

Criminal Justice

Punished for life: Unexpected repercussions dog defendants who agree to cop even minor pleas

By Kat Aaron, The Investigative Reporting Workshop December 4, 2013 10:49am 4 Comments

A few years back, a young woman named Delisallynn took a walk to the corner store. She was with her sister, who lives in eastern New Orleans, and their route happened to take them past the house where Delisallynn's ex-boyfriend lived. The young man was outside, with a new girlfriend. Delisallynn exchanged words with him, and things got heated. As she tells it, she and her sister continued on with their errand. When they got to the corner store, the new girlfriend was waiting, with the police.

She accused Delisallynn and her sister of slashing the tires on her ex's car, something Delisallynn denies doing. She was arrested on the spot. At the precinct, she was told that the misdemeanor charge, criminal damage to property, carried a prison sentence of up to six months.

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“I had a 3-year-old at the time, and I did not want to go to jail,” Delisallynn said in an interview. She said the prosecutor and public defender told her that if she pleaded guilty she'd avoid that six-month sentence, so she did.

“Me being young, I just pled guilty,” she said, even though she maintains she had not committed the crime. “All I knew was that I had a daughter, and I had a job. I could not do six months in jail.”

What she didn't know, and what she said no one explained to her, was that the misdemeanor conviction would stick with her forever. The public defender assigned to her case didn't mention that in the few minutes they spoke, Delisallynn said — and in any case, the conversation took place after she had accepted the plea deal. Delisallynn asked to be identified only by her first name, a sign of the stigma that can accompany a criminal record.

Public defenders nationwide are often overwhelmed and underfunded, juggling dozens or hundreds of cases. Despite *Gideon v. Wainwright*, the 1963 Supreme Court decision that granted lawyers to defendants who can't afford private counsel, it's not uncommon for criminal defendants to take a plea with minimal input from an attorney. Or none at all.

“Fifty years after *Gideon*, the fact of the matter is that people wind up with convictions all across the country without ever talking to a lawyer,” said Jo-Ann Wallace, president of the National Legal Aid and Defender Association, which advocates for access to justice in the civil and criminal courts.

Lawyers tend to see the criminal and civil courts as two separate entities, but for people caught up in the legal system, the problems often bleed from one arena into the other. Having a bad lawyer or one who is simply overwhelmed can result in a felony conviction rather than a misdemeanor, or a plea deal rather than a trial. Those missed opportunities can have economic and social effects that ripple far beyond a prison sentence.

“We are talking about employment licenses, employment consequences, immigration consequences, housing,” Wallace said. “Life-changing impacts that don't only impact the person, the individual, but families and children.”

An estimated 65 million Americans — more than one in four — have a criminal record, according to a 2011 report by the National Employment Law Project (http://www.nelp.org/page/-/SCLP/2011/65_Million_Need_Not_Apply.pdf?nocdn=1%20p%203). With a criminal record, it can be hard to find a job or an apartment. And if money struggles land someone in civil court, there's no right to a public defender.

AN ECONOMIC DEATH SENTENCE

“There are a lot of people who have done one stupid thing and been caught for it when they are youth,” said Ed Monahan, the chief public defender in Kentucky, “and they have this economic death sentence around their neck.”

The implications of a criminal record vary from state to state, with layers of penalties imposed at the federal and state levels. A criminal record can affect housing, employment and educational opportunities. People convicted of drug crimes or sex offenses can be barred from public housing or access to Section 8 housing vouchers. Private landlords can refuse to rent to people with a criminal record, and employers are under no obligation to hire them. In many states, people with felony convictions have limited access to licenses for everything from hunting to plumbing to selling theater tickets (<http://www.abacollateralconsequences.org/CollateralConsequences/RetrieveValues?id=Michigan>).

In New Orleans, part-time public defenders carry the equivalent of almost 19,000 misdemeanor cases per lawyer, which translates to about seven minutes per case. The nationally recommended standard (http://www.opensocietyfoundations.org/sites/default/files/misdemeanor_20090401.pdf%20%E2%80%93%20p%2021)

is 400 misdemeanors a year per attorney.

“There are so many consequences out there, it’s difficult even for competent counsel to even know and identify what all those consequences are,” said Miriam Aukerman, a lawyer with the ACLU of Michigan who focuses on prisoner re-entry. “It’s this enormous universe.” If a defendant’s counsel is unprepared or overburdened, it becomes almost impossible to accurately assess the client’s choices and their long-term effects.

Overburdened counsel is the national norm among public defender offices. In Kentucky, Monahan puts the average defender caseload at around 500 a year — 30 percent of them felony cases, 70 percent misdemeanors. “That’s just more cases than someone can competently do,” he said. In Miami, Chicago and Atlanta, a defender handles more than 2,000 misdemeanor cases per year, according to a 2009 report by the National Association of Criminal Defense Lawyers.

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In Michigan, where Aukerman works, the public defense system is notorious. The ACLU of Michigan spent five years suing the state, alleging that it was violating the constitutional right to counsel in criminal cases. A scathing 2008 report found that Michigan “fails to provide competent representation to those who cannot afford counsel in its criminal courts,” and that while the quality of counsel varies from county to county, none of the defender systems surveyed (http://www.mynlada.org/michigan/michigan_report.pdf) were “constitutionally adequate.” In July, Gov. Rick Snyder, a Republican, signed a bill that advocates hope will bring about long-sought improvements in public defense.

But for many people in Michigan and beyond, it’s already too late.

“Every day somebody walks in this door and says if I had known what I know now about the consequences of the charge, I would have taken it to trial and tried to prepare a defense,” said Monica Jahner, who works with a re-entry program in Lansing, Mich. “You don’t ever get to go on and be a normal citizen, if you’re convicted of a felony,” she adds.

It’s worth noting that a felony isn’t what most people think it is. Felony charges are not confined to rape, assault or murder cases. Many drug possession charges — even for relatively small amounts for personal use — are felonies. Stealing a purse often results in a felony charge. Graffiti that causes damage in excess of \$1,000 is a felony. (http://www.leg.state.fl.us/statutes/index.cfm?App_mode=Display_Statute&URL=0800-0899/0806/Sections/0806.13.html)

In Michigan, welfare fraud over \$500 is a felony, too (http://www.michigan.gov/dhs/0,4562,7-124-5459_7701_7851-20385--,00.html). Fraud is a crime of intent, explains Lynda Krupp, a lawyer at Detroit’s Legal Aid and Defender Association. In theory, that means the prosecutor has to prove that the person meant to defraud the government. But that requirement is rarely met, she said. While some people are trying to scam the system, Krupp said the vast majority of the fraud cases are accidental. With benefits changing constantly as lives shift, it’s easy to mistakenly cash a check for more than you’re supposed to get.

NEARLY DOOMED BY DATA-ENTRY ERROR

Krupp recently had an elderly client who was working part time — and part-time work, she said, is often where things go awry. The woman had documented all her income and sent in proof, but a worker at the welfare office made a data-entry error, and the woman was accused of defrauding the system. Krupp urged the agency to double-check the woman’s file, where her income was found to have been accurately reported. It was a near-miss.

More often, Krupp sees clients on the other side of the welfare fraud hearing, after they have a felony conviction. She is one of the few public lawyers in Detroit who helps people get their criminal records expunged. It’s a time-consuming, exhausting, intricate process.

People unfamiliar with the process might think someone can handle the case alone, Krupp said, but even the trained attorneys run into problems, sometimes just to schedule an initial hearing. “We just reflect on how there’s no way the client could have done this themselves,” she said. With lawyers, they’re doing fine. Of about 500 cases her project has handled, only three expungement requests have been denied, and those cases are being appealed. “It’s a very small percentage that don’t get them, and I think it’s because they’re standing there with an attorney,” she said.

Krupp has far more cases than she can possibly handle, even with help from volunteer lawyers. Her office’s budget was cut 40 percent in December 2011, and Krupp lost a big chunk of her funding and staff. Because expunging a record is a civil matter, people are not entitled to representation on the public dime.

Nationally, resources for expungement are scarce.

“There’s not a lot of us,” said Sally Friedman, legal director of the Legal Action Center, a nonprofit group that helps New Yorkers who face discrimination because of their criminal records. In New York City, Friedman said, “a handful” of legal services providers offer expungement services — even fewer outside of the city. And the need is intense. “I sit 10 feet from our receptionist, and our phone rings all day,” Friedman said.

In Louisiana, few free attorneys work on the issue, and not many private lawyers either, said Adrienne Wheeler, director and co-founder of the Justice and Accountability Center, which helps Louisianans pursue expungements. When people try to go it alone, she said, they can spend \$350 to \$775 in fees, only to have their petitions refused because of errors.

Corey Yates tried to navigate the system on his own, but, he said, “I didn’t know the first things to do, or any order of the process.” Yates had pleaded guilty to two counts of marijuana possession in Baton Rouge in 2005 and 2006. Like Delisalynn, he said his lawyer never mentioned the long-term effects of his plea. Unlike Delisalynn, Yates hired a private attorney. It didn’t help.

“I thought that after I was finished with my restitution and my probation, it was going to be okay. I wouldn’t have any problems gaining employment,” he said. “But unfortunately that wasn’t the case.”

Yates crisscrossed Louisiana seeking work and traveled to Texas and Virginia. Only after learning about the expungement services of the Justice and Accountability Center and getting one conviction cleared from his record was he able to find a job. He is currently seeking expungement for the second conviction.

A TWOFOLD SOLUTION

The enormous demand for expungement highlights the crossover between the crisis in indigent defense and the crisis in civil legal services. People who can't get a job because of a criminal record or can't find affordable housing because landlords won't rent to them may well find themselves in the civil courts, facing eviction, debt collection or wage garnishment.

If they do, they're almost certain to confront that case without the benefit of an attorney. The lender will be represented by counsel, and most landlords will be, too. The collection process can destroy a credit record; the eviction can lead to homelessness. Options constrict further. For those who seek to clear their criminal record, finding a lawyer to help with that is another struggle.

Ultimately, Krupp thinks the solution is twofold: more support for expungement and other civil legal services, and better representation in the initial criminal cases. In many Michigan misdemeanor cases there is functionally no representation at all, according to the 2008 report by the National Legal Aid and Defender Association (http://www.mynlada.org/michigan/michigan_report.pdf%E2%80%93%20p%20ii). While the system may improve under the new state law, it is likely to be years until any changes take effect.

"I think the reality is that if there were more resources on both sides of the aisle, it would help the justice system generally be more effective," said Wallace, of the National Legal Aid and Defender Association. It is often the civil community dealing with the collateral consequences, she said.

Lawyers who understand the relationships between criminal cases and civil matters can make an enormous difference, Monahan said. On many low-level felonies, he explains, a good attorney can get a case diverted out of the courts or changed to a misdemeanor, particularly if the lawyer can make the defendant's story come alive for a judge. Such a reduction in charge can change the economic realities for the rest of the defendant's life, Monahan said. But spending enough time to become familiar with the client and the alleged crime is a luxury few public defenders have.

The difficulty in landing a job after prison is particularly worrisome to Russ Marlan, spokesman for the Michigan Department of Corrections, because finding stable employment is key to avoiding a return to prison. The state tracks parolee employment, and "unfortunately, it's not going in a positive direction," Marlan said. The state has launched a new training initiative for prisoners, providing focused vocational education in partnership with local employers. Louisiana also has vocational programs for prisoners in state prisons and local jails, with new initiatives launched in 2002 (<http://www.doc.la.gov/pages/reentry-initiatives/overview/>) and 2009 (<http://gov.louisiana.gov/index.cfm?articleID=1073&md=newsroom&tmp=detail>). Nonetheless, almost half of all Louisianans leaving prison will return within five years (<http://www.doc.la.gov/pages/reentry-initiatives/overview/>).

"If somebody has committed a criminal offense that's low-level, we can do things to either increase the chances that that person will never be successful in the future, or we can increase the chances that they can turn things around," Monahan said. "That's the choice we have on these low-level offenses."

"Putting a scarlet letter of a felony on their forehead is counterproductive," he said. Right now, we're "putting handcuffs on them and shackling them and then asking them to run like other people."

BANISHED FROM BASKETBALL FUNDRAISER

Monica Jahner knows what that's like. She served 28 years in prison for her role in the attempted murder of her stepmother. Released in 2007, she works for a re-entry program for former inmates in Lansing. Recently, students at Michigan State University organized a fundraiser for Jahner's group, selling food at an MSU basketball game.

Jahner was told she couldn't participate in the fundraiser, she said, because of the felony on her criminal record: "They would not let me volunteer. I can pay and buy tickets at the event, but I can't volunteer. Nobody ever told me that would be a consequence."

In New Orleans, Delisalynn realized the implications of her plea within days. She had interviewed for a position as a 911 dispatcher and was scheduled to take a final test shortly after the confrontation.

"They called me and were like, no, don't come in," she said. "That hurt me to the core. He said to me that I would never get that job."

"In the short term, it was like, pleading is the easy answer," Delisalynn said, looking back at her fateful decision. Since her arrest in 2010, she has had only two jobs, both in low-level customer service. Each time she fills out an application, she is reminded of her decision to take a plea. Some job applications ask whether a candidate has been convicted of a felony; others ask if a person has been convicted by a court, which includes misdemeanors.

"I don't like having to check that box," she said. "It hurts me to check that box."

One 2010 survey found that 90 percent of employers conduct background checks on prospective workers, which reveal both felony and misdemeanor convictions. A measure under consideration in New Orleans would eliminate the box in which applicants for jobs in city government are required to place a check mark indicating whether they have a criminal record (<http://thelensnola.org/2013/11/26/ban-the-box-hailed-as-a-step-in-the-right-direction-if-approved/>).

Delisalynn now lives outside of New Orleans, a move she made in pursuit of work. She is working with the Justice and Accountability Center to get her record expunged. Like Yates, she tried to clear her record on her own, she said, but found the process confusing and intimidating. It's also expensive. Even with a free lawyer from the center, the expungement will cost \$450 in fees, of which she is borrowing half.

"It's still not easy," she said. "But I want better for myself."

Yates has seen the impact an expungement can have, and he wants to help others take the same step. "Everybody makes mistakes," he said. "And if there's somebody else out in the world that was going through what I went through, I would want to be an extra voice for them."

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Marta Jewson / The Lens

Adrienne Wheeler is co-founder of the Justice and Accountability Center, which helps people pursue expungements.

Reporter *Samantha Sumne* contributed to this story.

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