<table>
<tr><td>DISTRICT COURT IN AND FOR THE FIRST
JUDICIAL DISTRICT, JEFFERSON COUNTY
100 Jefferson County Parkway, Golden, CO 80401</td><td rowspan="4">▲COURT USE ONLY▲
____

Case No. 15CV31960

Div. 4</td></tr>
<tr><td>On appeal from the Wheat Ridge Municipal Court,
Hon. Christopher D. Randall, No. GA14-34553</td></tr>
<tr><td>Plaintiff-Appellee: CITY OF WHEAT RIDGE by and on behalf of THE STATE OF COLORADO

v.

Defendant-Appellant: WILBURN TAYLOR</td></tr>
<tr><td>Ty Gee, #19772
HADDON, MORGAN AND FOREMAN, P.C.
150 East 10th Avenue
Denver, CO 80203
Tel 303.831.7364
tgee@hmflaw.com

Mark Silverstein, #25979
Rebecca T. Wallace, #39606
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO
303 East Seventeenth Avenue, #350
Denver, CO 80203
Tel 303.777.5482
msilverstein@aclu-co.org; rtwallace@aclu-co.org

Attorneys for Defendant-Appellant Wilburn Taylor</td></tr>
<tr><td colspan="2" align="center">Mr. Taylor's Opening Brief
—Oral Argument is Requested—</td></tr>
</table>

Table of Contents

Introduction 1

Facts 2

Vagrancy-solicitation proceedings. 2

Contempt proceedings. 8

C.M.C.R. 235(c) proceedings. 9

Standard of Review 10

Argument 11

I. Mr. Taylor's conviction was obtained in violation of section 18-1.3-702. 11

A. The municipal court failed to give sufficient notice to Mr. Taylor. 11

B. The municipal court failed to comply with the requirement of section 18-1.3-702 and C.R.C.P. 107 that it notify Mr. Taylor of his rights in a contempt proceeding. 13

C. The court violated section 18-1.3-702 by incarcerating Mr. Taylor when he was unable to pay the court costs without undue hardship. 15

II. The court violated Mr. Taylor's constitutional rights by finding him in contempt for failure to pay the court costs. 16

A. Mr. Taylor's guilty plea to the contempt charge was not voluntary, knowing and intelligent; the municipal court entered judgment on the plea in violation of due process. 17

B. The municipal court violated Mr. Taylor's rights to equal protection and due process by convicting and punishing him for contempt because of his inability to pay the court costs. 20

III. The municipal court violated the Colorado Constitution's prohibition against imprisoning debtors. 23

IV. The municipal court violated Mr. Taylor's right to counsel. 23

V. The municipal court violated Mr. Taylor's right to fundamental fairness and Colorado law by engaging in plea discussions and by inducing him to plead guilty to criminal contempt of court. 26

Conclusion 31

Oral Argument 32

Index of Exhibits 33

Table of Authorities

Cases

Bearden v. Georgia, 461 U.S. 660 (1983) 22, 23

Crumb v. People, 230 P.3d 726 (Colo. 2010) 30, 31, 32, 33, 34

Denver Health & Hosp. Auth. v. City of Arvada ex rel. Arvada Police Dep't, 2016 COA 12 11

Henderson v. Morgan, 426 U.S. 637(1976) 19

In re Marriage of Nussbeck, 974 P.2d 493 (Colo.1999) 15, 20, 25

Iowa v. Tovar, 541 U.S. 77 (2004) 27

Lacy v. People, 775 P.2d 1 (Colo. 1989) 19, 32

Mulkey v. Sullivan, 753 P.2d 1226 (Colo. 1988) 19, 21

Obergefell v. Hodges, 135 S. Ct. 2584 (2015) 18

People v. Clark, 183 Colo. 201, 515 P.2d 1242 (1973) 30

People v. Diaz, 347 P.3d 621 (Colo. 2015) 18

People v. Kirk, 221 P.3d 63 (Colo. Ct. App. 2009) 32

Smith v. O'Grady, 312 U.S. 329 (1941) 19

Tate v. Short, 401 U.S. 395 (1971) 22, 23

Thrap v. People, 192 Colo. 341, 558 P.2d 576 (1977) 29

Tipton v. City of Lakewood, 198 Colo. 18, 595 P.2d 689 (1979) 29

Turner v. Rogers, 131 S. Ct. 2507 (2011) 28

United States v. Baker, 489 F.3d 366 (D.C. Cir. 2007) 32

United States v. Bradley, 455 F.3d 453 (4th Cir. 2006) 31

United States v. Cano-Varela, 497 F.3d 1122 (10th Cir. 2007) 31

United States v. Cronic, 466 U.S. 648 (1984) 26

United States v. Powell, 287 U.S. 45 (1932) 26

Wright v. District Court, 192 Colo. 553, 561 P.2d 15 (1977) 15

Statutes

C.R.S. § 13-10-112 29

C.R.S. § 13-10-116(2) 10

C.R.S. § 13-6-310 10

C.R.S. § 13-6-310(1) 11

C.R.S. § 13-6-310(2) 11

C.R.S. § 16-7-302(1) 31

C.R.S. § 18-1.3-702 .... 1, 11

C.R.S. § 18-1.3-702(1)(a)(I)-(III) 12

C.R.S. § 18-1.3-702(2) 12, 13

C.R.S. § 18-1.3-702(3) 15

C.R.S. § 18-1.3-702(3)(a) 16

C.R.S. § 18-1.3-702(3)(b) 14, 29

C.R.S. § 18-1.3-702(3)(c) 16, 18

C.R.S. § 18-1.3-702(5). 12

Rules

C.M.C.R. 211 .... 21, 32

C.M.C.R. 211(b)(2) 32

C.M.C.R. 260 10

C.M.C.R. 37(b) 10

C.R.C.P. 107 .... 8, 14, 15, 20, 29

C.R.C.P. 107(a)(4) 8

C.R.C.P. 107(a)(5) 8

C.R.C.P. 107(d) 14

C.R.C.P. 107(d)(1) 27

Colorado Rule of County Court Civil Procedure 407 30

Crim. P. 11 .... 20, 21, 32, 34

Crim. P. 11(b)(1) 19

Crim. P. 11(b)(2) 32

Crim. P. 11(f)(4) 32

Crim. P. 54 21

Other Authorities

Colo. Const. art. II, § 12 25

Colo. Const. art. II, § 25 18

Wheat Ridge Solicitation Ordinance § 16-113 2

Wheat Ridge Solicitation Ordinance § 16-113(b) 3

Appellant-defendant Wilburn Taylor, through his attorneys Haddon, Morgan and Foreman, P.C., in cooperation with the ACLU Foundation of Colorado, respectfully submits this Opening Brief.

Introduction

This appeal of the denial of a post-conviction motion arises out of Mr. Taylor's conviction for contempt of court following his failure to pay court costs. The costs were assessed following his conviction for attempting to solicit money from motorists. Mr. Taylor's contempt conviction was obtained and he was sentenced in violation of the United States and Colorado constitutions and Colorado laws.

The conviction was obtained in violation of section 18-1.3-702, C.R.S. (2014), which governs the imposition in all courts, including municipal courts, of contempt for nonpayment of fines or other monetary amounts owed to a court. It was obtained in violation of Colorado Rule of Civil Procedure 107, which governs criminal contempt proceedings. And it was obtained in violation of the federal and state constitutions' Due Process and Equal Protection clauses as well as the Colorado Constitution's prohibition against imprisonment for debt.

The Court should vacate Mr. Taylor's contempt conviction.

Facts

In March 2014, Mr. Taylor was 33 years old, jobless and impoverished. EXHIBIT 1 ¶¶ 1, 5.[1] For years he has struggled with mental illness, including severe schizophrenia. *Id.* ¶ 1; EXHIBIT 2, at 6.

Vagrancy-solicitation proceedings. That month, after visiting his psychiatrist at the Jefferson County Mental Health Center, Mr. Taylor stopped at the I-70 off-ramp on Kipling Street. EXHIBIT 1 ¶ 3. He intended to create and display a sign inviting charity to help him buy food and other necessities. *Id*.

Officer Cook of the Wheat Ridge Police Department encountered Mr. Taylor. Officer Cook observed that Mr. Taylor "was holding a pen and it appeared he was preparing to write a message asking for money prior to my arrival." Mr. Taylor acknowledged he was planning on asking motorists for money. EXHIBIT 3.

Based on this, Officer Cook issued Mr. Taylor a summons and complaint alleging a violation of Wheat Ridge's solicitation ordinance, § 16-113 of the Wheat Ridge Municipal Code. EXHIBIT 4. The ordinance provides in relevant part, "It shall be unlawful for any person to solicit or attempt to solicit … contributions of any kind from

[1]The municipal court clerk did not serially paginate the record on appeal; so it is not efficient to cite to the record. Instead, we attach as exhibits those portions of the record we cite to. An index of exhibits follows this brief and precedes the attached exhibits.

the occupant of any vehicle on any highway … including any entrance to or exit from such highway." § 16-113(b).

The summons set the initial appearance in the case, No. GA14-34553, for May 5, 2014. After Mr. Taylor failed to appear, the Wheat Ridge Municipal Court issued a bench warrant for Mr. Taylor's arrest, set bond at $100, and imposed $75 in costs. EXHIBIT 5, at [1].

On June 25, 2014, Mr. Taylor was in custody on the bench warrant, and he appeared *pro se* in court via video for his arraignment. EXHIBIT 5, at [1]. No prosecutor was present. *See id.* The municipal court conducted plea negotiations with Mr. Taylor:

> THE COURT: …. So, Mr. Taylor, what I'll do if you plead guilty, I'm gonna le—, read the police report and see what you were doin', then I'll look at your criminal history. If you don't have any of these panhandling convictions, I'm just gonna give you a small fine and tell you don't do—
>
> MR. TAYLOR: (Inaudible.)
>
> THE COURT: — don't come back to Wheat Ridge and panhandle anymore.
>
> ….
>
> THE COURT: So, guilty or not guilty?
>
> MR. TAYLOR: Guilty, Your Honor.

EXHIBIT 2, at 4. The court imposed a suspended fine of $100. *Id.* at 6. It also imposed court costs of $100. *Id.*

Mr. Taylor indicated he had no means to pay the court costs and suffers from a severe mental disability. In response, the municipal court suggested he obtain a job through a temp agency:

> MR. TAYLOR: Oh, (inaudible), you know, right now it looks like (inaudible) policy (inaudible) panhandle (inaudible) for extra cash because I have no, no, like, actual source of income.
>
> THE COURT: Well, you don't, you don't look, you look like a man who could work though. I mean, you don't look disabled or unable to work.
>
> MR. TAYLOR: Okay, you know … (inaudible) … severe schizophrenia.[2]
>
> THE COURT: And a lot of guys go to Labor Ready or Aramark or whatnot ser—
>
> ….
>
> THE COURT: —Temp, temp services….

Id. at 6-7.

The court said Mr. Taylor was required to pay "in two months on August 25th." *Id.* at 7. When Mr. Taylor inquired whether the deadline is "like, four months or so," the court said, "Nah, it's more like two months, but you, you got to get out and get some work…." *Id.* The court then warned Mr. Taylor, "if you don't pay it, I'll issue another warrant, and you and I will be goin' through this all again down the road, so make sure you do take care of it." *Id.*

The municipal court caused Mr. Taylor to sign a court form titled "Request for Stay of Execution/Promise to Pay." *See* EXHIBIT 6. Under "Address" in the form,

---

[2]On March 3, 2016, we objected to the record on the ground that the June 25, 2014, transcript should reflect that Mr. Taylor said to the court: "No, I do suffer from severe schizophrenia, though." In response, the municipal court amended the transcript so that Mr. Taylor said, "Okay, you know … (inaudible) … severe schizophrenia." EXHIBIT 14.

Mr. Taylor wrote "Homeless." *Id.* He did not list an address, a city or a phone number. *Id.* In the form, the Municipal Court directed Mr. Taylor to "pay total due of $100 **or** appear in court on Monday, August 25, 2014 @ 8:30 a.m." *Id.* (capitalization altered). Mr. Taylor was unable to pay the $100. EXHIBIT 1 ¶ 5.

When Mr. Taylor had not paid the fine by August 25 and failed to appear on that date, the court on August 28 issued a bench warrant for his arrest. EXHIBIT 7. The court also assessed additional court costs of $75 so that the total court costs owed by Mr. Taylor amounted to $175. *See* EXHIBIT 5, at [1]. The court set the bond at $175, the amount owed to the court. *See id.*

On November 24, 2014, Mr. Taylor was in custody on the bench warrant, and he appeared *pro se* in court via video. EXHIBIT 5, at [2]. No prosecutor was present. *See id.*; EXHIBIT 8. The municipal court did not inform Mr. Taylor that it had added additional court costs of $75 or that the total court costs he owed had increased to $175. *See* EXHIBIT 8. Mr. Taylor indicated that although he wanted to be released from jail, he had no ability to post the $175 bond; and as he did at the June hearing, he indicated he would encounter significant difficulties in paying the court costs:

> THE COURT: If you thought you had the ability to pay, I would consider releasing you on the matter, or, alternatively, I'll convert it to a *four-day jail sentence at $50.00 a day and give you credit for time served of*

two days. So you can serve another two days and be done with the matter[3] or I can give you additional time to pay the fines and costs.

MR. TAYLOR: I'd like additional time, sir.

THE COURT: All right, I'm g—

MR. TAYLOR: —Will I be (inaudible), will I be released today if I pay, if I take the, that option?

THE COURT: Yes.

MR. TAYLOR: I would like that option, sir.

THE COURT: So when are you gonna get this paid, then?

MR. TAYLOR: I will try to make a budget for it by a few dollars a month, and I don't know how I'll be able to, but I'll try to squeeze the money in (inaudible).[4]

THE COURT: Now, we're not gonna wait four months to get this paid off. You're gonna to have to figure out a faster payment schedule than that.

MR. TAYLOR: I'll see what I can do, sir. I'm not, I don't have any (inaudible) access to money.

EXHIBIT 8, at 2-3 (emphasis supplied). The court concluded: "I'm going to give you a month to either pay it or to come back to court and ask for more time …. If not paid by [December 18 at 1 p.m.] then, you must be back in court December 18th at 1:00 p.m. to request additional time to pay." *Id.* at 3. The court then released Mr. Taylor on a $175 PR bond. *Id.* at 3-4.

---

[3]The italicized language is the only indication by the municipal court that the amount owed by Mr. Taylor had increased since June 2014. The court did not indicate why Mr. Taylor would have to spend a total of four full days in jail at $50 a day to pay for $175 in court costs.

[4]The municipal court amended the transcript. *See* EXHIBIT 14.

As in June, the municipal court caused Mr. Taylor to sign a Municipal Court form titled "Request for Stay of Execution/Promise to Pay." EXHIBIT 9. Under "Address" in the form, Mr. Taylor wrote "N/A" for "not applicable." *See id.* He listed his city as Lakewood. He listed his telephone number as "N/A." *Id.* In the form, the Municipal Court directed Mr. Taylor to "pay total due of $175 **or** appear in court on Thursday, December 18, 2014 @ 1:00 p.m." *Id.* (capitalization altered). This form is the only judicial notice to Mr. Taylor that the amount he owed from June had increased from $100 to $175; it does not indicate why there was an increase in the amount owed to the court.

Mr. Taylor remained jobless and impoverished during the following months. EXHIBIT 1 ¶ 5. He was unable to pay the $175 amount due. *Id.* Mr. Taylor failed to appear on December 18. On December 23, the court issued a bench warrant for Mr. Taylor's arrest. The court also apparently assessed additional court costs of $100 so that the total court costs now owed by Mr. Taylor had increased to $275. *See* EXHIBIT 5, at [2]. The court set a bond of $250 on the warrant. *See id.*

On February 25, 2015, while Mr. Taylor was in custody on the bench warrant, the municipal court served on him a contempt citation because of his failure to pay the previously-assessed court costs.[5] EXHIBIT 10.

---

[5]The sanctions available for the two types of contempt—remedial and punitive contempt—serve different purposes. *See* C.R.C.P. 107. Sanctions imposed for remedial contempt are intended to force compliance with a lawful order or compel performance of an act within the person's power or present ability to perform. *See* C.R.C.P. 107(a)(5). Sanctions for punitive contempt are intended to punish, and they consist of an

(footnote cont'd on next page)

Contempt proceedings. On February 25, Mr. Taylor appeared *pro se via* video for a bond hearing and contempt advisement. EXHIBIT 5, at [3]. No prosecutor was present. *See id.*; EXHIBIT 11. The court did not tell Mr. Taylor that it had assessed additional court costs of $100 or that the total court costs he owed had increased to $275. *See* EXHIBIT 11.

The municipal court began by telling Mr. Taylor it would advise him "on a contempt citation" and "tell you some things you can do…. One of these things is probably pretty attractive." EXHIBIT 11, at 2. The court notified Mr. Taylor, among other things, that "[p]unishment for contempt can consist of a fine or sentence of imprisonment not to exceed 15 days." The court advised that he had the right if indigent to an appointed attorney; he had the right to remain silent; he was presumed innocent; and he had the right to require proof beyond a reasonable doubt. *Id.* at 2-3.

The court then engaged in plea negotiations with Mr. Taylor, encouraging him to plead guilty because "a lot of guys" faced with "only three days" of jail as punishment for nonpayment of fines "are just doin'" the jail time; otherwise, he would have to wait "60 days" for the contempt hearing:

---

unconditional fine, fixed sentence of imprisonment, or both, for conduct found to be offensive to the court's authority and dignity. *See* C.R.C.P. 107(a)(4). In the case at bar, the court pursued punitive contempt only. *See* EXHIBIT 10 (providing written advisement on rights afforded to persons under C.R.C.P. 107(d)(1) who are charged with punitive contempt).

> *So here's how it works, Mr. Taylor. I give you the chance, if you want to do a little bit of jail, to do a little bit of jail and take care of the fine. So if you admit you didn't pay your fine, yet had the ability to pay the fine, I would give you three days in jail.* Or the other thing you can do is have a hearing on this issue, and the hearing would be set out about 60 days, and between then and now, I'd put you on a payment plan. But *I will tell you, a lot of guys, when it's only three days, a lot of guys are just doin' it.* And I'd give you credit from yesterday. So you got two more days to do ….

EXHIBIT 11, at 3 (emphasis supplied). After Mr. Taylor said he had no questions, the municipal court asked, "What do you want to do?" *Id.* at 3. Mr. Taylor accepted the court's plea deal, responding: "I'll, I'll do the three days." *Id.* The court commented:

> Mr. Taylor, so here's what you're sayin', is that you pled guilty, back whenever you did, to something, and then you had some court costs, and that's what you didn't pay. So you didn't, you, you pled guilty in June, and then you had a couple months to pay and didn't, and I think Judge Davis saw you again and gave you more time, then you didn't pay, and here you are. So here's how it works.

Id. at 4. The court then imposed sentence: "Three days are imposed, whatever he owes, I'm just gonna, three days imposed, credit for one day, two to go, Mr. Taylor, and then you are done with this case." *Id.*; EXHIBIT 12.

Mr. Taylor served a total of three days in jail on the contempt conviction. *See* EXHIBIT 1 ¶¶ 5, 7.

C.M.C.R. 235(c) proceedings. Mr. Taylor timely moved for post-conviction relief. *See* C.M.C.R. 235(c). The motion asserted five principal grounds for relief: (a) Mr. Taylor's conviction was obtained in violation of section 18-1.3-702; (b) the municipal court violated his constitutional rights by finding him in contempt for failure to

pay the court costs; (c) the court violated the Colorado Constitution's prohibition against imprisoning debtors; (d) the court violated his right to counsel; and (e) the court violated his right to due process and Colorado law by engaging in plea discussions with him and inducing him to plead guilty to criminal contempt of court.

The municipal court denied the motion. This appeal followed.

Standard of Review

Appeals from municipal court are governed by Colorado Rule of Criminal Procedure 37. *See* C.M.C.R. 37(b); *see also* C.M.C.R. 260 (providing that municipal court rules "are additions to Colorado Rules of Criminal Procedure").

In appeals from the judgments of municipal courts, the practice and procedure are the same as those prescribed in section 13-6-310, C.R.S. (2015), for appeals from judgments of county courts. § 13-10-116(2). Accordingly appeals from municipal court judgments "shall be based upon the record" made in the municipal court. § 13-6-310(1). In such appeals, the district court "shall review the record on appeal and affirm, reverse, remand, or modify the judgment." § 13-6-310(2).

The facts are not in dispute in this appeal. This appeal raises pure questions of law. Accordingly, the standard of review is de novo. *See Denver Health & Hosp. Auth. v. City of Arvada ex rel. Arvada Police Dep't*, 2016 COA 12 ¶ 28 ("Whether the district court misinterpreted [case law] is a question of law, and we review *de novo* questions of law and ... the application of law to undisputed facts.") (internal quotations omitted).

Argument

I. Mr. Taylor's conviction was obtained in violation of section 18-1.3-702.

Section 18-1.3-702 prescribes the due process that must be afforded when any court of record in the state of Colorado, "including but not limited to municipal courts,"[6] seeks to enforce orders requiring a defendant to pay a "monetary amount." The statute applies to an order of a court that the defendant pay an entire monetary amount at the time of sentence, at some later date, or as directed by a court employee, such as a collections investigator. § 18-1.3-702(1)(a)(I)-(III).

A. The municipal court failed to give sufficient notice to Mr. Taylor.

Subsection (2) of the statute provides that when a court imposes a sentence that:

> includes payment of any monetary amount, the court *shall instruct the defendant as follows*:
>
> (a) If at any time the defendant is unable to pay the monetary amount due, the defendant must contact the court's designated official or appear before the court to explain why he or she is unable to pay the monetary amount; and
>
> (b) If the defendant has the ability to pay the monetary amount as directed by the court or the court's designee but willfully fails to pay, the defendant may be imprisoned for failure to comply with the court's lawful order to pay pursuant to the terms of this section.

§ 18-1.3-702(2) (emphasis supplied).

[6] § 18-1.3-702(5).

On June 25, 2014, the court found Mr. Taylor guilty of solicitation and imposed court costs of $100. The court did not provide any of the notices required under subsection (2) of section 18-1.3-702. The court merely said, "Mr. Taylor, if you don't pay it, I'll issue another warrant, and you and I will be goin' through this all again down the road, so make sure you do take care of it." EXHIBIT 2, at 7.

On November 24, 2014, the court required Mr. Taylor to pay an additional $75 in court costs. The court again failed to provide the notices required under section 18-1.3-702(2). Instead, the court said it would consider jailing Mr. Taylor for four days and crediting Mr. Taylor $50 a day as full payment of the court costs. EXHIBIT 8, at 2. It also warned Mr. Taylor that if he did not pay the $175 in court costs or return to court on December 18, 2014, "a new bench warrant's gonna issue for your arrest, you're gonna owe the Court another $175 on the bond, and *you're not gonna be released upon this kind of [PR] bond again in the future*." *Id.* at 4 (emphasis supplied). None of these statements qualified as the notice required under section 18-1.3-702(2).

On December 23, 2014, after Mr. Taylor failed either to pay all court costs or appear in court on December 18, the court added $100 in court costs to the monetary amount he owed. Mr. Taylor was not in court on December 23. Thereafter, the court failed to give the section 18-1.3-702(2) notices. Nor were such notices given to Mr. Taylor on February 25, 2015, when he appeared before the court after being cited for contempt for failure to pay the court-ordered costs. *See* EXHIBIT 11.

In denying Mr. Taylor's C.M.C.R. 235(c) motion, the municipal court did not specifically address its compliance with section 18-1.3-702(2)'s notice provisions. The court appeared to conclude that it properly advised Mr. Taylor of his rights for *contempt* purposes. EXHIBIT 13, at 2. Even if that were true (it is not), section 18-1.3-702(2) *also* requires notice to the defendant regarding his *ability to pay*. The municipal court's order denying the C.M.C.R. 235(c) motion failed to address this point. The record establishes the court did not advise Mr. Taylor that if he was unable to pay, he had a right to explain why he was unable to pay. Accordingly, the court violated section 18-1.3-702(2).

B. The municipal court failed to comply with the requirement of section 18-1.3-702 and C.R.C.P. 107 that it notify Mr. Taylor of his rights in a contempt proceeding.

Under section 18-1.3-702(3)(b), when a court commences contempt proceedings for nonpayment of a monetary amount, "the court, including a municipal court, shall provide all procedural protections mandated" in C.R.C.P. 107. As the statute notes, the procedural protections listed in C.R.C.P. 107 are required by the terms of the rule itself.

Among the protections mandated by C.R.C.P. 107 is notice to the defendant that he has "the right to have the action heard by another judge" and "the right to testify at trial."[7] C.R.C.P. 107(d). The court did not notify Mr. Taylor of these rights.

[7]The municipal court did advise Mr. Taylor that he had "the right to make a statement on your own behalf." EXHIBIT 11, at 3. This is different from the right to testify. C.R.C.P. 107(d) requires the court to advise the defendant both of "the right to testify at trial" and, after a contempt finding, "the right to make a statement in mitigation

(footnote cont'd on next page)

Additionally, under section 18-1.3-702(3) and C.R.C.P. 107, the defendant is entitled to notice that the alleged contumacious act is the *willful* failure to pay a court-ordered monetary amount without undue hardship, and not the mere failure to pay. *See In re Marriage of Nussbeck*, 974 P.2d 493, 497 (Colo.1999). Notice to the defendant in the contempt proceedings of his alleged contumacious acts and his rights in such proceedings "play[s] a very important role in enabling [him] to understandingly shape his course and prepare his defense," *Wright v. District Court*, 192 Colo. 553, 555, 561 P.2d 15, 16-17 (1977). The municipal court failed to inform Mr. Taylor that his alleged contumacious act was *willful* failure to pay while having the ability to pay without undue hardship. *A fortiori*, the municipal court violated section 18-1.3-702(3)(b) and C.R.C.P. 107(d).

The municipal court found that it did not violate section 18-1.3-702(2)'s requirements relating to procedural protections afforded defendants in contempt proceedings. It concluded Mr. Taylor "was advised pursuant to C.R.C.P. Rule [sic] 107 and § 18-1.3-702 C.R.S. No trial court is required to use the exact language of a rule or statute or follow a formalistic litany when advising. Rather, the test is whether the record as a whole shows that the defendant entered the plea voluntarily, knowingly, and intelligently." EXHIBIT 13, at [2]. This conclusion notwithstanding, the court did not find it had advised Mr. Taylor of (a) the right to have the action heard by another judge,

---

prior to the imposition of sentence." The municipal court advised Mr. Taylor of the latter right; it did not advise him of the former.

(b) the right to testify at a contempt trial, or (c) the right to be advised of the alleged contumacious act he is accused of committing. The record establishes the court failed to notify Mr. Taylor of these rights.

C. The court violated section 18-1.3-702 by incarcerating Mr. Taylor when he was unable to pay the court costs without undue hardship.

Subsection (3)(a) of the due process statute prohibits incarceration for failure to pay a monetary amount "[w]hen a defendant is unable to pay a monetary amount due without undue hardship to himself or herself or his or her dependents." Subsection (3)(c) prohibits a court from finding a defendant in contempt of court, or from incarcerating the defendant, for failure to pay a monetary amount

> unless the court has made *findings on the record*, after providing notice to the defendant and a hearing, that the *defendant has the ability to comply with the court's order to pay a monetary amount* due without undue hardship to the defendant or the defendant's dependents and that the *defendant has not made a good-faith effort to comply with the order*.

(Emphasis supplied.)

During the court appearances in June and November 2014, Mr. Taylor provided information to the court that he was homeless, jobless, suffered from "severe schizophrenia," was "really strapped" for cash, and needed significant time to acquire enough money to pay the court costs. In fact, as the court knew, Mr. Taylor's original offense was for soliciting money from others.

Before entering a judgment of conviction and incarcerating Mr. Taylor on the contempt citation, the court failed to provide notice to Mr. Taylor that he was not in

contempt if he was unable to pay the court costs without undue hardship to him. The court did not find on the record that Mr. Taylor had the ability to comply with the orders to pay court costs without undue hardship. And the court did not find on the record that Mr. Taylor had failed to make a good faith effort to comply with the orders to pay court costs. In fact, at all times he was under the court's order to pay a monetary amount in this case, he was jobless and impoverished and had no ability to pay without undue hardship. *See* EXHIBIT 1 ¶ 5. Accordingly, the finding of contempt against Mr. Taylor violated the clear mandate of section 18-1.3-702, and the order incarcerating him was illegal.

The municipal court's order denying the C.M.C.R. 235(c) motion did not directly address this issue. The court suggested, however, that it was *Mr. Taylor's* obligation to give notice to the *court* if he was unable to pay the court costs. *See* EXHIBIT 13, at 3 ("[I]f at any time a defendant is unable to pay a monetary amount, the defendant must contact the court's designated official or appear before the court to explain why he is unable to pay the monetary amount owed. Mr. Taylor did not do so."). This part of the statute does not displace the court's own obligations. The express terms of section 18-1.3-702(3)(c) bar a court from finding a defendant in contempt or from incarcerating him for failure to pay court costs *unless the court makes* "*findings on the record*," § 18-1.3-702(3)(c) (emphasis supplied).

II. The court violated Mr. Taylor's constitutional rights by finding him in contempt for failure to pay the court costs.

Article II, Section 25, of the Colorado Constitution guarantees the right to equal protection and due process. *E.g., People v. Diaz*, 347 P.3d 621, 626 n.6 (Colo. 2015). The

Fourteenth Amendment to the United States Constitution also guarantees the right to equal protection and due process. *E.g., Obergefell v. Hodges*, 135 S. Ct. 2584, 2604 (2015).

A. Mr. Taylor's guilty plea to the contempt charge was not voluntary, knowing and intelligent; the municipal court entered judgment on the plea in violation of due process.

The court's failure to give Mr. Taylor notice under section 18-1.3-702 that he could not be convicted and punished for his inability—without fault—to pay the court costs also violated his rights under the Due Process clauses of the state and federal constitutions. A plea of guilty cannot be either a voluntary or a knowing and intelligent admission of guilt unless the defendant receives """real notice of the true nature of the charge against him, the first and most universally recognized requirement of due process.""" *Lacy v. People*, 775 P.2d 1, 4 (Colo. 1989) (quoting *Henderson v. Morgan*, 426 U.S. 637, 645 (1976) (quoting *Smith v. O'Grady*, 312 U.S. 329, 334 (1941))).

To establish that the defendant understands the nature of the charge against him, "the record must affirmatively demonstrate the defendant's understanding of the *critical elements of the crime* to which the plea is tendered." *Id.* at 5 (emphasis supplied). Colorado Rule of Criminal Procedure 11(b)(1) provides that a court "shall not accept a plea of guilty without first determining … [t]hat the defendant understands the nature of the charge and the elements of the offense to which he is pleading." The rule governs the acceptance of guilty pleas in municipal courts, which must "adhere strictly to the rule's

requirements in order to show that a plea is voluntarily and intelligently made," *Mulkey v. Sullivan*, 753 P.2d 1226, 1229 (Colo. 1988).

Prior to accepting the unrepresented Mr. Taylor's guilty plea to contempt, the court failed to advise of the elements of the crime of contempt and failed to determine that Mr. Taylor understood the elements. The elements of punitive contempt are: "(1) the existence of a lawful order of the court; (2) contemnor's knowledge of the order; (3) contemnor's ability to comply with the order; and (4) contemnor's willful refusal to comply with the order." *In re Marriage of Nussbeck*, 974 P.2d 493, 497 (Colo.1999). In addition to failing to advise Mr. Taylor of these elements, the court did not inform Mr. Taylor that under section 18-1.3-702 he could not be convicted of contempt unless he had the ability to pay the court costs without undue hardship and willfully refused. Before pleading guilty Mr. Taylor did not know these were the elements of contempt. EXHIBIT 1 ¶ 8. Had he known, he would not have pleaded guilty to contempt. *Id.*

The municipal court concluded that it was not required to comply with Crim. P. 11 because the Colorado Rules of Criminal Procedure "do not apply to municipal ordinance and charter violations…. Municipal court [sic] is obligated to follow C.M.R.C. [sic] 211, not Crim.P. 11." EXHIBIT 13, at 2-3. The conclusion is error.

To begin with, contempt of court is not a "municipal ordinance [or] charter violation[]." Nothing in the rules of municipal procedure establish the procedures in a contempt proceeding, which is governed in the context of unpaid fines and court costs by section 18-1.3-702 and C.R.C.P. 107. As section 18-1.3-702(3)(b) provides, "When

instituting contempt of court proceedings, the court, *including a municipal court*, shall provide all procedural protections mandated in [C.R.C.P.] 107 ….” (emphasis supplied).

Additionally, while as the municipal court correctly noted Crim. P. 54 provides that the rules of criminal procedure do not apply to ordinance and charter violations, it is incorrect to conclude that Crim. P. 11 has no relevance to a municipal court's duties in taking a guilty plea under C.M.C.R. 211. To the contrary, to the extent Crim. P. 11 prescribes procedures required under the state and federal constitutions, it is no answer to say that Crim. P. 11 does not "apply" to municipal courts. *Mulkey* is instructive. There, when the municipal defendant pleaded guilty he was not represented by counsel and was not advised by the Aurora Municipal Court judge that he had a right to a lawyer if he could not afford to hire one. At the time of Mulkey's guilty plea, C.M.C.R. 211 did not require—it does not now require—a municipal judge to advise a defendant of his right to counsel regardless whether he could afford one. Granting Mulkey's petition for a writ of habeas corpus, the district court ruled that even though C.M.C.R. 211 differed from Crim. P. 11, the municipal court erred in accepting Mulkey's guilty plea without advising him of the right to counsel: "there is nothing in the statute or rules that permits a proceeding which violates an individual Constitutional right and the courts must interpret C.M.C.R. 211 in that regard." *Mulkey*, 753 P.2d at 1228 (brackets omitted). The Colorado Supreme Court agreed with the district court's reasoning and held that "the guilty plea accepted here did not meet constitutional requirements." *Id.* at 1233.

The municipal court was required to ensure that Mr. Taylor's guilty plea was voluntary, knowing and intelligent. It failed to do this. Accordingly, the plea was invalid.

B. The municipal court violated Mr. Taylor's rights to equal protection and due process by convicting and punishing him for contempt because of his inability to pay the court costs.

It is settled that a state court may not incarcerate a criminal defendant simply because she is indigent and cannot pay a monetary amount imposed by the court. *See, e.g., Tate v. Short,* 401 U.S. 395, 398 (1971). The court may not constitutionally find a defendant in contempt of court and incarcerate him on the assumption that, or without inquiry into the question whether, she can pay the monetary amount. *See id.*; *see generally Bearden v. Georgia*, 461 U.S. 660, 664-69, 673 (1983).

Bearden is instructive. As a condition of probation, the defendant Bearden was required to pay $750 in fines and restitution. He was unable to pay after he was laid off from his job. The Georgia state court revoked his probation and sentenced him to serve the remaining portion of his probationary period in prison. Noting that it "has long been sensitive to the treatment of indigents in our criminal justice system," 461 U.S. at 664, the United States Supreme Court held that a state court violates the Equal Protection and Due Process clauses by revoking probation for failure to pay court-imposed monetary amounts "absent evidence and findings that the defendant was somehow responsible for the failure," *id.* at 665. *Id.* at 665-69. "We hold … that in revocation proceedings for failure to pay a fine or restitution, a sentencing court *must inquire into the reasons for the failure to pay*." *Id.* at 672 (emphasis supplied).

Following Mr. Taylor's panhandling conviction, the municipal court retained jurisdiction over him to monitor and enforce payment of the assessed court costs. So, for example, in June the court stayed execution of the order requiring payment of court costs and gave Mr. Taylor additional time to pay. When Mr. Taylor had not paid the court costs by February 2015, however, the municipal court—like the Georgia court in *Bearden*—sentenced Mr. Taylor to jail. The court made no inquiry into his ability to pay the court costs. It simply assumed, without justification, that Mr. Taylor had the ability to pay. That assumption disregarded an abundance of evidence indicating that Mr. Taylor had no ability to pay the court costs. *See, e.g.,* EXHIBIT 2, at 6; EXHIBIT 6. In finding Mr. Taylor guilty of contempt and sentencing him to jail, the municipal court violated his right to equal protection and due process.

The municipal court concluded that *Tate v. Short*, 401 U.S. 395 (1971), and *Bearden v. Georgia*, 461 U.S. 660 (1983), are distinguishable. *Tate*, the court said, holds only that "the state cannot convert a fine imposed under a *fine-only* ordinance into a jail term solely because the defendant was indigent and could not *immediately* pay the fine." EXHIBIT 13, at 3 (emphasis by the municipal court). We think this is a distinction without a constitutional difference. Contrary to the municipal court's suggestion, *Tate* cannot be distinguished because it involved a "fine-only ordinance." If anything, *Tate* applies with more force in this case. *Tate* holds that imprisonment of a defendant because of his inability to pay a fine violates the Equal Protection Clause. 401 U.S. at 398. A fine is a form of punishment. Court costs are not. If it is unconstitutional to imprison a defendant

because of his inability to pay a fine, *a fortiori* it is unconstitutional to imprison a defendant because of his inability to pay court costs.

As the municipal court noted, in *Tate* the Supreme Court held it was unconstitutional to imprison an indigent "for failing to make *immediate* payment of any fine," *id.* (emphasis supplied). Because it did not require Mr. Taylor to make "immediate" payment of court costs, the municipal court suggests, *Tate* does not apply. The municipal court's implication is that it would be proper to imprison a defendant for nonpayment of court costs so long as it did not require "immediate" payment. The lesson of *Tate* is that a defendant cannot be imprisoned merely because he cannot pay a fine that, for example, a wealthier person could pay to avoid imprisonment. The municipal court cannot circumvent *Tate*'s holding by forbearing "immediate" payment and demanding payment within one, three or six months *and then imprisoning the indigent defendant.* The constitutional question is not how much time must pass before the government can imprison an indigent defendant for nonpayment of court fines or costs. Rather, the question is, can the defendant pay the fines or costs at the time the decision to imprison him is made? If the answer is no, as it was here, the Constitution forbids imprisonment.

The municipal court also tried to distinguish *Bearden.* That case, the municipal court concluded, holds only that a court "may not *automatically* revoke probation because a probationer could not pay a fine." *Id.* (emphasis by the municipal court). The municipal court's conclusion is error. *Bearden* stands for the principle that the state

violates the Equal Protection and Due Process clauses for depriving a criminal defendant of liberty without first receiving evidence, and making findings, that the defendant was responsible for the failure to pay a court-imposed monetary amount.

Here, the municipal court imprisoned Mr. Taylor because of his indigence-based failure to pay a monetary amount, the court undertook no efforts to determine whether he was responsible for failing to pay the amount, and the court made no findings that he was able to but chose not to pay the amount.

III. The municipal court violated the Colorado Constitution's prohibition against imprisoning debtors.

Article II, Section 12, of the Colorado Constitution prohibits the imprisonment of a person for debt. The prohibition does not apply to a defendant adjudged to be in contempt for failure to pay a court-imposed monetary amount "when the contemnor had the ability to pay" but willfully refuses to do so. *Nussbeck*, 974 P.2d at 498.

Section 12 prohibited the municipal court's imprisonment of Mr. Taylor. As discussed above, before sentencing Mr. Taylor to imprisonment, the court had substantial evidence he had no ability to pay. Imposing a term of imprisonment under these circumstances directly violated Article II, Section 12, of the Colorado Constitution.

The municipal court did not address this ground for C.M.C.R. 235(c) relief.

IV. The municipal court violated Mr. Taylor's right to counsel.

An accused's right to be represented by counsel is a fundamental component of our criminal justice system. "Lawyers in criminal cases 'are necessities, not luxuries.' Their presence is essential because they are the means through which the other rights of

the person are secured. Without counsel, the right to a trial itself would be 'of little avail ….'" *United States v. Cronic*, 466 U.S. 648, 653(1984) (footnote omitted). As the United States Supreme Court held in *United States v. Powell*, 287 U.S. 45, 68-69 (1932):

> The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad…. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.

(Quoted in *Cronic*, 466 U.S. at 653 n.8.) It is for these reasons the Supreme Court has recognized that "[o]f all the rights that an accused person has, the right to be represented by counsel is by far the most pervasive for it affects his ability to assert any other rights he may have." *Cronic*, 466 U.S. at 654 (footnote and internal quotations omitted).

C.R.C.P. 107(d)(1) provides that the defendant charged with punitive contempt "shall be advised of the right to be represented by an attorney and, if indigent and if a jail sentence is contemplated, the court will appoint counsel." Since the court in the case at bar intended to imprison Mr. Taylor for failure to pay court costs, it was required to appoint a lawyer to represent him.

On February 25, 2015, the municipal court rotely notified Mr. Taylor, "You have the right to be represented by an attorney, and if you're indigent, I would appoint an

attorney to represent you." EXHIBIT 11, at 2. The court did not explain that Mr. Taylor was entitled to an attorney not only to represent him at any trial on the contempt charge but also to advise him and to represent him in pretrial proceedings, including in any proceeding in which he was offered a plea bargain. *See Iowa v. Tovar*, 541 U.S. 77, 87 (2004) ("A plea hearing qualifies as a 'critical stage'" of the criminal process where the Sixth Amendment right to counsel attaches). The municipal court failed to advise Mr. Taylor "of his right to be counseled regarding his plea." *Id.* at 81. The court did not inquire whether he understood his right to counsel. And the court failed to determine whether he was waiving his right to counsel. *See id.* at 88 ("[A] waiver of counsel [is] intelligent when the defendant knows what he is doing and his choice is made with eyes open.") (internal quotation marks omitted).

In fact, Mr. Taylor did not understand his right to counsel. He believed the right to counsel extended only to the trial of the contempt charge. EXHIBIT 1 ¶ 6. He did not know—and the municipal court's rote advisal failed to explain—that he was entitled under *Tovar* to have a lawyer advise him about the elements of contempt and the evidence supporting conviction—or the lack of such evidence—before entering into a plea bargain and pleading guilty to contempt. *See id.*

Without a proper advisement on his right to counsel, Mr. Taylor could not have knowingly, voluntarily and intelligently waived his right to counsel before pleading guilty. The violation of his right to counsel exacerbated the court's violation of both section 18-1.3-702 and due process. As the United States Supreme Court held in *Turner*

v. Rogers, 131 S. Ct. 2507 (2011), when a defendant faces the risk of incarceration in contempt proceedings for nonpayment of court-ordered monetary amounts and she is not afforded counsel, the court must provide her with procedural safeguards. These include giving the defendant notice that ability to pay "is a critical issue in the contempt proceeding," an opportunity for her to respond to statements and questions about her financial status, and "an express finding by the court that the defendant has the ability to pay." 131 S. Ct. at 2519. Where as here the municipal court fails to provide counsel (or does not secure a constitutional waiver of the right to counsel) and also fails to provide the procedural safeguards, it violates due process by finding the defendant in contempt and incarcerating the defendant.

The municipal court did not address this ground for C.M.C.R. 235(c) relief.

V. The municipal court violated Mr. Taylor's right to fundamental fairness and Colorado law by engaging in plea discussions and by inducing him to plead guilty to criminal contempt of court.

A municipal judge has the authority to find a litigant in contempt of court. *Tipton v. City of Lakewood,* 198 Colo. 18, 20, 595 P.2d 689, 691 (1979); *Thrap v. People*, 192 Colo. 341, 343, 558 P.2d 576, 578 (1977). The source of this authority is not the municipality or its laws but the judicial authority conferred upon the municipal judge in section 13-10-112, C.R.S. (2014), by the state legislature. *See Tipton,* 198 Colo. at 20, 595 P.2d at 691; *Thrap*, 192 Colo. at 343, 558 P.2d at 578.

Accordingly, when a municipal judge presides over contempt proceedings, he must comply with the Code of Criminal Procedure, i.e., Title 16 of the Colorado Revised

Statutes, the Colorado Rules of Criminal Procedure, and the rules governing contempt proceedings, *see* § 18-1.3-702(3)(b) ("[w]hen instituting contempt of court proceedings, the court, *including a municipal court*, shall provide all procedural protections mandated in" C.R.C.P. 107 or Colorado Rule of County Court Civil Procedure 407[8]) (emphasis supplied).

In criminal cases the judge plays an essential role to ensure the impartial and objective administration of justice. *Crumb v. People,* 230 P.3d 726, 731 (Colo. 2010). When a judge becomes involved in plea discussions, thereby bringing to the discussions "the full force of the judicial office," she is "no longer a judicial officer or a neutral arbiter." *Id.* Judicial participation "transforms the judge from a neutral arbiter to an advocate for the resolution the judge has suggested to the defendant." *Id.* "Because of the disparity in power between the defendant and the judge, judicial participation in plea negotiations undermines the fundamental fairness of the proceedings." *Id.* For these reasons, the Colorado Supreme Court more than 40 years ago emphasized that judicial participation in plea discussions is forbidden: "In our view, participation by the trial judge in the plea bargaining process must be condemned." *People v. Clark*, 183 Colo. 201, 204, 515 P.2d 1242, 1243 (1973).

---

[8]Because C.R.C.P. 107 and County Rule 407 are identical, we refer to them collectively as "C.R.C.P. 107."

"Numerous jurisdictions," the supreme court said, "have ruled that a judge cannot take certain actions, such as threaten a defendant with a more severe sentence if the defendant refuses to plead guilty, make a tacit offer of leniency, even if that offer is accompanied by caveats, compare the potential consequences of pleading guilty versus going to trial, or become a legal advisor to the defendant, [*United States v. Cano-Varela*, 497 F.3d 1122, 1134 (10th Cir. 2007)]; *see also United States v. Bradley*, 455 F.3d 453, 462 (4th Cir. 2006) (finding error where the trial court, among other comments, advised the defendants they might 'be better off pleading to the indictment')." *Crumb*, 230 P.3d at 731 (selective citations omitted); *see id.* ("The judge should not through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered. The rationale supporting this rule is that it protects the constitutional presumption of innocence, and avoids placing judicial pressure on the defendant to compromise his or her rights.") (internal quotations, citation and emphasis omitted).

The Colorado General Assembly and the supreme court have codified the proscription. Section 16-7-302(1), C.R.S. (2014), provides, "The trial judge shall not participate in plea discussions." Colorado Rule of Criminal Procedure 11(f)(4) provides, "The trial judge shall not participate in plea discussions." A claim that the trial judge violated section 16-7-302(1) and Crim. P. 11(f)(4) is properly raised in a post-conviction motion under C.M.C.R. 235(c). *See People v. Kirk*, 221 P.3d 63, 64-65 (Colo. App. 2009).

Separate and apart from section 16-7-302's and Crim. P. 11's proscriptions against judicial participation in plea discussions, "[d]ue process of law requires that in order to provide the basis for a judgment of conviction, a guilty plea must be made voluntarily." *Lacy*, 775 P.2d at 4. To that end C.M.C.R. 211(b)(2) requires courts to reject a plea of guilty unless that court has determined "[t]hat the plea is voluntary on defendant's part and is not the result of undue influence or coercion on the part of anyone." *Accord* Crim. P. 11(b)(2). When a judge offers leniency in sentencing if the defendant pleads guilty, that judge is unconstitutionally exercising "undue influence" on and coercing the defendant to plead guilty rather than go to trial. *See Crumb*, 230 P.3d at 731; *see also United States v. Baker*, 489 F.3d 366, 376 (D.C. Cir. 2007) (noting that Rule 11's "strict prohibition exists because judicial participation in plea discussions is inherently coercive").

At Mr. Taylor's advisement hearing on the contempt citation, the municipal court engaged in direct plea negotiations with him. After advising Mr. Taylor that "it has been made to appear to the Court that you failed to pay … costs as previously ordered," the court said it would advise him on contempt and "tell you some things you can do .... One of those things *is probably pretty attractive*." EXHIBIT 11, at 2 (emphasis supplied). The court then said:

> *So here's how it works, Mr. Taylor. I give you the chance, if you want to do a little bit of jail, to do a little bit of jail and take care of the fine. So if you admit you didn't pay your fine, yet had the ability to pay the fine, I would give you three days in jail.* Or the other thing you can do is have a hearing on this issue, and the hearing would be set out about 60 days, and between

> then and now, I'd put you on a payment plan. But *I will tell you, a lot of guys, when it's only three days, a lot of guys are just doin' it.* And I'd give you credit from yesterday. So you got two more days to do ….

EXHIBIT 11, at 3 (emphasis supplied).

The "disparity in power between the defendant and the judge," *Crumb,* 230 P.3d at 731, was particularly stark in the case at bar: Mr. Taylor, who had disclosed to the court his "severe schizophrenia" and impoverishment, already had been arrested and was incarcerated before the hearing and appeared *pro se* before the court. It was clear he could not post a bond to be released from jail while awaiting a contempt trial. The court's suggestion to and inducement of Mr. Taylor to plead guilty to criminal contempt deprived him of fundamental fairness, violated the supreme court's admonition and section 16-7-302's and Crim. P. 11(f)(4)'s prohibition against a trial judge's participation in plea discussions. The court suggested that if Mr. Taylor pleaded guilty, it would impose a lenient sentence, three days in jail versus the maximum fifteen days in jail. It suggested that if Mr. Taylor insisted on a trial, he would have to wait 60 days without stating whether he would remain in jail until the trial. In fact, the court 90 days earlier had told Mr. Taylor that "you're not gonna be released [on a PR] bond again in the future." EXHIBIT 8, at 4. And the court suggested that it was common for contempt defendants to "just" plead guilty and serve the time because "it's only three days." But for the court's suggestion and inducement, Mr. Taylor would not have pleaded guilty to contempt. *See* EXHIBIT 1 ¶¶ 6-8.

Without discussing what *constitutes* plea discussions, the municipal court concluded it did not engage in plea discussions with Mr. Taylor: "In this case, there were no negotiations, concessions, or substitutions [sic]." EXHIBIT 13, at 3. We respectfully submit the court erred. There is no other reasonable way to characterize the colloquy between the municipal court and Mr. Taylor other than that it was a plea negotiation. The court said it would offer to him a "probably pretty attractive" resolution. EXHIBIT 11, at 2. It said if Mr. Taylor would "admit" nonpayment of the "fine" and "yet had the ability to pay the fine," it would impose "a little bit of jail" and he would be done with the criminal case. This was an improper communication from a judicial officer that "a plea agreement should be accepted or that a guilty plea should be entered," *Crumb*, 230 P.3d at 731. It violated Mr. Taylor's right to due process.

Conclusion

The court should reverse the judgment of the municipal court, and vacate Mr. Taylor's conviction for contempt.

Oral Argument

We respectfully submit that oral argument would aid the Court's decision in this appeal. Accordingly, we request oral argument.

April 27, 2016.

Respectfully submitted,

s/ Ty Gee
Ty Gee, #19772
HADDON MORGAN AND FOREMAN, P.C.
150 E. 10th Avenue
Denver, CO 80203
Tel 303.831.7364
tgee@hmflaw.com
In cooperation with the American Civil Liberties Union Foundation of Colorado

Mark Silverstein
Rebecca T. Wallace
AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF COLORADO
303 East Seventeenth Avenue, #350
Denver, CO 80203
Tel 303.777.5482
msilverstein@aclu-co.org;
rtwallace@aclu-co.org

Attorneys for Defendant-Appellant Wilburn Taylor

Certificate of Service

I certify that on April 27, 2016, a copy of the foregoing *Mr. Taylor's Opening Brief* was served *via* U.S. mail upon the following:

Donna L. Schneider
Assistant City Attorney
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, CO 80033

Gerald E. Dahl
Joseph Rivera
Murray Dahl Kuechenmeister & Renaud LLP
710 Kipling Street, Suite 300
Lakewood, CO 80215

Hon. Christopher D. Randall
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, CO 80033

s/ Stephanie Klipp

Index of Exhibits

1. Affidavit of W. Taylor (August 21, 2015)
2. Transcript of Arraignment (June 25, 2014)
3. Police report (March 26, 2014)
4. Summons & Complaint (March 26, 2014)
5. Minutes of Wheat Ridge Municipal Court
6. Request for Stay of Execution/Promise to Pay (June 25, 2014)
7. Bench warrant (August 28, 2014)
8. Transcript of Return on Warrant and Bond Hearing (November 24, 2014)
9. Request for Stay of Execution/Promise to Pay (November 24, 2014)
10. Notice of Order to Show Cause re Contempt of Court (February 25, 2015)
11. Transcript of Return on Warrant and Contempt Advisement (February 25, 2015)
12. Jail Mittimus or Release (February 25, 2015)
13. Order Denying C.M.C.R. 235(c) Motion (November 5, 2015)
14. Order re Transcript Amendment (March 14, 2016)