

Dallas Court of Appeals Upholds Right to Jury Trial in Texas Family Courts

The Dallas Court of Appeals yesterday GRANTED two writs of habeas corpus filed on behalf of a Dallas family law client in a contempt/enforcement case on temporary orders. *In re McCray*, ___ S.W.3d ___, 2010 WL 3895689 (Tex. App. – Dallas 2010, no pet. history). The Dallas Family Court judge confined the client for alleged violations of several court orders to pay various amounts of money, even after payment was made. The contempt orders failed to run the punishment on each separate count concurrently to all of the other counts, which violated the sacred right to a jury trial. The client's trial lawyer demanded a jury trial and paid the required fee, but the Judge denied him that right.

The right to a jury trial in the United States remains inviolate. A party is entitled to a jury trial in a criminal or quasi-criminal case (such as a contempt proceeding, even in a civil court) when the *possible* punishment could exceed a total for all counts of 6 months in jail and a total of \$500 fine on all counts. When a case will have a period of confinement of less than 6 months and fine of less than \$500 it is considered a "petty" offense, for which a jury trial is not an option. However, when the punishment exceeds that limited amount, the

allegations are considered "serious" and invokes the right to jury trial.

The Sixth Amendment to the United States Constitution guarantees the right to jury trials for serious offenses, but not petty offenses.¹ This guarantee applies with equal force to state prosecutions for contempt.² Unless the legislature has authorized a serious punishment for criminal contempt, the punishment imposed determines whether the contempt is petty or serious, not the punishment possible.³

An alleged contemnor is subject to serious punishment if the contemnor is (1) incarcerated for a period of more than six months or (2) required to pay a large fine.⁴ Criminal contempt in the district court is subject to punishment by a fine of not more than \$500, or by confinement in the county jail for not more than six months, or both.⁵

When a contemnor has a right to a jury trial, the record must show that

¹ *Muniz v. Hoffman*, 422 U.S. 454, 95 S.Ct. 2178, 45 L.Ed.2d 319 (1975); see also U.S. Const. Amend. VI.

² *Ex parte Werblud*, 536 S.W.2d 542, 546-47 (Tex. 1976); see also *Ex parte Sproull*, 815 S.W.2d 250, 250 (Tex.1991).

³ *In re Brown*, 114 S.W.3d 7, 12 (Tex. App. – Amarillo 2003, orig. proceeding).

⁴ *Ex parte Sproull*, 815 S.W.2d at 250; *Ex parte Griffin*, 682 S.W.2d 261, 262 (Tex. 1984); *Ex parte Werblud*, 536 S.W.2d at 547; *Ex parte Casillas*, 25 S.W.3d 296 (Tex. App. -- San Antonio 2000, orig. proceeding).

⁵ See Tex. Gov't Code §21.002(b).

the court informed her of the right and that she affirmatively waived that right.⁶ The court will not presume that a jury was waived when the record is silent on the matter.⁷ Failure to admonish an alleged contemnor of her right to a jury trial constitutes a violation of the contemnor's due process rights, requiring granting of writ of habeas corpus.⁸

In the *McCray*, case, the trial court denied husband's request for a jury trial based upon Wife's representation that she was seeking no more than six months in jail and no more than a (singular) \$500 fine cumulative for all counts of contempt. After the trial, the trial court held the relator in contempt and imposed what amounts to a cumulative **serious** punishment on Husband – punishment that should have entitled Husband to the jury trial he was denied.

The Dallas Court of Appeals stated, "The orders signed by the trial court did not clearly state that the jail terms imposed by the court were to be served concurrently. Accordingly, relator was sentenced to more than 6 months in jail

⁶ *Ex parte Sproull*, 815 S.W.2d at 250; *Ex parte Casillas*, 25 S.W.3d at 299; *Ex parte Levingston*, 996 S.W.2d 936, 938 (Tex. App. -- Houston [14th Dist.] 1999, orig. proceeding).

⁷ *Sproull*, 815 S.W.2d at 250; *Casillas*, 25 S.W.3d at 299; *Levingston*, 996 S.W.2d at 938.

⁸ See *In re Baker*, 99 S.W.3d 230 (Tex. App. – Eastland 2003, orig. proceeding).

and was entitled to a trial by jury". As a result the Dallas Court of Appeals granted the writs of habeas corpus in favor of relator, released him from confinement (he has been out on bond), and vacated the orders made the basis of the commitment. This decision by the Court of Appeals attaches jeopardy, which is a legal concept that prohibits retrying a person for alleged violations where the court of appeals finds the law was violated in the first trial.