

In April, 2006 the [U.S. 9th District Appeals Court](#) ruled that making it a crime to be homeless by charging them with a crime is in violation of the 8th Amendment. The previous link provides the complete 54 page transcript in PDF. The following are pertinent excerpts of that transcript:

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

EDWARD JONES; PATRICIA VINSON; GEORGE VINSON; THOMAS CASH; STANLEY BARGER; ROBERT LEE PURRIE, <i>Plaintiffs-Appellants,</i> v. CITY OF LOS ANGELES; WILLIAM BRATTON, Chief; CHARLES BECK, Captain, in their official capacity, <i>Defendants-Appellees.</i>
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No. 04-55324
D.C. No.
CV-03-01142-ER
OPINION

Appeal from the United States District Court
for the Central District of California
Edward Rafeedie, District Judge, Presiding

Argued and Submitted
December 6, 2005—Pasadena, California

Filed April 14, 2006

Before: Pamela Ann Rymer and Kim McLane Wardlaw,
Circuit Judges, and Edward C. Reed, Jr.,* District Judge.

Opinion by Judge Wardlaw;
Dissent by Judge Rymer

L.A., Cal., Mun. Code ss 41.18(d) (2005).
A violation of section 41.18(d) is punishable by a
fine of up to \$1000 and/or imprisonment of up to
six months. - *Id.* ss 11.00(m).

The City could not expressly criminalize the status of homelessness by making it a crime to be homeless without violating the Eighth Amendment, nor can it criminalize acts that are an integral aspect of that status. Because there is substantial and undisputed evidence that the number of homeless persons in Los Angeles far exceeds the number of available shelter beds at all times, including on the nights of their arrest or citation, Los Angeles has encroached upon Appellants' Eighth Amendment protections by criminalizing the unavoidable act of sitting, lying or sleeping at night while being involuntarily homeless.

Jones argues that LAMC ss 41.18(d) makes criminal what biology and circumstance make necessary, that is, sitting, lying, and sleeping on the streets. He maintains that the gap between the number of homeless persons in Los Angeles, and the number of available shelter beds, leaves thousands without shelter every night. Jones claims that some 42,000 people are homeless each night in the City of Los Angeles, with approximately 11,000 living in the Skid Row area. The number of homeless persons exceeds the number of available shelter beds. Of the 11,000 on Skid Row, approximately 7,000 sleep in a single room occupancy facility and 2,000 stay in emergency shelter facilities. - (*See id.*)

- *id.* at 568 n.31
(Fortas, J., dissenting); the Eighth Amendment prohibits the City from punishing involuntary sitting, lying, or sleeping on public sidewalks that is an unavoidable consequence of being human and homeless without shelter in the City of Los Angeles.

[14]We do not suggest that Los Angeles adopt any particular social policy, plan, or law to care for the homeless. See *Johnson v. City of Dallas*, 860 F. Supp. 344, 350-51 (N.D. Tex.1994), rev'd on standing grounds, 61 F.3d 442 (5th Cir. 1995). We do not desire to encroach on the legislative and executive functions reserved to the City Council and the Mayor of Los Angeles. There is obviously a "homeless problem" in the City of Los Angeles, which the City is free to address in any way that it sees fit, consistent with the constitutional principles we have articulated.

That being impossibility, **by criminalizing sitting, lying, and sleeping, the City is in fact criminalizing Appellants' status as homeless individuals. Similarly, applying Robinson and Powell, courts have found statutes criminalizing the status of vagrancy to be unconstitutional.** For example, *Goldman v. Knecht* declared unconstitutional a Colorado statute making it a crime for "[a]ny person able to work and support himself" to "be found loitering or strolling about, frequenting public places,...begging or leading an idle, immoral or profligate course of life, or not having any visible means of support." 295 F. Supp. 897, 899 n.2, 908 (D. Colo. 1969) (three-judge court); see also *Wheeler v. Goodman*, 306 F. Supp. 58, 59 n.1, 62, 66 (W.D.N.C. 1969) (three judge court) (striking down as unconstitutional under *Robinson* a statute making it a crime to, inter alia, be able to work but have no property or "visible and known means" of earning a livelihood), vacated on other grounds, 401 U.S. 987 (1971).

Protection against deprivations of life, liberty and property without due process is, of course, the role of the Fourteenth Amendment, not the Eighth. The majority's analysis of the substantive component of the Eighth Amendment blurs the two. However, the Eighth Amendment does not afford due process protection when a Fourteenth Amendment claim proves unavailing.

The defense encompasses the very difficulties that Jones posits here: sleeping on the streets because alternatives were inadequate and economic forces were primarily to blame for his predicament. *Id.* at 390. Jones argues that he and other homeless people are not willing or able to pursue such a defense because the costs of pleading guilty are so low and the risks and challenges of pleading innocent are substantial.

By our decision, we in no way dictate to the City that it must provide sufficient shelter for the homeless, or allow anyone who wishes to sit, lie, or sleep on the streets of Los Angeles at any time and at any place within the City. All we hold is that, so long as there is a greater number of homeless individuals in Los Angeles than the number of available beds, the City may not enforce section 41.18(d) at all times and places throughout the City against homeless individuals for involuntarily sitting, lying, and sleeping in public.

As the Eighth Amendment does not forbid *arrests*, the injunction sought by Jones extends beyond what would be necessary to provide complete relief even if *convictions* under the ordinance were unconstitutional. An injunction “should be no more burdensome to the defendant than [is] necessary to provide complete relief to the plaintiffs.” *Califano v. Yamasaki*, 442 U.S. 682, 702 (1979). Here, there is no evidence of *Eighth Amendment* harm to any of the six homeless persons who prosecute this action and equitable relief cannot be based on alleged injuries to others. *Hodgers-Durgin v. de La Vina*, 199 F.3d 1037, 1045 (9th Cir. 1999) (en banc). Therefore, the record does not support the relief sought, even under Justice White’s concurrence in *Powell*. Regardless, as a matter of constitutional law, the Eighth Amendment could at most entitle Jones to an injunction forbidding *punishment* of a homeless person under the ordinance when he demonstrates a necessity defense; however, I would decline to accord any such relief as it would entail “intrusive and unworkable” federal oversight of state court proceedings. As the Supreme Court explained in *O’Shea v. Littleton*, 414 U.S. 488 (1974), such an injunction would not “strike down a single state statute, either on its face or as applied[, nor] enjoin any criminal prosecutions that might be brought under a challenged criminal law,” but rather would be “aimed at controlling or preventing the occurrence of specific events that might take place in the course of future state criminal trials.” *Id.* at 500. This would run afoul of *Younger v. Harris*, 401 U.S. 37 (1971), and related cases. So, too, would an injunction requiring state courts to permit and to apply the *Eichorn* defense. **The proper procedure for homeless people to protect their rights would be to plead “not guilty and then to challenge the constitutionality” of their conviction, either through direct appeal or collateral review, in the event their necessity defense was rejected by the court.** *See Kidder*, 869 F.2d at 1333.

COMPLETE COURT TRANSCRIPT ON PDF AVAILABLE AT:

<http://www.ca9.uscourts.gov/datastore/opinions/2006/04/14/0455324.pdf>