UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Twanda Marshinda Brown, *et al.*, Plaintiffs, v. Lexington County, South Carolina, *et al.*, Defendants.	Civil Action No. 3:17-cv-01426-MBS-SVH

PLAINTIFFS' REPLY MEMORANDUM IN SUPPORT OF PLAINTIFFS' AMENDED MOTION FOR CLASS CERTIFICATION

INTRODUCTION

Plaintiffs Xavier Larry Goodwin and Raymond Wright, Jr., bring this lawsuit to challenge policies and practices that routinely result in the arrest and incarceration of indigent people, who cannot afford to pay fines and fees to magistrate courts in Lexington County, South Carolina, without court hearings on their ability to pay or representation by counsel. Mr. Goodwin and Mr. Wright bring claims against the Defendants under the Fourteenth, Sixth, and Fourth Amendments to the U.S. Constitution on behalf of a proposed class of similarly situated individuals who owe magistrate court fines and fees.

Mr. Goodwin and Mr. Wright moved to certify the following Class: "All indigent people who currently owe, or in the future will owe, fines, fees, court costs, assessments, or restitution in cases handled by Lexington County magistrate courts." *See* Dkt. No. 21; Dkt. No. 21–1 at 2. Plaintiffs supported their motion with an analysis of the elements required for class certification under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure. *Id.* at 16–28. Rather than

address those elements, Defendants responded by asking this Court to postpone its certification decision until the Court has ruled on the issues raised in Defendants' pending motion for partial summary judgment. Dkt. No. 30 at 1. In that motion, Defendants argue that Plaintiffs' prospective-relief claims should be denied as a matter of law, asserting that Mr. Wright lacks standing and fails to present a live case and controversy and that the Court should decline to rule on Mr. Goodwin's claims under the doctrine of federal court abstention set forth in *Younger v. Harris*, 401 U.S. 37 (1971). *See* Dkt. No. 29–1.

Defendants' arguments fail. Both Mr. Goodwin and Mr. Wright have standing to bring prospective relief claims because each faced a real and immediate threat of injury at the time he filed his claims for declaratory and injunctive relief. Defendants concede that Mr. Goodwin's prospective relief claims remain live. Furthermore, Mr. Wright presents a live case and controversy because the claims he asserts on behalf of the proposed Class satisfies the *Gerstein* rule, a well-established exception to the mootness doctrine. Thus, both Mr. Goodwin and Mr. Wright's claims for declaratory and injunctive relief withstand Defendants' standing and mootness challenges.

Second, *Younger* abstention is inapplicable because there is no ongoing criminal prosecution against Mr. Goodwin. Nor do Defendants assert, much less demonstrate, any pending state proceeding against Mr. Wright that would require this Court to abstain from resolving his claim for prospective relief on behalf of the proposed Class.

Accordingly, this Court has jurisdiction to hear this case and should resolve Plaintiffs' motion for class certification. Because Plaintiffs satisfy each element required for class certification under Rule 23(a) and (b)(2), class certification should be granted.

I. AUTHORITY AND ARGUMENT

A. Plaintiffs Goodwin and Wright satisfy the requirements for standing and present a live case and controversy.

As argued more thoroughly in Plaintiffs' Memorandum of Points and Authorities in Opposition to Defendants' Motion for Partial Summary Judgment,[1] a plaintiff's standing to seek relief is determined as of the date on which the plaintiff files his claims with the court. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570 n.5 (1992) (standing is determined at commencement of lawsuit); *Pashby v. Delia*, 709 F.3d 307, 316 (4th Cir. 2013) (same). When Mr. Goodwin filed his claims for prospective relief on June 1, 2017, he was indigent, could not afford to pay fines and fees imposed by the Irmo Magistrate Court, and faced a real and imminent threat of arrest and incarceration for nonpayment. *See* Goodwin Decl. ¶¶ 21, 24.[2] Under well settled law, the fact that even one plaintiff survives Defendants' standing challenge settles the matter, and this Court need not address standing as to Mr. Wright. *See Wikimedia Found. v. Nat'l Sec. Agency*, 857 F.3d 193, 216–17 (4th Cir. 2017) (recognizing that when a court has found one plaintiff to have standing, it need not address standing for other plaintiffs who seek identical relief); *Crawford v. Marion Cty. Elec. Bd.*, 553 U.S. 181, 189 n.7 (2008) ("We . . . agree with the unanimous view of [the Seventh Circuit] that [some of the petitioners] have standing . . . and that there is no need to decide whether the other petitioners also have standing.").[3]

Should the Court nevertheless reach the question of standing as to Mr. Wright, the undisputed record demonstrates that he has standing to pursue prospective relief claims. When

[1] Plaintiffs will file their Memorandum of Points and Authorities in Opposition to Defendants' Motion for Partial Summary Judgment concurrently with this brief.

[2] Defendants notably omit Mr. Goodwin from their arguments on standing. *See* Dkt. No. 29–1 at 4–6. Defendants thus concede that Mr. Goodwin is entitled to seek declaratory and injunctive relief. *Id*.

[3] Mr. Wright's claims for declaratory and injunctive relief are identical to three of Mr. Goodwin's prospective relief claims. *See* Dkt. No. 20 ¶¶ 443, 454, 470 (Claims 1, 2 and 3 by Mr. Goodwin and Mr. Wright for declaratory and injunctive relief).

Mr. Wright filed his claims for prospective relief on July 21, 2017, he was indigent, could not afford to pay fines and fees imposed by the Central Traffic Court, and faced an active bench warrant calling for his immediate arrest and incarceration for nonpayment. Dkt. No. 29–2 ¶ 3.f; Wright Decl. ¶¶ 13–14. As such, both Mr. Goodwin and Mr. Wright satisfy the standing requirements because each faced a real, imminent, and redressable threat of injury at the time they filed their claims for declaratory and injunctive relief. *See Davis v. Fed. Election Comm'n*, 554 U.S. 724, 734 (2008) ("A party facing prospective injury [at the time the case is filed] has standing to sue where the threatened injury is real, immediate, and direct.").

Mr. Goodwin and Mr. Wright also satisfy the requirement of presenting a live case and controversy, thus overcoming Defendants' assertions of mootness. While the question of standing for prospective relief focuses on whether a plaintiff is in immediate danger of suffering an injury at the time the complaint is filed, the question of mootness focuses on whether events subsequent to the filing of the suit have eliminated the controversy between the parties. *See Friends of the Earth, Inc. v. Laidlaw Envtl. Servs. (TOC), Inc.*, 528 U.S. 167, 184, 189 (2000). Defendants concede that Mr. Goodwin has live claims for declaratory and injunctive relief. *See* Dkt. No. 29–1 at 6. Furthermore, the undisputed record shows that Mr. Goodwin continues to face a threat of imminent arrest and incarceration because he cannot afford to pay debts owed to the Irmo Magistrate Court. Goodwin Decl. ¶ 24; Dkt. No. 29–2 ¶ 3.g.

Mr. Wright's individual claims for declaratory and injunctive relief, on the other hand, were rendered moot after the filing of the Amended Complaint. His subsequent arrest and incarceration discharged him of any further obligation to pay fines and fees to the Central Traffic Court and removed the threat of future unlawful arrest and incarceration. Dkt. No. 29–2 ¶ 3.f. Mr. Wright is nevertheless entitled to pursue claims for declaratory and injunctive relief on

behalf of the proposed Class because those claims are "inherently transitory" and therefore fall under a well-established exception to mootness known as the *Gerstein* rule.

The *Gerstein* rule provides an exception to the mootness doctrine for claims that "are so inherently transitory that the trial court will not have even enough time to rule on a motion for class certification before the proposed representative's individual interest expires." *See Cty. of Riverside v. McLaughlin*, 500 U.S. 44, 52 (1991) (discussing *Gerstein v. Pugh*, 420 U.S. 103, 110 n.11 (1975)). The *Gerstein* rule applies where "(1) it is uncertain that a claim will remain live for any individual who could be named as a plaintiff long enough for a court to certify the class; and (2) there will be a constant class of persons suffering the deprivation complained of in the complaint." *Olson v. Brown*, 594 F.3d 577, 582 (7th Cir. 2010) (citing *Gerstein*, 420 U.S. at 110 n.11, and other cases). Under these circumstances, the claims "relate back to the time the named representative filed the class-action complaint . . . ." *United States v. Sanchez-Gomez*, 859 F.3d 649, 671 (9th Cir. 2017).

Here the first requirement of the *Gerstein* rule is met because there is significant uncertainty as to whether any individual's claims will remain live long enough for the Court to rule on class certification. Indigent people who cannot afford to pay fines and fees to a Lexington County magistrate court are frequently arrested, incarcerated, and released from jail in less than two months. Of the seven named Plaintiffs, the longest period of time between arrest for failure to pay and release from jail was 63 days. *See* Dkt. No. 29–2 ¶ 3; Goodwin Decl. ¶ 5. Mr. Wright was arrested, incarcerated, and released all within the span of a single week, which resulted in his individual claims being mooted only eleven days after they were filed with this Court. *Compare* Dkt. No. 20 (showing Amended Complaint was filed on July 21, 2017), *with* Dkt. No. 29–2 ¶ 3.f (showing Mr. Wright was released from Detention Center on August 1,

2017). The period of time during which claims were live for Mr. Wright and are live for members of the proposed Class are far shorter than those found to satisfy the uncertainty prong of the *Gerstein* rule in other cases. *See Olson*, 594 F.3d at 579 (named plaintiff was incarcerated for a period of 139 days); *Zurak v. Regan*, 550 F.2d 86, 90 (2d Cir. 1977) (all plaintiffs served a sentence of ninety days or more).

The second requirement of the *Gerstein* rule is also satisfied because of the substantial likelihood that the constitutional violations challenged are "likely to recur with regard to the class." *Olson*, 594 F.3d at 584. Each year, Lexington County magistrate courts annually target more than one thousand people with payment bench warrants, placing them at risk of arrest and incarceration for nonpayment of fines and fees without the pre-deprivation ability-to-pay hearings required by law. Dkt. No. 21– 8 ¶ 19. And each year, hundreds of people are arrested and incarcerated in the Detention Center for nonpayment of magistrate court fines and fees under these bench warrants. *See* Dkt. No. 21–5 ¶¶ 6–11 (finding that during a four week period, at least 57 indigent people were arrested on magistrate court bench warrants and jailed in the Detention Center because they could not afford fines and fees). Plaintiffs allege that many of these people are indigent, and all are arrested and incarcerated without pre-deprivation court hearings concerning their ability to pay and without representation by court-appointed counsel. Dkt. No. 20 ¶¶ 10, 114. Thus, the claims at issue are inherently transitory, and Mr. Wright is entitled to pursue those claims on behalf of the proposed Class.

Because both Mr. Goodwin and Mr. Wright have standing to pursue prospective relief and present live claims on behalf of the proposed Class, this Court should reject Defendants' argument for denial of class certification on standing and mootness grounds.

B. Plaintiffs' prospective relief claims are not barred by the *Younger* abstention doctrine.

Although they do not challenge Mr. Goodwin's claims for declaratory and injunctive relief on standing or mootness grounds, Defendants nevertheless ask this Court to decline to exercise jurisdiction over his claims under the abstention doctrine set forth in *Younger*, 401 U.S. 37. Defendants argue that federal court adjudication of Mr. Goodwin's claims would interfere with a state court criminal proceeding that purportedly remains "ongoing" because he owes fines and fees to the Irmo Magistrate Court. Dkt. No. 29–1 at 6–7. Defendants are wrong.

In *Sprint Communications, Inc. v. Jacobs*, the Supreme Court emphasized the "virtually unflagging" obligation of federal courts to exercise the jurisdiction bestowed upon them by Congress. 134 S. Ct. 584, 591 (2013) (quoting *Colorado River Water Conservation Dist. v. United States*, 424 U.S. 800, 817 (1976)). With this obligation in mind, the Court narrowly confined *Younger* abstention to three "exceptional circumstances": (1) "ongoing state criminal prosecutions," (2) "certain civil enforcement proceedings," and (3) "pending civil proceedings involving certain orders uniquely in furtherance of the state court's ability to perform their judicial functions." *Sprint*, 134 S. Ct. at 591 (internal marks and citations omitted).

None of these exceptions applies here. As a threshold matter, Defendants do not assert that *Younger* abstention applies to Mr. Wright's claims for prospective relief, much less demonstrate the existence of *any* pending state court proceeding against him that falls within any of the three exceptional circumstances identified in *Sprint*. Dkt. No. 29–1 at 6–7. Mr. Wright has live claims for declaratory and injunctive relief on behalf of the proposed Class. *See discussion supra* Section A. This Court is obligated to exercise jurisdiction over these claims because Defendants have not shown that *Younger* applies. *Sprint*, 134 S. Ct. at 593–94 (emphasizing that *Younger* extends to three exceptional circumstances, "but no further"); *Doran*

v. Salem Inn, Inc., 422 U.S. 922, 928 (1975) ("[A]ll three plaintiffs should [not] automatically be thrown into the same hopper for Younger purposes").

Defendants' main *Younger* argument is that a criminal proceeding against Mr. Goodwin is ongoing because he continues to owe fines and fees related to an Irmo Magistrate Court case involving a charge of driving under a suspended license, 3rd offense ("DUS-3"). Dkt. No. 29–1 at 7. But the criminal prosecution of Mr. Goodwin concluded months before the commencement of this action. *See ReadyLink Healthcare, Inc. v. State Comp. Ins. Fund*, 754 F.3d 754, 759 (9th Cir. 2014) ("[T]he date for determining whether *Younger* applies is the date the federal action is filed."). The Irmo Magistrate Court convicted and sentenced Mr. Goodwin for DUS-3 on April 4, 2017. Dkt. No. 29–2 ¶ 3.g. The time for appealing the conviction and sentence expired on April 14, 2017, and Mr. Goodwin did not file an appeal. *See* Goodwin Decl. ¶ 25; S.C. Code § 18–3–30 (requiring appeal from magistrate court criminal judgment to be filed within ten days of sentencing). The Complaint, by contrast, was filed on June 1, 2017. Dkt. No. 1. Thus, there was no "ongoing" criminal prosecution against Mr. Goodwin at the time he filed his claims for declaratory and injunctive relief. *See Moncier v. Jones*, No. 3:11-CV-301, 2012 WL 262984, at *5 (E.D. Tenn. Jan. 30, 2012) (explaining that a proceeding is "pending" from "the time of the filing . . . until a litigant has exhausted his state appellate remedies").[4] The fact that Mr. Goodwin still owes fines and fees to the Irmo Magistrate Court does not alter this conclusion. *See, e.g., Cain v. City of New Orleans*, 186 F. Supp. 3d 536, 550 (E.D. La. 2016) ("Because the mere existence of plaintiffs' undischarged debts does not constitute an 'ongoing state judicial

[4] *Cf. Mercer v. Stirling*, No. 0:14-CV-2607-RBH, 2015 WL 1280618, at *4 n.4 (D.S.C. Mar. 20, 2015) (finding criminal proceeding still pending because defendant had not yet been sentenced).

proceeding,' *Younger* abstention does not apply.").[5]

Because this case does not concern any "ongoing" proceedings against Mr. Goodwin or Mr. Wright that fall within the three "exceptional circumstances" that "define *Younger*'s scope," the Court should abide by its "unflagging" duty to hear the case and enforce Plaintiffs' federal constitutional rights. *Sprint*, 134 S. Ct. at 591.

C. Plaintiffs Goodwin and Wright satisfy the requirements for class certification.

1. The requirements of Rule 23(a) are satisfied.

Mr. Goodwin and Mr. Wright's motion for class certification readily meets the first prerequisite, numerosity, because the proposed Class is "so large that 'joinder of all members is impracticable.'" *Lienhart v. Dryvit Sys., Inc.*, 255 F.3d 138, 146 (4th Cir. 2001) (quoting Fed. R. Civ. P. 23(a)(1)). Publicly available court records show that the Lexington County magistrate courts target more than one thousand people with payment bench warrants each year. Dkt. No. 21–8 ¶ 19. Further, the Lexington County Sheriff's Department annually arrests and incarcerates hundreds of indigent people for nonpayment of magistrate court fines and fees. Dkt. No. 21–5 ¶¶ 6–11. Joinder of these individuals is impracticable, particularly in light of the inherently transitory nature of their claims. *See Cty. of Riverside*, 500 U.S. at 51–52. And the U.S. Court of Appeals for the Fourth Circuit has certified classes that are much smaller. *See, e.g.*, *Brady v. Thurston Motor Lines*, 726 F.2d 136, 145 (4th Cir. 1984) (certifying class of 74 people).

The motion for class certification also meets the second prerequisite, commonality, because "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). The existence of even a single common question will satisfy this requirement. *EQT Prod. Co. v. Adair*, 764 F.3d 347, 360 (4th Cir. 2014). In their Amended Class Action Complaint, Plaintiffs

[5] *See also Rodriguez v. Providence Cmty. Corr., Inc.*, 191 F. Supp. 3d 758, 763 (M.D. Tenn. 2016) ("The mere existence of Plaintiffs' undischarged debts does not constitute an 'ongoing state judicial proceeding,' and *Younger* abstention therefore does not apply.")

set forth 31 common questions of law and fact that apply to members of the proposed Class, including Mr. Goodwin and Mr. Wright, as a direct result of Defendants' uniform courses of conduct. *See* Dkt. No. 21–1 at 20–24. Given the numerous common questions of law and fact, the commonality requirement is satisfied.

Mr. Goodwin and Mr. Wright also satisfy the third prerequisite for certification, which requires showing that the claims of the named plaintiffs are typical of the proposed Class they seek to represent. Fed. R. Civ. P. 23(a)(3). "The typicality requirement is met if a plaintiff's claim arises from the same event or course of conduct that gives rise to the claims of other class members and is based on the same legal theory." *Moodie v. Kiawah Island Inn Co., LLC*, 309 F.R.D. 370, 378 (D.S.C. 2015) (citation omitted). To demonstrate typicality, a named plaintiff's injuries should be "similar to the injuries suffered by the other class members." *McClain v. South Carolina Nat'l Bank*, 105 F.3d 898, 903 (4th Cir. 1997). Here, the claims of Plaintiffs Goodwin and Wright are typical of the claims of the Class because all claims arise from Defendants' common courses of conduct, which routinely result in the arrest and incarceration of indigent people on payment bench warrants issued by Lexington County magistrate courts without pre-deprivation ability-to-pay hearings and the assistance of court-appointed counsel. *See* Dkt. No. 21–1 at 4–9. Furthermore, all claims against a given Defendant are based on the same legal and equitable theories. *Id.* at 10–16.

The fourth prerequisite for certification is also met here because Mr. Goodwin and Mr. Wright will fairly and adequately protect the interests of the proposed Class. *See* Fed. R. Civ. P. 23(a)(4) & (g)(1). Mr. Goodwin and Mr. Wright have retained lawyers with significant experience in class action litigation and matters involving civil rights. *See* Dkt. No. 21–2 ¶¶ 2, 7; Dkt. No. 21–4 ¶¶ 2, 5; Dkt. No. 21–3 ¶ 2. These attorneys have worked extensively to

investigate the claims brought on behalf of the Class, are dedicated to prosecuting those claims, and have the resources to do so. *See* Dkt. No. 21–2 ¶¶ 11–12; Dkt. No. 21–4 ¶¶ 10–11; Dkt. No. 21–3 ¶ 6. In addition, the claims that Mr. Goodwin and Mr. Wright bring against Defendants are coextensive with, and not antagonistic to, the claims asserted on behalf of the proposed Class. Mr. Goodwin and Mr. Wright have suffered the same injuries as the members of the Class—imminent arrest and incarceration because of their inability to pay fines and fees to Lexington County magistrate courts—and seek to obtain prospective relief that will benefit all Class members equally. *See* Dkt. No. 20 ¶ 422–76.

Finally, the ascertainability requirement is satisfied. *See EQT Prod.*, 764 F.3d at 358. The proposed Class is defined by objectively determinable criteria: (1) indigence and (2) an obligation to pay fines, fees, court costs, assessments, or restitution in one or more Lexington County magistrate court cases. As such, members of the Class are readily identifiable from documents in the possession of Defendants.

2. The requirements of Rule 23(b)(2) are satisfied.

Mr. Goodwin and Mr. Wright's motion for class certification also meets the requirements of Rule 23(b). *See EQT Prod.*, 764 F.3d at 357 ("[T]he class action must fall within one of the three categories enumerated in [Federal Rule of Civil Procedure] 23(b)."). Mr. Goodwin and Mr. Wright seek certification under Rule 23(b)(2), which was specifically created for civil rights cases challenging a common course of conduct. *Thorn v. Jefferson-Pilot Life Ins. Co.*, 445 F.3d 311, 330 n.24 (4th Cir. 2006); *see also* Fed. R. Civ. P. 23 advisory committee's note to 1966 Amendment, Subdivision (b)(2) (noting "various actions in the civil-rights field" are appropriate for (b)(2) certification). Rule 23(b)(2) certification is appropriate where "the party opposing the class acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." *Berry v.*

Schulman, 807 F.3d 600, 608 (4th Cir. 2015) (quoting Fed. R. Civ. P. 23(b)(2)).

Here, Mr. Goodwin and Mr. Wright have sufficiently alleged that each Defendant is acting, or refusing to act, on grounds generally applicable to all members of the Class. Defendants Adams and Dooley oversee, enforce, and sanction the systemic misuse of payment bench warrants and also maintain a magistrate court system that routinely deprives indigent people of pre-deprivation ability-to-pay hearings and the assistance of court-appointed counsel to defend against incarceration for nonpayment of fines and fees. *See* Dkt. No. 20 ¶¶ 88–120. Defendant Koon executes payment bench warrants and jails indigent people who cannot afford to pay the full amount of debt identified on the face of the warrants before booking. *Id.* ¶¶ 121–29. Defendant Lexington County fails to adequately fund public defense. *Id.* ¶¶ 47–79. And Defendant Robert Madsen similarly fails to adequately fund or allocate the resources necessary for public defense. *Id.*

Furthermore, a judgment from the Court declaring that Defendants are violating the constitutional rights of Class members and the entry of an injunction requiring Defendants to remedy those violations will apply equally to all Class members. Accordingly, certification of the Class under Rule 23(b)(2) is appropriate.

CONCLUSION

For the foregoing reasons, Plaintiffs Goodwin and Wright respectfully ask the Court to grant their motion for class certification.

DATED this 11th day of September, 2017.

Respectfully submitted by,

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