Prosecuting Attorneys' Council of Georgia

State Prosecution Support Division fyi

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Sentinel Offender Svcs., LLC v. Glover, et al. (32 cases)

Court Limits Scope Of Misdemeanor Probation; Privatizing Probation Services Is Constitutional; Tolling Of Sentences Is Not Authorized But Electronic Monitoring May Be Imposed As A Condition Of Probation; Private Probation Companies Can Be Sued For Fees Charged But Not Authorized By Law

In a forty-one page opinion authored by the Chief Justice, the Supreme Court has affirmed in part, reversed in part and remanded with direction, a decision by the Superior Court of Richmond County addressing the "use of private probation companies by Georgia courts to provide misdemeanor probation supervision services." The cases were brought by thirteen individuals who had been convicted of misdemeanors and sentenced to probation in Columbia and Richmond counties. Both counties had contracted with Sentinel Offender Services, LLC (or its predecessor) ("Sentinel") to provide private probation services in misdemeanor cases. In some of the cases, the plaintiffs/appellees had sought writs of habeas corpus, while in other cases the plaintiffs/appellees brought other types of civil actions.

A substantial portion of the opinion addresses who the parties are, the issues involved, and the ruling of the trial court. On the substantive issues, the Court ruled:

1. "[A]t least one plaintiff presents in a properly justiciable form each of the substantive legal issues that the trial court decided in its consolidated orders and that we decide below." However, the trial court "is directed to consider the justiciability of each claim as raised by each plaintiff or as applicable to other persons affected by any injunctive or class relief."

2. Meritless Sentinel's argument that "all the plaintiffs are precluded from bringing civil actions against it for money had and received, false arrest, and injunctive relief due to their failure to appeal their underlying criminal convictions and sentences." The Court, however, directed the trial court to determine on a case-by-case basis whether the plaintiffs should have challenged their sentences via direct appeal.

3. The private probation statute, O.C.G.A. § 42-8-100, is facially constitutional. "The mere act of privatizing these services does not violate due process. . . [and] we agree with the trial court that most of the alleged injuries suffered by the plaintiffs are not a consequence of the privatization of probation services per se, but rather result from wrongful acts allegedly committed by Sentinel employees." The Court does not decide whether

November 24, 2014

O.C.G.A. § 42-8-100 is unconstitutional as applied because the trial court did not address that issue.

4. "[T]hat none of the provisions of the State-wide Probation Act [O.C.G.A. §§ 42-8-20, et seq.] are applicable to defendants sentenced in courts utilizing [misdemeanor] probation systems authorized by O.C.G.A. § 42-8-100(g)(1)."

5. "[U]nder current Georgia statutes, the tolling of a misdemeanor probationer's sentence is not permitted."

6. "Electronic monitoring is a condition of probation which does not necessarily require explicit statutory authority in order to be imposed. . . . The fact that electronic monitoring and other conditions of probation are described in Article 2 as acceptable sentencing options for felony probationers supervised by the [Dept. of Corrections], does not, in and of itself, prohibit the application of these conditions to misdemeanor probationers supervised by private probation servicing companies."

7. "[T]he trial court's determination that a cause of action based on the theory of money had and received could be brought against Sentinel to recover probation supervision fees which it unlawfully collected from misdemeanor probationers in contravention of the dictates of the private probation statutory framework approved by the Georgia legislature."

8. With regard to Columbia County, the Court affirmed that Sentinel did not have a valid contract to provide probation services in misdemeanor cases because the contract had not been approved by the county commission as required by law. However, "the trial court erred in holding that the doctrine of mutual mistake and the principles of equity prevent Sentinel from having to disgorge any probation supervision fees Sentinel collected from them which the sentencing court had the ability to lawfully impose. . . Without a valid contract, Sentinel lacked the statutory authority to provide probation supervision services to the Superior Court of Columbia County and thus had no right to collect probation supervision fees from the plaintiffs. . . . Payments made under a void contract are recoverable in an action for money had and received. . . . Accordingly, the trial court erred in holding Sentinel would not be required to disgorge probation supervision fees it collected from the Columbia County plaintiffs under an invalid contract."

9. While there was a valid contact in Richmond County, the Court agreed "that a potential cause of action under a theory of money had and received exists for these plaintiffs to recover such fees paid after the expiration

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November 24, 2014

of their original sentences" but remanded for the trial court to make a determination based on the facts of each case. While noting that the plaintiff's cannot make a collateral attack on a sentence that could have been appealed, they "might return to the sentencing court to challenge their sentence as illegal or possibly seek relief through the filing of a habeas corpus petition, [fn.] with the potential to recover monies paid pursuant to an illegal sentence."

10. That fees charged and collected by Sentinel for electronic monitoring are not recoverable unless they were "unlawfully imposed by the court on a misdemeanor probationer after the expiration of his or her original sentence."

11. That the trial court must reconsider its conditional grants of class certification and permanent injunctions in light of the Supreme Court's decision.

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