

BAIL AND FINES AND FEES

Basic – and often ignored –
constitutional rules & procedural
requirements

BAIL

Constitutional Right to Bail

“Mississippi’s Constitution grants all criminal defendants the right to bail prior to conviction, with certain exceptions.” *Smith v. Banks*, 134 So.3d 715 (Miss. 2014).

Miss. Const. Art. 3, § 29(1) “Excessive bail shall not be required, and all persons shall, before conviction, be bailable by sufficient sureties, except....”

“BAIL” DOES NOT MEAN “MONETARY BAIL”

“A consideration of the equal protection and due process rights of indigent pretrial detainees leads us to the inescapable conclusion that a bail system based on monetary bail alone would be unconstitutional. However, the Mississippi bail system provides for release of pretrial detainees on terms other than monetary bail.” *Lee v. Lawson*, 375 So.2d 1019, 1023 (Miss. 1979).

THERE IS A PRESUMPTION IN FAVOR OF RECOGNIZANCE

In Mississippi, there is “a presumption that a defendant is entitled to be released on order to appear on his own recognizance.” *Lee v. Lawson*, 375 So.2d 1019, 1024 (Miss. 1979).

PURPOSE OF BAIL

“The purpose of bail is to secure the presence of the accused at trial.” *Lee v. Lawson*, 375 So.2d 1019, 1021 (Miss. 1979).

WHEN MONETARY BAIL IS REQUIRED IT MUST NOT BE “EXCESSIVE”

“Where excessive bail is required it is tantamount to a denial of bail which is in direct contradiction to Article 3, Section 29 of the Mississippi Constitution.” *Clay v. State*, 757 So.2d 236, 241 (Miss. 2000).

WHEN MONETARY BAIL IS REQUIRED IT MUST NOT BE “EXCESSIVE”

“[T]he modern practice of requiring a bail bond or the deposit of a sum of money subject to forfeiture serves as additional assurance of the presence of an accused. Bail set at a figure higher than an amount reasonably calculated to fulfill this purpose is ‘excessive’ under the Eighth Amendment.” *Stack v. Boyle*, 342 U.S. 1, 5 (1951).

Bail Hearings Are Necessary

Determining *whether* monetary bail is necessary to secure the presence of the accused at trial, and, if so, *how much* monetary bail is required requires a hearing and individualized consideration of various factors “bearing on the risk of willful failure to appear.” *Lee v. Lawson*, 375 So.2d 1019, 1024 (Miss. 1979) (listing factors).

Bail Hearings Are Necessary

When the defendant is indigent, the court must “consider whether a form of pretrial release other than money bail would adequately assure the defendant’s presence at trial.” *Lee v. Lawson*, 375 So.2d 1019, 1024 (Miss. 1979).

“[I]ncarceration of those who cannot raise a money bail, without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.” *Id.* at 1023 (citing *Pugh*, 572 F.2d at 1057).

FIXED BAIL SCHEDULES ARE UNCONSTITUTIONAL

“Utilization of a master bond schedule provides speedy and convenient release for those who have no difficulty in meeting its requirements. The incarceration of those who cannot, without meaningful consideration of other possible alternatives, infringes on both due process and equal protection requirements.” *Pugh v. Rainwater*, 572 F.2d 1053, 1057 (5th Cir. 1978) (en banc) (footnote omitted).

FIXED BAIL SCHEDULES ARE UNCONSTITUTIONAL

“The term [“master bond schedule”] as here used refers to a schedule with the amount of a bond specified for each listed offense. It contemplates that each accused's pretrial money bail is to be set automatically on the basis of the offense charged.” *Pugh v. Rainwater*, 572 F.2d 1053, 1057 n.6 (5th Cir. 1978) (en banc)

FIXED BAIL SCHEDULES ARE UNCONSTITUTIONAL

See also Chevon Elizabeth Thompson, et al v. Moss Point, Mississippi, 1:15cv182LG-RHW, Declaratory Judgment (doc. no. 18) (S.D. Miss. Nov. 6, 2015).

FINES & FEES

A Person May Not Be Imprisoned For Being Poor.

“It is established beyond per adventure (sic) that an indigent may not be incarcerated because he is financially unable to comply with an otherwise lawfully imposed sentence of a fine.”

Cassibry v. State, 453 So.2d 1298, 1299 (Miss. 1984) (citations omitted).

A determination of the person's ability to pay is required.

“[N]o individual may be held in jail for nonpayment of fines, fees, and/or costs imposed by a court without a determination, following a meaningful inquiry into the individual’s ability to pay, that the individual willfully refuses or willfully failed to make payment.” *Bell v. Sheppard*, 3:15-cv-00732-TSL-RHW, Declaratory Judgment (doc. no. 13) (S.D. Miss. June 20, 2016).

A determination of the person's ability to pay is required.

“[I]n revocation proceedings for failure to pay a fine or restitution, a sentencing court must inquire into the reasons for the failure to pay. ... If the probationer could not pay despite sufficient bona fide efforts to acquire the resources to do so, the court must consider alternative measures of punishment other than imprisonment.” *Bearden v. Georgia*, 461 U.S. 660, 672 (1983).

If A Person Is Unable To Pay, The Court Must Consider Alternatives.

If a person “is financially unable to pay [a] fine ... [the court] **must consider and apply** one of the alternatives to imprisonment set out in Mississippi Code Annotated § 99-19-20.” *Lee v. State*, 457 So.2d 920, 924 (Miss. 1984).

The U.S. Supreme Court has recognized alternatives to jail.

“[P]unishment and deterrence **can often be served fully** by alternative means” to incarceration, including:

- “reducing the fine”
- “extending the time for payments”
- “direct[ing] that the [person] perform some form of labor or public service”

Bearden, 461 U.S. at 671-72, 674.

Mississippi's statutory alternatives include:

“... that the fine be paid in installments...” Miss. Code Ann. § 99-19-20(1)(b)

“...that the defendant be required to work on public property for public benefit ... for a specific number of hours ...” Miss. Code Ann. § 99-19-20(1)(d)

The Court has authority to “reduce” or “revoke” fines and restitution.

“If it appears to the satisfaction of the court that the default in the payment of a fine or restitution is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount thereof or of each installment or revoking the fine or order of restitution or the unpaid portion thereof in whole or in part.” Miss. Code Ann. § 99-37-11.

The Court also has the authority to order alternatives to “assessments”

- Installment payments
- Community service
- County Board of Supervisor may “discharge any aged or infirm convict upon his making an affidavit of insolvency and inability to pay the fine and costs.” Miss. Code Ann. § 47-1-3.

See Op. Atty. Gen. Bounds, 1990 WL 548050, August 29, 1990