

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ALBANY

KIMBERLY HURRELL-HARRING, JAMES ADAMS,
JOSEPH BRIGGS, RICKY LEE GLOVER, RICHARD LOVE,
JACQUELINE WINBRONE, LANE LOYZELLE, TOSHA
STEELE, BRUCE WASHINGTON, SHAWN CHASE, JEMAR
JOHNSON, ROBERT TOMBERELLI, CHRISTOPHER YAW,
LUTHER WOODROW OF BOOKER, JR., EDWARD
KAMINSKI, JOY METZLER, VICTOR TURNER, CANDACE
BROOKINS, RANDY HABSHI, and RONALD McINTYRE,
on behalf of themselves and all others similarly situated,

Index No. 8866-07

Plaintiffs,

v.

THE STATE OF NEW YORK,

Defendant.

AFFIDAVIT OF ROBERT TOMBERELLI

Robert Tomberelli, being duly sworn, deposes and says:

1. I am a named plaintiff in the case *Hurrell-Harring v. State of New York*, Index No. 8866-07, pending in the Supreme Court of the State of New York for the County of Albany.
2. I am 50 years old and a resident of Burdett, New York.
3. At the time this case was filed, I had a pending criminal case in Schuyler County Court. I was represented in that case by the Schuyler County Public Defender's Office.
4. On June 15, 2007, I was arrested and charged with driving while under the influence of alcohol, a misdemeanor, along with aggravated unlicensed operation of a motor vehicle in the first degree, a felony, and two traffic tickets, for having no headlights and for parking in an intersection.
5. At my arraignment on June 15, I did not have a lawyer to represent me. I felt neglected and depressed that no one was there to let me know what was going to happen next. The judge released me on my own recognizance and told me to appear in court the following week.

6. I had two lawyers on my case. One represented me in town court and the other represented me in county court. It was confusing to have two lawyers. I did not understand how that worked, who was responsible for what. I felt left out from the decision-making in my case and I do not think my lawyers knew the facts of my case.
7. On June 20, 2007, I met for the first time the lawyer who represented me in town court, for a few minutes in court. All he told me was that I would have to bring my application for the public defender to his boss' office in person. Because I do not have a driver's license and her office is seven miles away from my house, I had to walk to her office to deliver the application.
8. In July, I saw my town court lawyer again in court. We talked only briefly. He told me that I would probably be going to drug treatment court but did not explain to me why or how, or what drug treatment court is. He also said that my case would be postponed until he could talk to the district attorney.
9. The third time I saw my town court lawyer was again in court, in August. Again, we talked only briefly. He told me that my case would take a while to get to county court, but did not explain why.
10. I never once met with my town court attorney outside of court or spoke with him over the phone.
11. Over the summer, I called my town court lawyer and my county court lawyer a few times and left my phone numbers for them. My town court lawyer never called me back, and my county court lawyer returned only one of my phone calls. This made me feel that I was lower class and that I had no say in my case. I felt I was treated poorly because I was not paying for their services.
12. I met my county court lawyer for the first time at a ten-or-fifteen minute meeting sometime in July. I brought her some documents she needed and she told me that my case would be moved from town court to county court. She did not tell me why or when.
13. At this meeting, my county court lawyer also told me that I would be looking at jail time if I did not agree to participate in drug treatment court. I continued to believe this because she never said anything to me about it again.
14. I never understood why my case had to move from town court to county court. No one explained that to me. This, along with other ways my lawyers treated me, made me feel left out of the decision-making in my case.
15. I do not know what a preliminary hearing is or whether I waived it, because no one ever explained it to me.

16. On July 26, 2007, I went to see my county court lawyer again. During this ten-or-fifteen minute meeting, she called the prosecutor and said that I would waive my right to be indicted by a grand jury, even though we had not discussed it. The fact that she made this decision for me without talking to me also made me feel left out of the decision-making in my case.
17. During the July 26 meeting, my lawyer presented me with a plea deal that the prosecutor had just sent to her. She told me that she had to know immediately whether I wanted to take the deal or not. She told me to sign the letter with the plea immediately, or else I could be looking at prison time. I felt that she was just listening to what the prosecutor was saying and eager to make a deal. I felt that she was rushing to make a deal and that she was treating me as though she had better things to do.
18. I felt very pressured to take the deal. Even though I wanted to think about whether I wanted to take the deal or not, I did not feel that I could because I was given only a short amount of time to take the plea or say no to it. I said yes to the deal because I felt that I had to.
19. Before I went to court to enter my guilty plea, I met with somebody who coordinates community service for Schuyler County. This was a complete surprise to me because no one had told me that I would be meeting with this person.
20. In county court on October 4, 2007, I waived my right to an indictment and pled guilty to driving under the influence and aggravated unlicensed operation. My plea deal put me under the control of the county drug treatment court, but I did not know what drug court would involve. When she said goodbye to me that day, my county court lawyer said, "See you in court." The fact that she did not plan to see me before my sentencing bothered me because it meant that she was not even planning to discuss my sentencing with me.
21. In fact, I did not see or talk to my county court lawyer again until my sentencing. The only contacts I had with her were the two brief meetings described above, where I handed over some documents and was pressured to take a plea deal, and two brief encounters in court on October 4 and at my sentencing.
22. Neither of my lawyers told me whether my guilty plea meant that I could go to jail, what being in drug court would involve, or if pleading guilty to a felony could cause other problems for me. Neither of them talked to me about the possibility of going to trial, what my sentence would have been if I had gone to trial, or about negotiating a plea. I do not believe that either of them knew the facts of my case. Even though I wanted to know what my other options were, my lawyers did not explain anything to me.
23. I was sentenced on November 15, 2007 to one-and-a-half years of drug court, five years of probation, and a \$1000 fine, plus surcharges.

24. At the time of my sentencing, no one had told me that there are probation fees of \$10 a month. I still do not know how long I have to pay this fee. It could be for the entire time of my probation, five years, or just the time I am in drug court.
25. The six weeks between my guilty plea and my sentencing were hard for me emotionally because I did not know what to expect. As with my guilty plea, I did not know what my options were for my sentencing, because my lawyer had not talked to me about the possible terms of my sentence.
26. On November 20, 2007, I appeared in drug court for the first time. Instead of my county court lawyer, my town court lawyer was there. I had not seen or spoken to him since my August court date. He told me that he could not stay because he had another appointment. Instead of waiting another week to start drug court after such a long wait already, I decided that I would proceed without him. I felt that he should not have made another appointment for the same time that he had an appointment with me. I thought it was disrespectful of me for him to do that.
27. I had told my town court lawyer about a defense that I thought I had, but I do not think he ever did anything about it because neither he nor the judge ever said anything to me about it again. This made me feel that the law treats people differently based on how much money you have and I think this is very unfair.
28. My town court lawyer does not talk to me and I would rather not talk to him because I think it is a waste of time. He never talked to me about the facts of my case or any of my options. He never asked me what I wanted to do. Instead, he just told me the deal he thought I would get, without explaining it to me or discussing it with me. He did not seem to care what would happen in my case. He seemed interested only in getting a plea deal, which he also did not discuss with or explain to me.
29. I am frustrated because if I had started drug court in the summer, soon after I was charged, I believe I would have had a shorter time to serve because of the way the drug court terms seem to work. Also, I would be several months into my sentence now, instead of just starting it.
30. After I started drug court, I found out that I could not graduate from drug court until my fines were paid. No one had told me this before I agreed to drug court. I feel I should have been warned about this.
31. I joined the lawsuit *Hurrell-Harring v. State of New York* because I feel strongly that I did not get the representation that I deserved and I want to prevent this from happening to other people.

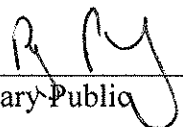
32. I think that the public defender should have to keep track of how much time the office spends with its clients and that the state should look at this information, so that it can see if paying clients get more time than non-paying clients do.

Dated: February 13, 2008
Burdett, New York


Robert Tomberelli

STATE OF NEW YORK)
) ss.
COUNTY OF SCHUYLER)

Sworn to or subscribed before me this 13 day of February, 2008.


Notary Public

PALYN P. HUNG
Notary Public, State of New York
No. 02HU6036170
Commission Expires January 18, 2002 ²⁻²⁰¹⁰