might be able to claim that he has been denied equal protection if he can show that his punishment is "much more severe" than a solvent defendant receives. For example, would the combination of the maximum jail term plus the *maximum* fine violate an indigent's equal protection rights since his total sentence would well exceed the amount permitted by law? The court in *Strattman* never answered that question since it was unnecessary to do so. This is because both of the above mentioned factors were present *plus* the unreasonable per diem rate of three dollars a day. It is interesting to note that the syllabus states the following:

> A court sentence pursuant to law which imposes both a maximum confinement and a fine does not, standing alone, deny an indigent equal protection of the laws.[40]

Perhaps the omission of the word "maximum" before the word "fine" was merely an oversight. On the other hand, it may indicate that a maximum fine would cause the indigent's sentence to exceed the maximum permissible term by so much that he is punished *much more* severely than a solvent defendant. In fact any fine, even less than the maximum, which exceeds the term permitted by law by an unreasonable number of days, may be held to punish the indigent much more severely.

This may explain why Judge Taft would prefer to base the decision on due process grounds. His objection to the majority's reasoning is stated as follows:

> However, if the equal protection reasoning of . . . [*Griffin*] is used as the basis for preventing confinement under Section 2947.20, Revised Code, of only those who are indigent, then confinement thereunder of a defendant who is not indigent will necessarily deny him protection of the laws equal to that given an indigent defendant.[41]

He speaks about using *Griffin* to prevent confinement, but the majority has not used *Griffin* to prevent imprisonment of indigents under 2947.20. The court merely required that some attempt be made to equalize the punishment by raising the per diem rate. Perhaps Taft fears that

[38] Strattman v. Studt, 20 Ohio St. 2d 95, 102, 253 N.E.2d 749, 753 (1969).
[39] *Id.* at 103, 253 N.E.2d at 754.
[40] *Id.* at 95, 253 N.E.2d at 250.
[41] *Id.* at 104, 253 N.E.2d 755.

Griffin may be used to prevent confinement in future cases involving the situations mentioned above where the indigent is punished much more severely, and under his due process reasoning that would not occur.

The cases mentioned earlier, which extended *Griffin* to the area of fines have all gone further than *Strattman* in determining when the punishment becomes so unequal as to outweigh the countervailing state interest. In three of those cases, the statute was interpreted as being based on the single-purpose concept. Thus *Sawyer*, although not based on constitutional grounds, did recognize that equal protection problems were involved, and set the limits of the judge's discretion at the maximum term "in every case"[42] whether the judge was aware of the defendant's indigency or not.

Saffore seems to go even further than that insofar as the state statute's intent is concerned.

> Since imprisonment for nonpayment of a fine can validly be used only as a method of collection for refusal to pay a fine we should now hold that it is illegal so to imprison a defendant who is financially unable to pay.[43]

This language implies that the state statute may never be used against an indigent even if the total term would be less than the maximum. *Saffore*, however, is also based on constitutional grounds, which would set the new limit if the New York legislature decided that it wanted a dual-purpose statute. In that event, *Saffore* holds that equal protection draws the line at one year for a misdemeanor, if the judge knows that the defendant is indigent.[44]

Collins also involves a single-purpose statute, but rests its holding solely on equal protection grounds. That case holds that the cut off point is reached when the indigent is given a maximum jail term plus a fine (not necessarily the maximum fine) which results in incarceration beyond the permissible maximum.[45]

The only two cases, other than Strattman, which involved dual-purpose statutes are *Williams*[46] and *Morris v. Schoonfield*.[47] As mentioned above, *Williams* refused to extend *Griffin* to the area of fines at all. But in

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[42] Sawyer v. District of Columbia, 238 A.2d 314, 318 (D.C. Cir. 1968).
"We hold this sentence invalid, and are of the opinion that in every case in which the defendant is indigent, a sentence of imprisonment in default of payment of a fine which exceeds the maximum term of imprisonment which could be imposed under the substantive statute as an original sentence is an invalid exercise of the court's discretion for the reason that its only conceivable purpose is to impose a longer term of punishment than is permitted by law."

[43] People v. Saffore, 18 N.Y.2d 101, 218 N.E.2d 686, 687, 271 N.Y.S.2d 974 (1966).

[44] The court states:
"We do hold that, when payment of a fine is impossible and known by the court to be impossible, imprisonment to work out the fine, if it results in a total imprisonment of more than a year for a misdemeanor, . . . violates the defendant's right to equal protection. . . ." *Id.* at 104, 218 N.E.2d at 688, 271 N.Y.S. 2d at 975.

[45] People v. Collins, 47 Misc.2d 210, 213, 261 N.Y.S.2d 970, 973-74 (1965).

[46] People v. Williams, 41 Ill.2d 511, 244 N.E. 197, 199 (1969).

[47] 301 F. Supp. 159, 163 (D.C. Md. 1969).

Morris, the Federal District Court of Maryland, held that even in the case where the total term of imprisonment is far below the maximum allowed, the statute cannot be constitutionally applied ". . . unless [the defendant] is given an opportunity to tell the judge that he is financially unable to pay the fine before he is committed for nonpayment. . . ."[48] Under this approach, the judge can then allow the defendant to pay the fine on the installment plan, or the judge will proportionately lower the fine, thus reducing the number of days he will have to serve for nonpayment. Under this latter system the judge will presumably try to translate the amount of the fine into terms of days in jail. For example, if the fine would be $60 for a solvent defendant, and the per diem rate for indigents is two dollars, the judge would probably lower the fine to $10 so that the indigent would only have to spend five extra days in jail instead of thirty at two dollars a day.

It is interesting to note that *Strattman* accomplishes approximately the same result without involving the judge in any way. Thus if the Ohio legislature raises the per diem rate to twelve dollars a day, an indigent under the example above would have to spend five extra days in jail instead of twenty at three dollars a day. *Strattman*, however, avoids the administrative and enforcement problems which would arise out of *Morris'* alternative of installment payments. *Strattman*, however, can only work if the courts do not arbitrarily raise the amount of the fines they give to indigents. If, however, a court does give an unreasonably high fine in a particular set of circumstances, the appellate court could reverse, or modify the fine on the theory that it was an abuse of discretion to use even a dual-purpose statute in that manner.

It will be interesting in the future to see if the *Griffin* rationale will be extended even further in Ohio. For the moment, however, both *Strattman* and *Morris* represent significant advances with little or no adverse effect on our penal system. Even though they do not go as far as some of the other cases which prohibit confinement after a certain point is reached, both *Strattman* and *Morris* are unique in that they provide solutions which benefit *all* indigents who must work off fines, instead of just those who are punished "much more severely." This, of course, represents an important and equitable change in our penal system.[49]

James J. Erb

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[48] The court states:

"The judge may then tailor the fine to the situation of the particular defendant, by allowing him to pay the fine in installments or by reducing the fine, thereby reducing the period the defendant will have to serve in lieu of paying the fine." *Id.*

[49] The court also held that Section 2947.20 could not be used to confine a defendant to work off court costs since they represent a civil debt. The Ohio Constitution provides in Article I § 15:

"No person shall be imprisoned for debt in any civil action, on mense or final process, unless in cases of fraud."