



12-1-1970

## Imprisonment of an Indigent Defendant for Failure to Pay a Fine Constitutes an Invidious Discrimination, on the Basis of Wealth, Violating the Equal Protection Clause of the 14th Amendment.

William F. McQuillen

Follow this and additional works at: <https://commons.stmarytx.edu/thestmaryslawjournal>



Part of the [Constitutional Law Commons](#)

---

### Recommended Citation

William F. McQuillen, *Imprisonment of an Indigent Defendant for Failure to Pay a Fine Constitutes an Invidious Discrimination, on the Basis of Wealth, Violating the Equal Protection Clause of the 14th Amendment.*, 2 ST. MARY'S L.J. (1970).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol2/iss2/10>

This Article is brought to you for free and open access by the St. Mary's Law Journals at Digital Commons at St. Mary's University. It has been accepted for inclusion in St. Mary's Law Journal by an authorized editor of Digital Commons at St. Mary's University. For more information, please contact [egoode@stmarytx.edu](mailto:egoode@stmarytx.edu), [sfowler@stmarytx.edu](mailto:sfowler@stmarytx.edu).

The ruling of the Fifth Circuit firmly establishes in Texas the right of both equitable relief and recovery of damages in tort for improper acquisition of a trade secret. The effect of this case dispels any vestiges of the theory that Texas will allow recovery only if a breach of confidence or fraudulent or illegal conduct are involved. The method of discovery, whether proper or improper, is determinative of both the right to equitable relief against further dissemination of the trade secret and the right of recovery in damages for tort.

*Ronald R. Winfrey*

**CONSTITUTIONAL LAW—IMPRISONMENT OF AN INDIGENT DEFENDANT FOR FAILURE TO PAY A FINE CONSTITUTES AN INVIDIOUS DISCRIMINATION, ON THE BASIS OF WEALTH, VIOLATING THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT. *In re Antazo*, 89 Cal. Rptr. 255 (Cal. 1970).**

Simeon Munsell Antazo and Steven Clausman were convicted of arson. The trial judge stated that he considered both defendants "as standing in the same and identical shoes before the Court with respect to responsibility for these matters." The court placed both defendants on probation for three years upon the condition that each pay a \$2,500 fine and a 25 per cent penalty assessment; or in lieu of payment, to be imprisoned one day for each \$10 of the unpaid balance. The petitioner (Antazo), being unable to pay the fine, was ordered confined for a period not to exceed 312 days. The codefendant (Clausman) paid the fine and was set free. The petitioner's prayer for a writ of habeas corpus alleged that his rights under the 14th amendment's equal protection clause were violated in that he was discriminated against solely because of his indigency. Held—*writ granted*. Imprisonment of an indigent defendant for failure to pay a fine constitutes an invidious discrimination, on the basis of wealth, violating the equal protection clause of the 14th amendment.

In *Griffin v. Illinois* the United States Supreme Court ruled that "[i]n criminal trials a State can no more discriminate on account of poverty than on account of religion, race, or color."<sup>1</sup> The Court stated that people who are charged with a crime must "stand on an equality before the bar of justice in every American court"<sup>2</sup> and there cannot be "invidious discrimination between persons and different groups of

<sup>1</sup> *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 590, 100 L. Ed. 891, 898 (1956).

<sup>2</sup> *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 590, 100 L. Ed. 891, 898 (1956), citing *Chambers v. Florida*, 309 U.S. 227, 241, 60 S. Ct. 472, 479, 84 L. Ed. 716, 724 (1939).

persons."<sup>3</sup> The Court emphasized that the financial status of the defendant should have no bearing on the judicial proceeding and "there can be no equal justice where the kind of trial a man gets depends on the amount of money he has."<sup>4</sup> In spite of *Griffin's* requirement that all defendants be treated equally, two-thirds of the states continued to permit indigent defendants to be confined for a period in excess of the offense's statutory maximum.<sup>5</sup> Four of these states still consider as equal treatment a one dollar deduction of the defendant's fine for every day spent in prison.<sup>6</sup> Since *Griffin*, the principle of equality before the law, and the practice of imprisoning an indigent defendant for non-payment of a fine, have paradoxically been upheld.<sup>7</sup> The constitutionality of the "pay or jail" statutes<sup>8</sup> has consistently been affirmed but the application of the statutes has been subjected to strict scrutiny.<sup>9</sup>

New York was the first state to recognize the possible application of *Griffin* to the "pay or jail" statute. In *People v. Saffore*<sup>10</sup> the defendant was sentenced to one year imprisonment and a five hundred dollar fine for the commission of a misdemeanor. The maximum imprisonment in New York State for any misdemeanor is one year.<sup>11</sup> The indigent defendant was ordered confined for one year plus one day for every dollar fined. This could have resulted in an 865 day imprisonment. The court of appeals used *Griffin's* language saying that an affirmance of this case would allow different treatment for the defendant who can pay a fine and the defendant who was unable to pay.<sup>12</sup> The court stated that since imprisonment for nonpayment of a fine can be validly used only as a method of collection to reassure the payment of the fine, then any imprisonment beyond the statutory maximum is but ". . . an illegal method of requiring imprisonment far beyond the maximum

<sup>3</sup> *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 589, 100 L. Ed. 891, 898 (1956).

<sup>4</sup> *Id.* at 19, 76 S. Ct. at 591, 100 L. Ed. at 899.

<sup>5</sup> *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 2025-2030, 26 L. Ed. 2d 586, 595-603 (1970).

<sup>6</sup> *Id.* There are actually five states that credit the defendant with a deduction of a dollar a day but Arizona provides that the indigent cannot be imprisoned beyond the statutory maximum. Arkansas, Massachusetts, Vermont, and Wyoming direct that the indigent defendant shall be imprisoned until the fine is paid by imprisonment at the rate of one dollar a day.

<sup>7</sup> *Privitera v. Kross*, 239 F. Supp. 118 (S.D.N.Y. 1965), 345 F.2d 533 (2d Cir. 1965), *cert. denied*, 382 U.S. 911, 86 S. Ct. 254, 15 L. Ed. 2d 163 (1965). *Kelly v. Schoonfield*, 285 F. Supp. 732 (D. Md. 1968); *People v. Saffore*, 218 N.E.2d 686 (N.Y. 1966); *Sawyer v. District of Columbia*, 238 A.2d 314 (D.C. Ct. App. 1968); *People v. Williams*, 244 N.E.2d 197 (Ill. 1969).

<sup>8</sup> *See, e.g.*, TEX. CODE CRIM. PROC. ANN. art. 43.03 (1966): When a judgment and sentence have been rendered against a defendant for a pecuniary fine, if he is present, he shall be imprisoned in jail until discharged as provided by law. This article is referred to as the "pay or jail" statute and for purposes of this Note, all articles in different states will also be referred to as "pay or jail" statutes.

<sup>9</sup> *E.g.*, *Sawyer v. District of Columbia*, 238 A.2d 314 (D.C. Ct. App. 1968).

<sup>10</sup> 218 N.E.2d 686 (N.Y. 1966).

<sup>11</sup> NEW YORK PENAL CODE ANN. BOOK 39, art. 10.00(4) (1967).

<sup>12</sup> *People v. Saffore*, 218 N.E.2d 686 (N.Y. 1966).

term of imprisonment allowed by the statute . . . ."<sup>18</sup> In *Sawyer v. District of Columbia*,<sup>14</sup> the court recognized the need to apply the "pay or jail" statute in compliance with the equality principle pronounced in *Griffin*. Rather than viewing the statute as a violation of the equal protection clause, the court examined the discretionary role of the judge.<sup>15</sup> In *Sawyer* the court said:

. . . [I]n 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.<sup>16</sup>

The court stated that if the alternate sentences and default imprisonment were used to mete out longer prison terms than the statutory maximum then the very purpose of the statute would have been subverted. "If this can be done then a longer imprisonment can be imposed on a poor person than on one with means. Such is not the purpose of the law."<sup>17</sup>

In *Williams v. Illinois*,<sup>18</sup> the United States Supreme Court substantially followed the New York reasoning that aggregate imprisonment could not exceed the maximum statutory confinement. "Applying the teaching of the *Griffin* case here, we conclude that an indigent criminal defendant may not be imprisoned in default of payment of a fine beyond the maximum authorized by the statute regulating the substantive offense."<sup>19</sup> The Court did not say the "pay or jail" sentence was unconstitutional; only that it could become unconstitutional when applied solely to indigents.<sup>20</sup> "[A] law nondiscriminatory on its face may be grossly discriminatory in its operation."<sup>21</sup> The Court said the defendant did not actually have a choice of paying the fine or selecting imprisonment. "The 'choice' of paying \$100 fine or spending 30 days in jail is really no choice at all to the person who cannot raise \$100."<sup>22</sup> The

<sup>13</sup> *Id.* at 687.

<sup>14</sup> 238 A.2d 314 (D.C. Ct. App. 1968).

<sup>15</sup> Compare in *Peoples v. District of Columbia*, 75 A.2d 845 (D.C. Mun. Ct. App. 1950), the court warned that future courts "ought" not to allow imprisonment beyond the statutory maximum. *Sawyer v. District of Columbia* said that it would be an invalid exercise of discretionary power if the court did allow imprisonment beyond the statutory maximum.

<sup>16</sup> *Id.* at 318.

<sup>17</sup> *Id.* at 317.

<sup>18</sup> 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

<sup>19</sup> *Id.* at —, 90 S. Ct. at 2022, 26 L. Ed. 2d at 593.

<sup>20</sup> *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

<sup>21</sup> *Id.* at —, 90 S. Ct. at 2023, 26 L. Ed. 2d at 593, where the court quoted *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 590, 100 L. Ed. 891, 898 (1956).

<sup>22</sup> Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. REV. 205, 221 (1964).

invidious discrimination was that an affluent defendant could pay the fine and escape any further deprivation of liberty while the indigent would be spending a period in jail which exceeded the maximum punishment for the offense. *Williams* said that it was a violation of the equal protection clause for an indigent to be imprisoned beyond the statutory maximum, but the Court did not say it would be an invidious discrimination against the indigent defendant simply because he was not afforded the same choice as the affluent defendant.<sup>23</sup> This question was answered by the Supreme Court of California two months later in *In Re Antazo*.<sup>24</sup> The rationale used by the California court in declaring "pay or jail" statutes unconstitutional is substantially the same argument utilized in *Williams*. The difference is that the California court determined the practice of imprisoning convicted indigent defendants for nonpayment was not necessary to promote the *compelling interest* the state had in collecting fines.<sup>25</sup> The court stated that equal protection does not require "absolute equality" and quoted *Douglas v. California*:<sup>26</sup>

"... a state can, consistently with the Fourteenth Amendment provide for differences so long as the result does not amount to a denial of due process or an 'invidious discrimination.'"<sup>27</sup>

Classifications are constitutional when shown to be necessary to promote a compelling governmental interest.<sup>28</sup> In *Antazo*, the court stated "... somewhat in the manner of the court in *Williams*, we assume that the state's interest in the collection of fines and in the reformation and rehabilitation of the convicted defendants is 'substantial and legitimate.'"<sup>29</sup> This compelling interest would have been sufficient to warrant classification between the indigent and the affluent *if* the state could have shown that it was necessary in order to promote the governmental interest. The state had contended that imprisonment was necessary as a method of enforcing payment but this was held to be false. The court found that "[a]s applied to indigents we fail to see how either the threat or the actuality of imprisonment can force a man who is with-

<sup>23</sup> *Williams v. Illinois*, 399 U.S. 235, 90 S. Ct. 2018, 26 L. Ed. 2d 586 (1970).

<sup>24</sup> 89 Cal. Rptr. 255 (Cal. 1970).

<sup>25</sup> *Id.* at 265.

<sup>26</sup> *Douglas v. California*, 372 U.S. 353, 356, 83 S. Ct. 814, 816, 9 L. Ed. 2d 811, 814 (1963).

<sup>27</sup> *In Re Antazo*, 89 Cal. Rptr. 255 (Cal. 1970).

<sup>28</sup> Two examples where the court has ruled that the classifications were not constitutional. In *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), the Supreme Court said that a residence requirement for one year in order to collect welfare is violative of the equal protection clause of the 14th amendment, in that it establishes a classification which is not based on a compelling interest of the state. In *Castro v. State*, 466 P.2d 244 (Cal. 1970), the Supreme Court of California said that a state may not establish a classification between voters and nonvoters based only on the fact that one group may not be literate in English. The classification would not be necessary in carrying out a compelling governmental interest and would violate the equal protection clause of the 14th amendment.

<sup>29</sup> *In Re Antazo*, 89 Cal. Rptr. 255, 262 (Cal. 1970).

out funds, to pay a fine."<sup>30</sup> The court reasoned that it would not be a necessary classification, even if it was an effective means of enforcing payment, because there are many other methods of collection which could be used.<sup>31</sup> The state contended they had an interest in the reformation and rehabilitation of convicted defendants.<sup>32</sup> The California Supreme Court found that "[s]ince the state may thus promote its interest in rehabilitation directly, imprisonment of the indigent offender for nonpayment of his fine should not be necessary."<sup>33</sup>

The court concluded that the state had a substantial interest in the collection of fines, however, the imprisonment of the indigent defendant was not necessary to promote this compelling interest. The classification between the indigent and the affluent constituted an invidious discrimination prohibited by the equal protection clause of the 14th amendment.<sup>34</sup>

The Declaration of Independence stated that all men are created equal. The first Chief Justice of the Supreme Court spoke of the "free air" of the American people.<sup>35</sup> In 1891, the Supreme Court of the United States said that the 14th amendment ". . . requires that no different or higher punishment shall be imposed on one that is imposed on all for like offenses . . . ."<sup>36</sup> In 1956, the Supreme Court of the United States said that the 14th amendment ". . . requires that no ". . . stand on an equality before the bar of justice in the American Court."<sup>37</sup>

It is difficult to comprehend how the United States could maintain for almost 200 years an "archaic system akin to imprisonment for debt."<sup>38</sup> Sentencing Antazo to 312 days in prison and freeing his co-defendant amounted to no more than buying and selling liberty. The Magna Carta pronounced that ". . . we will sell to no man, we will not

<sup>30</sup> *Id.* at 263.

<sup>31</sup> *Id.* at 264. The court referred to *Williams v. Illinois* which had suggested two alternate methods:

- (1) cost and fine could be collected through an installment plan;
- (2) imposition of a parole requirement specifying certain tasks which the indigent must perform during the day.

<sup>32</sup> *Id.* at 263. The court mentioned that there are only a few examples of an analysis of default imprisonment in terms of the relationship between imprisonment of indigents and the state's interest which is to be promoted. The opinion in *Strattman v. Studt*, 253 N.E.2d 749 (Ohio 1969) analyzed the problem in this fashion and concluded that the state does have a compelling interest. The court said that imprisonment is necessary to promote the punitive, retributive and rehabilitative interest when the defendant is unable to pay the fine.

<sup>33</sup> *Id.* at 264.

<sup>34</sup> *Id.* at 265.

<sup>35</sup> Goldberg, *Equality and Governmental Action*, 39 N.Y.U.L. REV. 205, 227 (1964).

<sup>36</sup> *In Re Converse*, 137 U.S. 624, 632, 11 S. Ct. 191, 193, 34 L. Ed. 796, 799 (1891).

<sup>37</sup> *Griffin v. Illinois*, 351 U.S. 12, 17, 76 S. Ct. 585, 590, 100 L. Ed. 891, 898 (1956), citing *Chambers v. Florida*, 309 U.S. 227, 241; 60 S. Ct. 472, 479, 84 L. Ed. 716, 724 (1939).

<sup>38</sup> *People v. McMillian*, 279 N.Y.S.2d 941 (Orange County Ct. 1967).