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Justice Department says indigent defendants have right to sue Idaho

Scott Maben/SR scottm@spokesman.com (208) 758-0260

The U.S. Justice Department is supporting the right of criminal defendants to sue Idaho over inadequate public defense in a case that involves two North Idaho prosecutions.

Attorney General Loretta Lynch filed a brief this week supporting the ability of indigent defendants to sue over violations of their constitutional right to legal representation.

“The right to adequate counsel is an essential safeguard of our commitment to equal justice – and it is the responsibility of the states to protect that right, to uphold that principle, and to ensure that every defendant has access to competent counsel,” Lynch said in a news release Thursday.

The “friend of the court” brief was filed Wednesday in a class-action lawsuit by the American Civil Liberties Union on behalf of four Idaho residents, including two in North Idaho, who claim the state has failed to provide effective counsel to defendants who cannot afford to hire lawyers.

They sued Gov. Butch Otter and the seven members of the Idaho Public Defense Commission, alleging that systemic failings in the state’s public defender system violated their Sixth and 14th Amendment rights.

Due to insufficient oversight, training and funding, public defenders across Idaho are unable to meet with clients in a meaningful way, conduct a significant investigation into their cases, file substantive motions, retain experts to challenge the allegations or devote time to prepare for hearings and trials, the plaintiffs allege.

A 4th District Court judge in January dismissed the suit in part because the plaintiffs sued before they were convicted and sentenced, and therefore could not show how they had been injured by ineffective counsel. The plaintiffs appealed to the Idaho Supreme Court.

In its brief, the Justice Department said sufficient case law exists to allow indigent defendants to mount such a challenge before they are convicted. The plaintiffs are not alleging their lawyers were incompetent, but that the state’s system fails to provide adequate legal representation to defendants who cannot afford it, the brief stated.

“The district court has deprived indigent defendants in Idaho of this essential tool, well-grounded in the law, for enforcing their constitutional right to counsel,” Lynch’s office argued.

Tracy Tucker was arrested in Bonner County on March 6, 2015, after being charged with attempted strangulation and domestic battery in the presence of a child. Tucker was assigned a public defender who did not attend his initial court appearance, when his bail was set at \$40,000.

Tucker was unable to argue for lower bail, could not afford to post bail and remained in the Bonner County Jail for three months, the suit stated. During that time he met with his attorney just three times for a total of about 20 minutes, he claimed.

While in jail, Tucker attempted, without success, to reach his attorney by phone more than 50 times, according to the suit. He pleaded guilty to attempted strangulation and was sentenced last August to two to four years in prison.

Another plaintiff, Jason Sharp, was arrested for burglary and grand theft in Shoshone County on May 16, 2014. Sharp's public defender also did not attend his initial appearance, and his bail was set at \$50,000.

Sharp remained in the Shoshone County Jail about two weeks, until he convinced a judge his high bail was based on the erroneous belief he was on probation when arrested. His bail was lowered to \$5,000, but he continued to have problems communicating with his attorney on his case, including what evidence the state had.

In a plea agreement last July, he was sentenced to two years of probation.