

LA. PUBLIC DEFENDER BOARD,  
ET AL : NUMBER 597627 SECTION 27  
VS. : 19TH JUDICIAL DISTRICT COURT  
JULIAN PARKER, ET AL : PARISH OF EAST BATON ROUGE  
: STATE OF LOUISIANA

RULING

THIS MATTER CAME BEFORE THE COURT ON FEBRUARY 8, 2011 FOR A WRIT OF MANDAMUS FILED BY THE PLAINTIFFS. IN ADDITION, EXCEPTIONS FILED BY THE DEFENDANTS WERE HEARD BY THE COURT AND OVERRULED BY THE COURT.

AT THE CONCLUSION OF THE HEARING THE PARTIES STATED ON THE RECORD THAT A CONSENT JUDGMENT WOULD BE ENTERED AND FILED WITH THE COURT BY FEBRUARY 9, 2011. THE COURT THEN INDICATED THAT THE REMAINING ISSUES PRESENTED, IF ANY, WOULD BE TAKEN UNDER ADVISEMENT.

THE COURT HAS NOT RECEIVED A CONSENT JUDGMENT SIGNED BY ALL PARTIES AS STIPULATED AND HAS REASON TO BELIEVE THAT ONE IS NOT FORTHCOMING. THEREFORE, THE COURT HEREBY ISSUES THE FOLLOWING RULING:

THE COURT HEREBY GRANTS PLAINTIFFS' REQUEST FOR WRIT OF MANDAMUS AND ORDERS THE DEFENDANTS TO ASSESS, IN ACCORDANCE WITH LA. R.S. 15:168, THE SPECIAL COST OF THIRTY-FIVE DOLLARS (\$35) IN EVERY CASE WHERE THE DEFENDANT IS CONVICTED AFTER A TRIAL, ENTERS A PLEA OF GUILTY OR NOLO CONTENDERE OR FORFEITS BOND, SAID SPECIAL COSTS TO BE IN ADDITION TO ALL OTHER FINES, COSTS OR FORFEITURES IMPOSED.

THE SPECIAL ASSESSMENT CONTAINED IN LA. R.S.15:168 IS NON-DISCRETIONARY AND SHALL BE ASSESSED. THE STATUTE DOES NOT REQUIRE THAT THE DEFENDANTS REMIT THE SPECIAL COST PRIOR TO COLLECTION. THE SPECIAL COST OR ASSESSMENT OF THIRTY-FIVE DOLLARS (\$35) IS ADDED TO A LITANY OF OTHER ASSESSMENTS IMPOSED BY LAW AND COLLECTIVELY ALL OF THESE COSTS MAKE UP WHAT IS COMMONLY REFERRED TO AS "COURT COSTS." COURTS COSTS ARE ASSESSED AGAINST DEFENDANTS IN CRIMINAL CASES EVEN IF THEY HAVE ABSOLUTELY NO MEANS TO PAY THE ASSESSMENT OR OTHERS.

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WHO HAVE NO INTENTION OF PAYING THEM. IT IS AT THIS MOMENT THAT THE PRESIDING JUDGE MUST USE THE DISCRETIONARY AUTHORITY VESTED IN HIM OR HER TO DECIDE WHETHER A CRIMINAL DEFENDANT DOES OR DOES NOT HAVE THE MEANS TO PAY. THEN THE COURT MUST DECIDE A JUST AND APPROPRIATE SANCTION FOR FAILING TO PAY WHEN THE COURT DETERMINES IN ITS JUDICIAL DISCRETION THAT THE DEFENDANT CAN AFFORD TO PAY. THIS ACT BY THE JUDGE IS SQUARELY WITHIN HIS OR HER DISCRETIONARY AUTHORITY AND THEREFORE CANNOT BE REQUIRED TO REMIT A FEE THAT IS NOT POSSIBLE TO COLLECT.

AS STATED IN ARGUMENT "THE TRAFFIC COURT JUDGES ARE NOT HERE BECAUSE THEY HAVE BEEN TRYING TO REMIT THE ASSESSMENT BASED ON THEIR COLLECTIONS." THAT IS EXACTLY WHAT THE DEFENDANT'S IN THIS MANDAMUS ACTION HAVE AGREED VIA STIPULATION TO DO. THAT IS EXACTLY WHAT R.S. 15:168 REQUIRES OF THEM.

THEREFORE, EVIDENCE CLEARLY SUPPORTS THE GRANTING OF THE MANDAMUS REQUIRING THE DEFEDANTS TO ASSESS THE SPECIAL COST OF THIRTY-FIVE DOLLARS (\$35) PURSUANT TO R.S. 15:168. THERE IS NO REQUIREMENT THAT THE SPECIAL COST BE REMITTED PRIOR TO THE COURT'S COLLECTION AND OR THEIR EXERCISING OF THEIR JUDICIAL DISCRETIONARY AUTHORITY TO DETERMINE A JUST PENALTY FOR A CRIMINAL DEFENDANT'S FAILURE TO PAY OR THE ABSOLUTE INABILITY TO PAY.

JUDGMENT TO BE SIGNED ACCORDINGLY.

SIGNED THIS 11<sup>th</sup> DAY OF FEBRUARY, 2011



TODD W. HERNANDEZ, JUDGE  
19th Judicial District Court  
Parish of East Baton Rouge  
State of Louisiana

I hereby certify that on this day a notice of the above judgment was mailed by me, with sufficient postage affixed, to: Lauren Goddard, Phillip Withman

Dated and signed on Feb 11 2011  
Wendy Richard  
Deputy Clerk of Court  
David Sanders Gilbert Burns, Jr.

**FILED**

FEB 11 2011  
Wendy Richard  
DY. CLERK OF COURT

19th JUDICIAL DISTRICT COURT