

EXHIBIT C

FILED

APR 24 2015

JEAN CARTER-ROOT-CIRCUIT CLERK
WOODRUFF COUNTY, AR

AT
PLAINTIFF

**IN THE CIRCUIT COURT OF WOODRUFF COUNTY, ARKANSAS
CRIMINAL DIVISION**

STATE OF ARKANSAS

-vs-

CASE NO.: CR-2014-77-2

RICKEY WAYNE BLEDSOE

DEFENDANT

ORDER

Comes now for consideration the Defendant's Motion to Dismiss, and based upon a review of the pleadings and all other matters considered, the Court finds:

The parties stipulate that the Defendant, Rickey Wayne Bledsoe, occupied a house at 2409 North 12th Street, Augusta, Arkansas pursuant to an agreement with the property owner, Berry and Berry, LLC ("Berry").¹ Berry alleged that the Bledsoe failed to pay rent under the terms of an oral lease agreement, and Berry caused Bledsoe to be served with a 10-day notice to vacate on or about May 14, 2014. Bledsoe did not vacate the premises within the ten day notice period. Bledsoe was charged with a violation of Arkansas' "criminal eviction" law, Arkansas Code Annotated § 18-16-101, and on June 13, 2014, the Augusta District Court issued a warrant of arrest. Bledsoe pled not guilty and did not make a payment to the district court registry as required by Arkansas Code Annotated § 18-16-101(c)(1). Bledsoe was subsequently convicted of a Class B misdemeanor pursuant to Arkansas Code Annotated § 18-16-101(c)(3) and sentenced to pay a \$4,175.00 fine, \$3,448.00 in victim restitution, \$100.00 in court costs, and was to be incarcerated for 30 days in the Woodruff County jail, with the jail time suspended upon condition that the Defendant vacate the property. A timely appeal to this court followed. The

¹ The parties dispute whether the subject agreement is a lease or a real estate land-sale contract. The Court considers this a question of fact and makes no ruling on that point. However, the Court does note that the plain language of Ark. Code Ann. § 18-16-101 makes clear that the statute is only intended to apply to landlord/tenant relationships.

Defendant filed the instant Motion to Dismiss on October 15, 2014, arguing that the failure to vacate charge should be dismissed because Ark. Code Ann. § 18-16-101 is unconstitutional.

The Defendant raises multiple arguments that the statute violates both the United States Constitution and the Constitution of the State of Arkansas including insufficient due process, lack of equal protection, a chilling effect on the right to trial, the state and federal constitutional bans on debtor's prison, and the Eighth Amendment ban on cruel and unusual punishment. The Court is aware, and does note, that the Arkansas Supreme Court has twice found previous versions of the statute constitutional. The last such case, *Duhon v. State*, 299 Ark. 503 (1989), was decided in 1989. However, in 2001, the legislature *fundamentally* modified the failure to vacate statute. The 2001 amendments added language to the statute requiring any tenant who wishes to enter a plea of not guilty to first deposit the disputed amount of rent into the registry of the court. If a tenant does not, or cannot, make this payment, the statute increases the tenant's potential criminal liability upon conviction from an unclassified misdemeanor punishable by a \$25 per day fine to a Class B misdemeanor punishable by a \$1000 fine and up to 90 days incarceration. The constitutionality of the amended statute has never been examined by an appellate level court.

The Defendant first argues that the statute violates the due process protections under the state and federal constitutions because it requires an accused tenant to pay the amount of rent that the landlord alleges is owed into the court registry prior to any adjudication of the tenant's guilt or the reasonableness of the landlord's allegation. The defendant contends that this requirement runs afoul of United States Supreme Court precedent which stands for the proposition that a hearing is required before a debtor can be forced to cede a property interest to a creditor. Supporting this proposition, the Defendant cites *Sniadach v. Family Finance Corp.*, 395 U.S.

337 (1969)(holding that, absent exigent circumstances, it is impermissible to garnish a debtor's wages prior to a hearing); *Connecticut v. Doehr*, 501 U.S. 1 (1991)(holding unconstitutional a state statute authorizing pre-judgment attachment of real estate even though the statute required a post attachment hearing); and *Fuentes v. Shevin*, 407 U.S. 67 (1972)(requiring a prior hearing in cases of replevin).

The Court agrees that the statute provides insufficient procedural protections to comport with the due process guarantees in the United States Constitution. Indeed, the statute provides no pre-deprivation process before a court is required to seize the registry fee. The lack of process would be troubling enough in a civil context, but this type of pre-adjudication deprivation in the context of a criminal trial appears to be unprecedented. Additionally, the fact that the deprivation is directly linked to the potential severity of a defendant's criminal liability cannot be tolerated under the Due Process Clause.² Thus, the Court finds that the statute violates the Due Process Clause of the 14th Amendment to the United States Constitution. The parties make no distinction between the due process arguments under the federal and state constitutions. The Court notes that "Our due process clause is not significantly different [than the Due Process Clause of the Fourteenth Amendment to the United States Constitution]." *Carroll v. Johnson*, 565 S.W.2d 10, 14 (Ark. 1978). Thus, this Court also finds Ark. Code Ann. § 18-16-101 to violate article 2, section 8 of the Arkansas Constitution.

The Defendant next argues that the requirement that an accused tenant pay the disputed rent into the registry prior to a hearing or face heightened punishment impermissibly chills the accused tenant's right to trial under the United States Constitution. The Defendant cites *United*

² The Court is equally troubled by the notion that the statute provides no means for a court that finds a tenant to owe rent in an amount less than was alleged by the landlord to order a registry disbursement in an amount less than what the tenant was originally compelled to pay. For example, if a landlord alleges a tenant owes \$1,000, the tenant must pay that amount into the registry. If, at trial, the court finds the tenant to owe only \$500, the statute still requires the court to order a disbursement to the landlord of the full \$1,000.

States v. Jackson, 390 U.S. 570 (1967), which invalidated a federal statute reserving the death penalty only for those defendants who went to trial, but not for defendants who pled guilty. While the registry fee is not a matter of life and death, it still creates an unnecessary and excessive barrier to an accused tenant's right to a trial. The statute forces an accused tenant to choose between pleading guilty, paying the registry fee, or facing enhanced sanctions. This requirement makes the statute analogous to *Jackson* and its progeny, and the Court finds that it violates the United States Constitution.³

The Defendant further argues that the statute violates the state and federal constitutions' bans on debtor's prison. Article 2, section 16 of the Arkansas Constitution states that "No person shall be imprisoned for debt in any civil action...unless in cases of fraud." The Defendant cites to two cases interpreting the constitutional provision. In *Peairs v. State*, the Arkansas Supreme Court struck down a statute criminalizing a contractor's failure to discharge a materialman's lien. 227 Ark. 230 (1957). Similarly, in *State v. Riggs*, our state's Supreme Court struck down a statute criminalizing a contractor's failure to pay for materials. 305 Ark. 217 (1991). In *Riggs*, the Court found that a willful failure to pay did not amount to fraud as required to exempt the statute from Article 2, section 16 of the Arkansas Constitution. This Court finds no material difference between the statute invalidated in *Riggs* and Arkansas Code Annotated § 18-16-101. Both statutes criminalize the failure to pay a private debt, both authorize incarceration, and neither requires intent to defraud as an element of the crime. Thus, the Court finds that the statute violates Article 2, section 16 of the Arkansas Constitution.

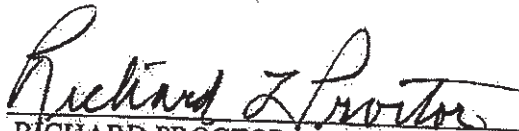
³ The Court also notes that tenants who pay the registry fee or vacate, and thus only face the unclassified misdemeanor established by the statute, may nonetheless be coerced into pleading guilty by the possibility of an exorbitant fine. The failure to vacate statute contains no upper limit on the amount a defendant may be assessed at \$25 per day. The final sum would be subject only to the vagaries of the criminal process: how long it took the landlord to seek a summons, the amount of time for the sheriff's office to serve the summons, the date of the initial appearance, the date and length of trial, etc. Tenants subsequently found guilty would be charged arbitrarily for the amount of time they protested their innocence.

The Court also finds that the statute violates the United States Constitution's ban on debtor's prison. A line of Supreme Court cases, including *Griffin v. Illinois*, 351 U.S. 12 (1956), *Tate v. Short*, 401 U.S. 395 (1971), and *Bearden v. Georgia*, 461 U.S. 660 (1983), collectively stand for the proposition that outcomes in the criminal justice system cannot turn on an individual's ability to pay a fee. The failure to vacate statute allows a tenant to be jailed for failure to pay the registry fee without any determination of his or her ability to pay the fee. Thus, the statute unconstitutionally risks incarcerating individuals solely because of their poverty.

Because the Court finds Ark. Code Ann. § 18-16-101 unconstitutional on the above grounds, the Court does not find it necessary to specifically rule on the balance of the arguments posited in the Defendant's brief.

THEREFORE, the Court hereby finds that Ark. Code Ann. § 18-16-101 violates both the United States Constitution and the Constitution of the State of Arkansas. The statute is wholly unconstitutional both on its face and as applied to the Defendant. The Defendant's Motion to Dismiss is GRANTED. The September 16, 2014 judgment of the Augusta District Court is VACATED. The Augusta District Clerk is ordered to return the Defendant's \$250.00 appeal bond upon presentation of this Order.

IT IS SO ORDERED.


RICHARD PROCTOR, CIRCUIT JUDGE

4-16-15

Date