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Testimony of David A. Singleton: "Protecting the Constitutional Right to Counsel for Indigents Charged with Misdemeanors," Senate Committee on the Judiciary, May 13, 2015

Good morning. Thank you for the opportunity to address the Committee on the very important issue of protecting the right to counsel for poor people charged with misdemeanors.

My name is David Singleton, and I am the executive director of the Cincinnati-based Ohio Justice & Policy Center ("OJPC"). OJPC is a non-profit public interest law firm which works to achieve criminal justice reform that both promotes public safety and fairness. Ensuring that poor people are adequately represented when facing criminal charges is something OJPC has worked to promote. I am also an associate professor of law at Northern Kentucky University Chase College of Law, and have worked previously as a public defender, first with the Neighborhood Defender Service of Harlem and then with the Public Defender Service for the District of Columbia. Accordingly, I care deeply about making sure that poor people who face criminal charges receive the representation to which they are constitutionally entitled.

Two Ohio Examples of Denial of Counsel in Misdemeanor Cases

In my work, I have often heard various criminal justice system players say the following about misdemeanor cases: "They don't matter." Too often, this sentiment is reflected by the failure of courts to appoint lawyers in misdemeanor cases where the accused has the right to counsel.

Just recently an Ohio appellate court reversed a conviction where the accused, a man named Kenya Jackson, faced 180 days in jail for child endangerment.¹ Although

¹ *State v. Jackson*, 3d Dist. No. 13-14-30, 2015-Ohio-1694.

Mr. Jackson was entitled to counsel because he faced jail time, he was not provided a lawyer, and the record did not demonstrate that he waived his right to counsel.

*State of Ohio v. Taylor*² is another example where a court denied the accused the right to have counsel assist in his defense. In that case, Mr. Taylor faced a “he said/she said” misdemeanor domestic violence charge. The following is an excerpt from the transcript of Mr. Taylor’s arraignment, which he handled on his own without the benefit of counsel.

THE COURT: What would you like to do? Do you wish to enter a plea or do you wish for a short continuance in order to speak with an attorney?

MR. TAYLOR: Uhm, how – how long is a short continuance exactly?

THE COURT: A week.

MR. TAYLOR: I’ll just go ahead and plead not guilty.

THE COURT: I’ll accept your plea of not guilty. I’m gonna direct that this matter be set for trial within 90 days of today’s date.

Ten days later, Mr. Taylor appeared for trial, and the following dialogue with the court occurred after the judge asked if Mr. Taylor was ready for trial:

THE COURT: Mr. Taylor?

MR. TAYLOR: No, your Honor.

THE COURT: No? Any reason why not?

MR. TAYLOR: I guess I misunderstood you last week at my initial hearing about counsel. Uhm, I heard – I heard you state continuance. I did not understand that meant that, I would like –

² 3d Dist. No. 13-12-35, 2013-Ohio-1300.

THE COURT: Well, I entered a not guilty plea and we ordered it be set for trial and here we are because you're in custody.

MR. TAYLOR: Yes, sir. And I wasn't aware that for – for me to get counsel. I realized I didn't have counsel after I got back.

THE COURT: Mr. Taylor, I don't just hand them out. You gotta ask me for them.

MR. TAYLOR: I – I – I –

THE COURT: If you want an attorney and you don't have the means, which I'm assuming you're trying to kind of allude to, I mean, I don't know how I'm supposed to figure that out.

MR. TAYLOR: No, I do not have the means. I --

THE COURT: Mr. Taylor, this is what I'm going to do. I'm gonna give you a few minutes to talk to the prosecutor. If you come on up with something you can agree on, great. Otherwise, I believe that we're going to proceed.

Taylor could not make a deal with the prosecutor, represented himself at trial and was convicted by the judge.

Why Representation in Misdemeanor Cases Matters

Some may say, “Well, it is just a misdemeanor. What's the big deal? It's not like Mr. Taylor or Mr. Lewis did hard time in prison.” But misdemeanors matter. And the reason they matter is not only because many people convicted of misdemeanors spend time incarcerated on the offense but also because of the lifelong impact that a misdemeanor conviction may have on a person's ability to work, support his or her family and to lead a productive life.

Let me tell you the story of one of my former clients, whom I will refer to as Melinda, not her real name. Melinda is the mother of three children, whom she has raised mostly as a single mother.

Melinda has suffered from seizures since she was nineteen years old. She is now in her early forties. After four years of taking anti-seizure medication her doctors took her off of it because the medication had lost its effectiveness. While off medication, Melinda suffered a seizure that led to the charges in her case.

On a warm summer day in the mid-1990s, Melinda was in the process of cleaning her house when she received a phone call from a church friend. Melinda went upstairs to take the call, leaving her children, who were three, four and five at the time, downstairs to watch a Barney video. While on the phone, Melinda suffered a serious seizure. The children were downstairs and unaware of what was happening, but the friend on the call realized that Melinda had suffered a seizure and called 9-1-1.

Upon arrival, the EMS crew helped Melinda downstairs and out to the ambulance. While in the home, the paramedics noticed that cleaning supplies had been left out in the kitchen; dirty dishes were in the sink; an electrical outlet was missing a cover; there were knives on the counter; window screens were missing from the upstairs windows; and that the smoke alarm did not work.

A week after her seizure, Melinda learned that she was being charged with child endangering because of the conditions observed by paramedics during her seizure. But there were innocent explanations for the conditions the paramedics had seen. For example, her landlord had failed to address a number of problems that Melinda had

brought to his attention. When Melinda asked the landlord to fix their broken smoke alarm and to replace the missing window screens and outlet cover, he told her that he had sold the building and it was no longer his responsibility. Melinda could not afford to repair all of these problems on her limited income but did purchase moveable screens which she put in the children's upstairs bedrooms at night and placed downstairs during the day. Additionally, the reason why the paramedics found unsecured cleaning supplies and knives was that Melinda was in the process of cleaning her house, including the kitchen, shortly before her seizure.

Two months after she was charged, Melinda entered an uncounseled no contest plea to two counts of misdemeanor child endangering. Although Melinda had been appointed a public defender, she does not recall ever meeting with her lawyer and was unrepresented when she entered her no contest plea. Melinda remembers that when the case was called, the judge asked, "Why do I even have this?"

After speaking briefly with the prosecutor, the judge told Melinda that she understood what it was like to be a single mother. The judge then explained the different kinds of pleas and then advised Melinda that the court would sentence her to six month non-reporting probation if she pled no contest to two counts of child endangering. Melinda decided to plead no contest because she did not think she had any other options. She did not have the benefit of assistance of counsel, who could have discussed her available defenses and whether child endangering could bar her from working in the daycare industry.

In the years following her conviction, Melinda worked a number of odd jobs to support her family until she finally found a stable job as a daycare teacher, employment she was good at and enjoyed. The center considered Melinda to be one of its best employees, and the children Melinda taught loved her. However, after performing state mandated background checks on all of its employees, the center fired Melinda after learning of her misdemeanor conviction.

What would have happened to Melinda if she had quality legal representation in her criminal case? Would she have entered a plea of no contest to a charge she would have had a strong defense to at trial? Would she have wound up with a conviction that caused her to lose the job she depended on to support her children? To this very day, Melinda continues to be affected by the lack of representation she received at her plea hearing because she is unable to work in a field she loves. Had Melinda had quality representation, I do not believe she would be in the circumstances she finds herself in today.

Melinda's story is just one example of many people who either received no legal representation or inadequate counsel while facing misdemeanor charges. And the point I want you to remember is that separate and apart from possible jail time, misdemeanor convictions can ruin people's lives by shutting them out of opportunities to work and lead productive lives.

In fact, in Ohio, there are over 700 laws on the books that deny employment based on the job applicant's criminal record, and approximately 20 percent of these laws apply to people with misdemeanor offenses. And we know from the ABA's National

Inventory of the Collateral Consequences of Conviction³ that misdemeanor convictions potentially bar millions of Americans across this country from gainful employment.

Conclusion

The time has come for our justice system to live up to the promise of *Gideon v. Wainwright*,⁴ and ensure that every person charged with a misdemeanor for which jail time is possible receives the legal representation to which they are entitled under the Sixth Amendment to the United States Constitution. It is for this reason that I concur in the recommendations offered by Professor Boruchowitz.

Thank you for your time and attention.

³ Available at <http://www.abacollateralconsequences.org/>.

⁴ 372 U.S. 335 (1963).