

Calhoun case: Should a poor person who can't make bail be held in jail?

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A 54-year-old man staggered down a rural road in Gordon County a year ago and fell into a hot debate in the criminal justice system: should people with money be able to bail themselves out of jail when people without money must wait behind bars?

And now 19 local, state and national groups — the U.S. Department of Justice, the American Bar Association, the CATO Institute, the Southern Center for Human Rights, for example — have joined Maurice Walker's lawsuit on one side or the other. The suit questions whether it is constitutional for governments to use pre-set bail amounts based only on the crime charged without considering whether the individual has the means to pay.

In Walker's case, Calhoun Municipal Court required a \$160 bail for his offense after he was accused of drunkenly walking in the road on a remote stretch of highway outside town.

He was charged with pedestrian under the influence of alcohol on the Thursday before Labor Day 2015. Since the bail amounted to a third of his monthly income, his only option was to wait in jail until the next session of Municipal Court 11 days later. At the time, Calhoun's Municipal Court was held only on non-holiday Mondays, and Walker was picked up the Thursday before Labor Day.

"You're supposed to be brought in front of a magistrate within 48 hours" of being jailed, said Georgia State University law professor Caren Morrison, concerned that the North Georgia town was not following a longstanding legal requirement.

Walker spent only six nights in the Gordon County Jail, which holds inmates for the city. On Sept. 8, 2015, the Southern Center for Human Rights and Equal Justice Under the Law filed a class action federal lawsuit, and Walker was released two days later. Two months after that, Calhoun adopted a policy that guaranteed an appearance before a judge within 48 hours.

'People are really paying attention to this'

Attorney Sarah Geraghty of the Southern Center said the issue in Walker's case is whether a city can detain indigent people accused of misdemeanors for up to seven days without any inquiry into their ability to pay bail.

U.S. District Judge Harold Murphy said Calhoun's adoption of the 48-hour rule wasn't enough to invalidate Walker's suit. The change, Murphy wrote in an order earlier this year, "simply

shortens the amount of time that indigent arrestees are held in jail. ... Any detention based solely on financial status or ability to pay is impermissible.”

Murphy issued a preliminary injunction prohibiting Calhoun from holding anyone who is charged with a misdemeanor until the town has adopted “post-arrest procedures” that comply with the U.S. Constitution.

Calhoun appealed and in recent weeks 32 lawyers representing 19 organizations filed briefs to join the fight.

“People are really paying attention to this after years of it going unrecognized,” said Morrison, the Georgia State law professor.

On one side of the issue, groups like the Georgia Sheriffs’ Association, the American Bail Coalition and the International Municipal Lawyers Association argue that pre-set bonds are constitutional and provide a guarantee that the accused will come to court appointments.

On the other side, the U.S. Department of Justice, the American Bar Association and the Southern Poverty Law Center argue that bail schedules are unconstitutional if there is no mechanism for determining indigency, meaning the poor stay locked up simply because they can’t pay to get out.

“The United States has a strong interest in ensuring that criminal justice systems, including bail practices within those systems, are fair and nondiscriminatory,” the Justice Department wrote in its brief.

14th Amendment violated, defendant says

The government’s lawyers said Calhoun’s practice of setting bail amounts based on the offense, regardless of the defendants’ means, violates the 14th Amendment guarantee of equal treatment under the law.

The 11th U.S. Circuit Court of Appeals has not scheduled oral arguments.

According to court filings, Walker has a “serious mental disorder” that prevents him from working. He lives with his sister and receives \$530 a month in federal Supplemental Security Income, which the sister manages.

On Sept. 3, 2015, the Calhoun Police Department received a complaint that an intoxicated man was walking in the roadway at Experiment Station Road and Ga. 53 Spur about two miles from downtown, a sparsely populated area that has a community college and a few scattered business.

Calhoun police officer Samuel Heath Everett wrote in his report he found Walker in the road, stumbling, smelling of alcohol, his speech slurred, his eyes red and glassy.

Heath charged Walker with “pedestrian under the influence,” which carries a fine of up to \$500.

At the Gordon County Jail, which holds inmates for the city, Walker was told he would be released immediately if he posted \$160 bail. Otherwise he would have to wait in jail until the next time Municipal Court was held, on Sept. 14.

‘Bail policy is clearly unconstitutional’

The city’s lawyers wrote there was no evidence that jailing Walker had any “terrible consequences” for him, or anyone else in the same circumstances. They wrote that blocking the use of pre-set bonds would not be in the public’s best interest.

Walker’s lawyers acknowledged that Georgia courts had approved the use of “standing bail orders.” The problem was when there was no mechanism for determining whether someone was too poor to pay, they said.

The American Bar Association wrote that it had long had “constitutional concerns with inflexible money-bail systems.”

“(Such) systems disrupt lives of indigent defendants, lead to worse legal outcomes and pressure defendants to plead guilty,” the ABA wrote.

“The bail policy under which (Walker) was arrested clearly is unconstitutional,” Judge Murphy wrote.

Several groups disagreed.

“The Constitution prohibits only *excessive* bail,” the American Bail Coalition, Georgia Association of Professional Bondsmen and the Georgia Sheriffs’ Association, supporting Calhoun, wrote in response to Murphy’s finding.