

2020 WL 7034347

Only the Westlaw citation is currently available.
United States District Court, N.D. Oklahoma.

Amanda FEENSTRA, Sharonica Carter, and
Lonnie Feenstra, Plaintiffs,

v.

Jared SIGLER, Special Judge of the District Court
of Washington County, in his official capacity;
Curtis Delapp, former Judge of the District Court
of Washington County, in his official capacity;
Oklahoma Indigent Defense System, an Oklahoma
State Agency; State of Oklahoma ex rel. Oklahoma
Indigent Defense System; Craig Sutter, Executive
Director of the Oklahoma Indigent Defense
System; and Oklahoma Indigent Defense System
Board of Directors, Defendants.

Case No. 19-CV-00234-GKF-FHM

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Signed 01/23/2020

Attorneys and Law Firms

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Watkins LLP, New York, NY, for Plaintiffs.

Devan A. Pederson, Stefanie Erin Lawson, Jon M.
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Mann, City of Oklahoma City Litigation Section,
Oklahoma City, OK, for Defendants.

ORDER

GREGORY K. FRIZZELL, UNITED STATES
DISTRICT JUDGE

*1 Plaintiffs seek leave to file an Amended Complaint.
For the reasons discussed below, their motion to do so is
granted in part and denied in part.

On March 21, 2019, plaintiffs filed a Petition against
defendants in the District Court of Washington County,
Oklahoma. Defendants removed the case to this court and
filed motions to dismiss. The court granted the motions in
part and denied them in part. Plaintiffs now seek to file an
Amended Complaint. The proposed Amended Complaint
would amend the original Petition in six ways.

First, plaintiffs seek leave to assert as Count One of the
Amended Complaint a claim for "FAILURE TO
CONDUCT ABILITY TO PAY HEARINGS AT
JUDGMENT AND SENTENCING, in violation of
Oklahoma Statutes, Title 22, Chapter 18, Rule 8.1." Plaintiffs used the identical title for Count Seven of their
Petition, a claim dismissed in the Opinion and Order of
November 13, 2019. The newly-reworked Count One is
premised on allegations that Washington County District
Court judges entered judgment against the plaintiffs
without knowing or disclosing the nature and amounts of
fees and costs that the plaintiffs would owe, "and without
informing them that they had a right to a hearing and
assessment of their ability to pay the full quantum of
fines, fees and costs that would be imposed." [Doc. 50-1,
¶ 62]. Plaintiffs further allege that, subsequent to the entry
of judgment, each plaintiff went to the Washington
County Clerk's office, and a deputy clerk calculated the
fees and costs the plaintiff owed. The deputy court clerk
then handed each plaintiff a form listing the various fees
and costs. Plaintiffs allege that the entry of judgment
without disclosing the categories or amounts of fees and
costs owed, and deferral of the calculation of those costs
to a later appointment with a deputy court clerk, violated
their rights under Rule 8.1 and the Due Process Clauses of
the Oklahoma and United States Constitutions. Plaintiffs
wish to bring Count One against current Washington
County District Judge Linda Thomas and current
Associate District Judge Russell Vaclaw, in their official
capacities.

Judges Thomas and Vaclaw, as well as the OIDS
Defendants, object to the proposed amendment set forth
in Count One as futile. They point to decisions of the
Oklahoma Court of Criminal Appeals holding that, when
a criminal defendant is sentenced to a term of
imprisonment, the ability to pay court costs is properly
determined after the defendant's release from prison. In
DeRonde v. State, 715 P.2d 84 (Okla. Crim. App. 1986),
the defendant/appellant argued that the trial court had
erred by assessing court costs without a hearing on his
ability to pay at the time the Judgment and Sentence was
imposed. The Court of Criminal Appeals found the
argument to have been prematurely presented "since
appellant's ability to pay court costs, in a criminal action,

is properly determined after his release from incarceration.” *Id.* at 87. Similarly, in *Dyer v. State*, 15 P.2d 689 (Okla. Crim. App. 1991), the defendant/appellant argued that his fine should be modified because it was excessive and because he was indigent. The court found the issue to be “prematurely raised” because the court had no way of knowing his financial status at the time the fines were due to be paid. *Id.* at 691. *See also Jones v. State*, 682 P.2d 757, 759 (Okla. Crim. App. 1984) (insofar as assessment is not due until a defendant/appellant is released from custody, the issue of indigency is prematurely raised); and *Hubbard v. State*, 45 P.3d 96, 102 (Okla. Crim. App. 2002) (Lumpkin, PJ., concurring) (noting that Rule 8, Rules of the Oklahoma Court of Criminal Appeals, Title 22, Ch.18, App., is in place for the failure to pay once time is served).

***2** Here, each plaintiff attaches his or her Judgment and Sentence to the proposed Amended Complaint. Those Judgments and Sentences show that plaintiffs Amanda Feenstra and Lonnie Feenstra were sentenced to terms of imprisonment [Doc. 50-1, pp. 43, 52]. In light of the decisions of the Oklahoma Court of Criminal Appeals cited by defendants, it is futile for those two plaintiffs to claim that the Washington County District Court failed to conduct ability to pay hearings at judgment and sentencing in violation of Oklahoma statutes Title 22, Chapter 18, Rule 8.1. The motion to amend is therefore denied with respect to this claim by the Feenstra plaintiffs.

The Judgment and Sentence for plaintiff Carter, on the other hand, reflects that she was sentenced to a term of imprisonment with execution of the sentence suspended. [Doc. 50-1, p. 48]. Insofar as the decisions cited by defendants do not apply to defendants who are not incarcerated, the court concludes that the allegations pertaining to plaintiff Carter state a claim upon which relief can be granted. The motion to amend is therefore granted with respect to this claim by plaintiff Carter.

To the extent that plaintiffs’ proposed Count One against Judges Thomas and Vaclaw are based on allegations that fees and costs were calculated by a deputy court clerk days to weeks after sentencing, plaintiffs have not alleged that the fees and costs were themselves improper. Plaintiffs offer no legal argument or authority in their reply brief in support of the proposition that a short delay in the assessment of fees and costs following the imposition of Judgment constitutes a violation of statutory or constitutional law. As long as mandated statutory costs are authorized by statute and are reasonable, uniform and related to the services provided, they are allowed. *Nesbitt*

v. State, 255 P.3d 435, 440 (Okla. Crim. App. 2011). The motion to amend is therefore denied with regard to these allegations contained in proposed Count One.

Second, plaintiffs seek to amend their claims in which former District Judge DeLapp was a defendant by substituting Special Judge Jared Sigler, the only judge presently presiding over the “cost docket,” in his official capacity. The motion to amend in this respect is granted.

Third, plaintiffs seek to amend their claim against the OIDS Defendants to allege that “[t]he Oklahoma Legislature has given the OIDS Defendants discretion to provide representation to indigent defendants at ‘cost docket’ hearings,” followed by the statutory language contained in 22 Okla. Stat. tit. 22, § 1355.6(B), which authorizes the Oklahoma Indigent Defense System, upon prior approval by the Executive Director of the System, to represent indigents in state proceedings other than capital and felony cases and all misdemeanor and traffic cases punishable by incarceration. [Doc. 50-1, ¶ 84]. The motion to amend in this respect is granted.

Fourth, plaintiffs seek to amend by removing any references to former Judges Gerkin or DeLapp as party defendants. Though plaintiffs do not allege any interaction with Associate Judge Vaclaw, plaintiffs merely seek to add the judge in his official capacity “for the sole purpose of effecting any relief ordered by the Court in the event that the Court declares the initial imposition of fees and costs on Plaintiffs to have violated Rule 8.1 or the Federal or Oklahoma Constitutions.” [Doc. 55 at p. 4]. The motion is granted in this respect.

Fifth, plaintiffs seek to state the bases for federal subject matter jurisdiction and venue. Defendants have no objections, and the motion is granted in this respect.

Sixth and finally, plaintiffs seek to delete their original Count Seven (Failure to Conduct Ability to Pay Hearings at Judgment and Sentencing), which the court previously dismissed. [Doc. 47]. The motion is granted as to this request.

***3** WHEREFORE, plaintiffs’ Motion for Leave to Amend Complaint [Doc. 50] is granted in part and denied in part. Plaintiffs shall file their Amended Complaint consistent with this Order on or before January 31, 2020.

All Citations

Not Reported in Fed. Supp., 2020 WL 7034347

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