

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

STATE OF ARKANSAS

PLAINTIFF

-vs-

**CASE NOS.: CR-2014-389
CR-2014-390**

**KENNETH JONES and
KIMBERLY JONES**

DEFENDANTS

ORDER

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

The parties stipulate that the Defendants, Kenneth and Kimberly Jones, occupied a house at 6369 Matlock Lane, Harrisburg, Arkansas pursuant to a written lease agreement with their landlord, Cindy Parker. Parker alleged that the Defendants failed to pay rent under the terms of the lease agreement, and she caused the Defendants to be served with a 10-day notice to vacate on or about June 30, 2014. The Defendants did not vacate the premises within the ten day notice period. The Defendants were both charged with a violation of Arkansas' "criminal eviction" law, Ark. Code Ann. § 18-16-101, and on July 29, 2014, the Harrisburg District Court issued a warrant of arrest for both defendants. The Defendants both pleaded not guilty, and neither made a payment to the district court registry as required by Ark. Code Ann. § 18-16-101(c)(1). The Defendants were subsequently each convicted of a Class B misdemeanor pursuant to Ark. Code Ann. § 18-16-101(c)(3). A timely appeal to this court followed. The Defendants filed the instant Motion to Dismiss on February 12, 2015, arguing the failure to vacate charges should be dismissed because Ark. Code Ann. § 18-16-101 is unconstitutional.

The Defendants raise 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 Eight 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 Defendants first argue 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 as to the tenant's guilt or the reasonableness of the landlord's allegation.

The Court agrees that the statute provides insufficient procedural protections to comport with the due process guarantees in the United States Constitution. 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 Defendants next argue 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 Defendants cite to *United 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.

Since 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 Defendants' 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 Defendants. The Defendants' Motion to Dismiss is GRANTED.

JOHN FOGLEMAN, CIRCUIT JUDGE

Date