SUPREME COURT OF THE UNITED STATES

No. 10–10

MICHAEL D. TURNER, PETITIONER *v.* REBECCA L. ROGERS ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

[June 20, 2011]

JUSTICE BREYER delivered the opinion of the Court.

South Carolina's Family Court enforces its child support orders by threatening with incarceration for civil contempt those who are (1) subject to a child support order, (2) able to comply with that order, but (3) fail to do so. We must decide whether the Fourteenth Amendment's Due Process Clause requires the State to provide counsel (at a civil contempt hearing) to an *indigent* person potentially faced with such incarceration. We conclude that where as here the custodial parent (entitled to receive the support) is unrepresented by counsel, the State need not provide counsel to the noncustodial parent (required to provide the support). But we attach an important caveat, namely, that the State must nonetheless have in place alternative procedures that assure a fundamentally fair determination of the critical incarceration-related question, whether the supporting parent is able to comply with the support order.

I

A

South Carolina family courts enforce their child support

orders in part through civil contempt proceedings. Each month the family court clerk reviews outstanding child support orders, identifies those in which the supporting parent has fallen more than five days behind, and sends that parent an order to "show cause" why he should not be held in contempt. S. C. Rule Family Ct. 24 (2011). The "show cause" order and attached affidavit refer to the relevant child support order, identify the amount of the arrearage, and set a date for a court hearing. At the hearing that parent may demonstrate that he is not in contempt, say, by showing that he is not able to make the required payments. See *Moseley* v. *Mosier*, 279 S. C. 348, 351, 306 S. E. 2d 624, 626 (1983) ("When the parent is *unable* to make the required payments, he is not in contempt"). If he fails to make the required showing, the court may hold him in civil contempt. And it may require that he be imprisoned unless and until he purges himself of contempt by making the required child support payments (but not for more than one year regardless). See S. C. Code Ann. §63–3–620 (Supp. 2010) (imprisonment for up to one year of "adult who wilfully violates" a court order); *Price* v. *Turner*, 387 S. C. 142, 145, 691 S. E. 2d 470, 472 (2010) (civil contempt order must permit purging of contempt through compliance).

B

In June 2003 a South Carolina family court entered an order, which (as amended) required petitioner, Michael Turner, to pay $51.73 per week to respondent, Rebecca Rogers, to help support their child. (Rogers' father, Larry Price, currently has custody of the child and is also a respondent before this Court.) Over the next three years, Turner repeatedly failed to pay the amount due and was held in contempt on five occasions. The first four times he was sentenced to 90 days' imprisonment, but he ultimately paid the amount due (twice without being jailed, twice

after spending two or three days in custody). The fifth time he did not pay but completed a 6-month sentence.

After his release in 2006 Turner remained in arrears. On March 27, 2006, the clerk issued a new "show cause" order. And after an initial postponement due to Turner's failure to appear, Turner's civil contempt hearing took place on January 3, 2008. Turner and Rogers were present, each without representation by counsel.

The hearing was brief. The court clerk said that Turner was $5,728.76 behind in his payments. The judge asked Turner if there was "anything you want to say." Turner replied,

> "Well, when I first got out, I got back on dope. I done meth, smoked pot and everything else, and I paid a little bit here and there. And, when I finally did get to working, I broke my back, back in September. I filed for disability and SSI. And, I didn't get straightened out off the dope until I broke my back and laid up for two months. And, now I'm off the dope and everything. I just hope that you give me a chance. I don't know what else to say. I mean, I know I done wrong, and I should have been paying and helping her, and I'm sorry. I mean, dope had a hold to me." App. to Pet. for Cert. 17a.

The judge then said, "[o]kay," and asked Rogers if she had anything to say. *Ibid.* After a brief discussion of federal benefits, the judge stated,

> "If there's nothing else, this will be the Order of the Court. I find the Defendant in willful contempt. I'm [going to] sentence him to twelve months in the Oconee County Detention Center. He may purge himself of the contempt and avoid the sentence by having a zero balance on or before his release. I've also placed a lien on any SSI or other benefits." *Id.*, at 18a.

The judge added that Turner would not receive good-time or work credits, but "[i]f you've got a job, I'll make you eligible for work release." *Ibid.* When Turner asked why he could not receive good-time or work credits, the judge said, "[b]ecause that's my ruling." *Ibid.*

The court made no express finding concerning Turner's ability to pay his arrearage (though Turner's wife had voluntarily submitted a copy of Turner's application for disability benefits, cf. *post*, at 7, n. 3 (THOMAS, J., dissenting); App. 135a–136a). Nor did the judge ask any followup questions or otherwise address the ability-to-pay issue. After the hearing, the judge filled out a prewritten form titled "Order for Contempt of Court," which included the statement:

> "Defendant (was) (was not) gainfully employed and/or (had) (did not have) the ability to make these support payments when due." *Id.*, at 60a, 61a.

But the judge left this statement as is without indicating whether Turner was able to make support payments.

C

While serving his 12-month sentence, Turner, with the help of *pro bono* counsel, appealed. He claimed that the Federal Constitution entitled him to counsel at his contempt hearing. The South Carolina Supreme Court decided Turner's appeal after he had completed his sentence. And it rejected his "right to counsel" claim. The court pointed out that civil contempt differs significantly from criminal contempt. The former does not require all the "constitutional safeguards" applicable in criminal proceedings. 387 S. C., at 145, 691 S. E. 2d, at 472. And the right to government-paid counsel, the Supreme Court held, was one of the "safeguards" not required. *Ibid.*

Turner sought certiorari. In light of differences among state courts (and some federal courts) on the applicability

of a "right to counsel" in civil contempt proceedings enforcing child support orders, we granted the writ. Compare, *e.g.*, *Pasqua* v. *Council*, 186 N. J. 127, 141–146, 892 A. 2d 663, 671–674 (2006); *Black* v. *Division of Child Support Enforcement*, 686 A. 2d 164, 167–168 (Del. 1996); *Mead* v. *Batchlor*, 435 Mich. 480, 488–505, 460 N. W. 2d 493, 496–504 (1990); *Ridgway* v. *Baker*, 720 F. 2d 1409, 1413–1415 (CA5 1983) (all finding a federal constitutional right to counsel for indigents facing imprisonment in a child support civil contempt proceeding), with *Rodriguez* v. *Eighth Judicial Dist. Ct.*, *County of Clark*, 120 Nev. 798, 808–813, 102 P. 3d 41, 48–51 (2004) (no right to counsel in civil contempt hearing for nonsupport, except in "rarest of cases"); *Andrews* v. *Walton*, 428 So. 2d 663, 666 (Fla. 1983) ("no circumstances in which a parent is entitled to court-appointed counsel in a civil contempt proceeding for failure to pay child support"). Compare also *In re Grand Jury Proceedings*, 468 F. 2d 1368, 1369 (CA9 1972) *(per curiam)* (general right to counsel in civil contempt proceedings), with *Duval* v. *Duval*, 114 N. H. 422, 425–427, 322 A. 2d 1, 3–4 (1974) (no general right, but counsel may be required on case-by-case basis).

II

Respondents argue that this case is moot. See *Massachusetts* v. *Mellon*, 262 U. S. 447, 480 (1923) (Article III judicial power extends only to actual "cases" and "controversies"); *Alvarez* v. *Smith*, 558 U. S. __, __ (2009) (slip op., at 4) ("An actual controversy must be extant at all stages of review" (internal quotation marks omitted)). They point out that Turner completed his 12-month prison sentence in 2009. And they add that there are no "collateral consequences" of that particular contempt determination that might keep the dispute alive. Compare *Sibron* v. *New York*, 392 U. S. 40, 55–56 (1968) (release from prison does not moot a *criminal* case because "collateral consequences"

are presumed to continue), with *Spencer* v. *Kemna*, 523 U. S. 1, 14 (1998) (declining to extend the presumption to parole revocation).

The short, conclusive answer to respondents' mootness claim, however, is that this case is not moot because it falls within a special category of disputes that are "capable of repetition" while "evading review." *Southern Pacific Terminal Co.* v. *ICC*, 219 U. S. 498, 515 (1911). A dispute falls into that category, and a case based on that dispute remains live, if "(1) the challenged action [is] in its duration too short to be fully litigated prior to its cessation or expiration, and (2) there [is] a reasonable expectation that the same complaining party [will] be subjected to the same action again." *Weinstein* v. *Bradford*, 423 U. S. 147, 149 (1975) *(per curiam)*.

Our precedent makes clear that the "challenged action," Turner's imprisonment for up to 12 months, is "in its duration too short to be fully litigated" through the state courts (and arrive here) prior to its "expiration." See, *e.g.*, *First Nat. Bank of Boston* v. *Bellotti*, 435 U. S. 765, 774 (1978) (internal quotation marks omitted) (18-month period too short); *Southern Pacific Terminal Co.*, *supra*, at 514–516 (2-year period too short). At the same time, there is a more than "reasonable" likelihood that Turner will again be "subjected to the same action." As we have pointed out, *supra*, at 2–3, Turner has frequently failed to make his child support payments. He has been the subject of several civil contempt proceedings. He has been imprisoned on several of those occasions. Within months of his release from the imprisonment here at issue he was again the subject of civil contempt proceedings. And he was again imprisoned, this time for six months. As of December 9, 2010, Turner was $13,814.72 in arrears, and another contempt hearing was scheduled for May 4, 2011. App. 104a; Reply Brief for Petitioner 3, n. 1. These facts bring this case squarely within the special category of

cases that are not moot because the underlying dispute is "capable of repetition, yet evading review." See, *e.g.*, *Nebraska Press Assn.* v. *Stuart*, 427 U. S. 539, 546–547 (1976) (internal quotation marks omitted).

Moreover, the underlying facts make this case unlike *DeFunis* v. *Odegaard*, 416 U. S. 312 (1974) *(per curiam)*, and *St. Pierre* v. *United States*, 319 U. S. 41 (1943) *(per curiam)*, two cases that respondents believe require us to find this case moot regardless. *DeFunis* was moot, but that is because the plaintiff himself was unlikely to again suffer the conduct of which he complained (and others likely to suffer from that conduct could bring their own lawsuits). Here petitioner himself *is* likely to suffer future imprisonment.

St. Pierre was moot because the petitioner (a witness held in contempt and sentenced to five months' imprisonment) had failed to "apply to this Court for a stay" of the federal-court order imposing imprisonment. 319 U. S., at 42–43. And, like the witness in *St. Pierre,* Turner did not seek a stay of the contempt order requiring his imprisonment. But this case, unlike *St. Pierre,* arises out of a state-court proceeding. And respondents give us no reason to believe that we would have (or that we could have) granted a timely request for a stay had one been made. Cf. 28 U. S. C. §1257 (granting this Court jurisdiction to review *final* state-court judgments). In *Sibron*, we rejected a similar "mootness" argument for just that reason. 392 U. S., at 53, n. 13. And we find this case similar in this respect to *Sibron,* not to *St. Pierre*.

III

A

We must decide whether the Due Process Clause grants an indigent defendant, such as Turner, a right to state-appointed counsel at a civil contempt proceeding, which may lead to his incarceration. This Court's precedents

provide no definitive answer to that question. This Court has long held that the Sixth Amendment grants an indigent defendant the right to state-appointed counsel in a *criminal* case. *Gideon* v. *Wainwright*, 372 U. S. 335 (1963). And we have held that this same rule applies to *criminal contempt* proceedings (other than summary proceedings). *United States* v. *Dixon*, 509 U. S. 688, 696 (1993); *Cooke* v. *United States*, 267 U. S. 517, 537 (1925).

But the Sixth Amendment does not govern civil cases. Civil contempt differs from criminal contempt in that it seeks only to "coerc[e] the defendant to do" what a court had previously ordered him to do. *Gompers* v. *Bucks Stove & Range Co.*, 221 U. S. 418, 442 (1911). A court may not impose punishment "in a civil contempt proceeding when it is clearly established that the alleged contemnor is unable to comply with the terms of the order." *Hicks* v. *Feiock*, 485 U. S. 624, 638, n. 9 (1988). And once a civil contemnor complies with the underlying order, he is purged of the contempt and is free. *Id.*, at 633 (he "carr[ies] the keys of [his] prison in [his] own pockets" (internal quotation marks omitted)).

Consequently, the Court has made clear (in a case not involving the right to counsel) that, where civil contempt is at issue, the Fourteenth Amendment's Due Process Clause allows a State to provide fewer procedural protections than in a criminal case. *Id.*, at 637–641 (State may place the burden of proving inability to pay on the defendant).

This Court has decided only a handful of cases that more directly concern a right to counsel in civil matters. And the application of those decisions to the present case is not clear. On the one hand, the Court has held that the Fourteenth Amendment requires the State to pay for representation by counsel in a *civil* "juvenile delinquency" proceeding (which could lead to incarceration). *In re Gault*, 387 U. S. 1, 35–42 (1967). Moreover, in *Vitek* v.

Jones, 445 U. S. 480, 496–497 (1980), a plurality of four Members of this Court would have held that the Fourteenth Amendment requires representation by counsel in a proceeding to transfer a prison inmate to a state hospital for the mentally ill. Further, in *Lassiter* v. *Department of Social Servs. of Durham Cty.*, 452 U. S. 18 (1981), a case that focused upon civil proceedings leading to loss of parental rights, the Court wrote that the

> "pre-eminent generalization that emerges from this Court's precedents on an indigent's right to appointed counsel is that such a right has been recognized to exist only where the litigant may lose his physical liberty if he loses the litigation." *Id.*, at 25.

And the Court then drew from these precedents "the presumption that an indigent litigant has a right to appointed counsel only when, if he loses, he may be deprived of his physical liberty." *Id.*, at 26–27.

On the other hand, the Court has held that a criminal offender facing revocation of probation and imprisonment does *not* ordinarily have a right to counsel at a probation revocation hearing. *Gagnon* v. *Scarpelli*, 411 U. S. 778 (1973); see also *Middendorf* v. *Henry*, 425 U. S. 25 (1976) (no due process right to counsel in summary court-martial proceedings). And, at the same time, *Gault, Vitek,* and *Lassiter* are readily distinguishable. The civil juvenile delinquency proceeding at issue in *Gault* was "little different" from, and "comparable in seriousness" to, a criminal prosecution. 387 U. S., at 28, 36. In *Vitek,* the controlling opinion found *no* right to counsel. 445 U. S., at 499–500 (Powell, J., concurring in part) (assistance of mental health professionals sufficient). And the Court's statements in *Lassiter* constitute part of its rationale for *denying* a right to counsel in that case. We believe those statements are best read as pointing out that the Court previously had found a right to counsel "*only*" in cases

involving incarceration, not that a right to counsel exists in *all* such cases (a position that would have been difficult to reconcile with *Gagnon*).

B

Civil contempt proceedings in child support cases constitute one part of a highly complex system designed to assure a noncustodial parent's regular payment of funds typically necessary for the support of his children. Often the family receives welfare support from a state-administered federal program, and the State then seeks reimbursement from the noncustodial parent. See 42 U. S. C. §§608(a)(3) (2006 ed., Supp. III), 656(a)(1) (2006 ed.); S. C. Code Ann. §§43–5–65(a)(1), (2) (2010 Cum. Supp.). Other times the custodial parent (often the mother, but sometimes the father, a grandparent, or another person with custody) does not receive government benefits and is entitled to receive the support payments herself.

The Federal Government has created an elaborate procedural mechanism designed to help both the government and custodial parents to secure the payments to which they are entitled. See generally *Blessing* v. *Freestone*, 520 U. S. 329, 333 (1997) (describing the "interlocking set of cooperative federal-state welfare programs" as they relate to child support enforcement); 45 CFR pt. 303 (2010) (prescribing standards for state child support agencies). These systems often rely upon wage withholding, expedited procedures for modifying and enforcing child support orders, and automated data processing. 42 U. S. C. §§666(a), (b), 654(24). But sometimes States will use contempt orders to ensure that the custodial parent receives support payments or the government receives reimbursement. Although some experts have criticized this last-mentioned procedure, and the Federal Government believes that "the routine use of contempt for non-

payment of child support is likely to be an ineffective strategy," the Government also tells us that "coercive enforcement remedies, such as contempt, have a role to play." Brief for United States as *Amicus Curiae* 21–22, and n. 8 (citing Dept. of Health and Human Services, National Child Support Enforcement, Strategic Plan: FY 2005–2009, pp. 2, 10). South Carolina, which relies heavily on contempt proceedings, agrees that they are an important tool.

We here consider an indigent's right to paid counsel at such a contempt proceeding. It is a civil proceeding. And we consequently determine the "specific dictates of due process" by examining the "distinct factors" that this Court has previously found useful in deciding what specific safeguards the Constitution's Due Process Clause requires in order to make a civil proceeding fundamentally fair. *Mathews* v. *Eldridge*, 424 U. S. 319, 335 (1976) (considering fairness of an administrative proceeding). As relevant here those factors include (1) the nature of "the private interest that will be affected," (2) the comparative "risk" of an "erroneous deprivation" of that interest with and without "additional or substitute procedural safeguards," and (3) the nature and magnitude of any countervailing interest in not providing "additional or substitute procedural requirement[s]." *Ibid.* See also *Lassiter*, 452 U. S., at 27–31 (applying the *Mathews* framework).

The "private interest that will be affected" argues strongly for the right to counsel that Turner advocates. That interest consists of an indigent defendant's loss of personal liberty through imprisonment. The interest in securing that freedom, the freedom "from bodily restraint," lies "at the core of the liberty protected by the Due Process Clause." *Foucha* v. *Louisiana*, 504 U. S. 71, 80 (1992). And we have made clear that its threatened loss through legal proceedings demands "due process protection." *Addington* v. *Texas*, 441 U. S. 418, 425 (1979).

Given the importance of the interest at stake, it is obviously important to assure accurate decisionmaking in respect to the key "ability to pay" question. Moreover, the fact that ability to comply marks a dividing line between civil and criminal contempt, *Hicks*, 485 U. S., at 635, n. 7, reinforces the need for accuracy. That is because an incorrect decision (wrongly classifying the contempt proceeding as civil) can increase the risk of wrongful incarceration by depriving the defendant of the procedural protections (including counsel) that the Constitution would demand in a criminal proceeding. See, *e.g.*, *Dixon*, 509 U. S., at 696 (proof beyond a reasonable doubt, protection from double jeopardy); *Codispoti* v. *Pennsylvania*, 418 U. S. 506, 512–513, 517 (1974) (jury trial where the result is more than six months' imprisonment). And since 70% of child support arrears nationwide are owed by parents with either no reported income or income of $10,000 per year or less, the issue of ability to pay may arise fairly often. See E. Sorensen, L. Sousa, & S. Schaner, Assessing Child Support Arrears in Nine Large States and the Nation 22 (2007) (prepared by The Urban Institute), online at http://aspe.hhs.gov/hsp/07/assessing-CS-debt/report.pdf (as visited June 16, 2011, and available in Clerk of Court's case file); *id.*, at 23 ("research suggests that many obligors who do not have reported quarterly wages have relatively limited resources"); Patterson, Civil Contempt and the Indigent Child Support Obligor: The Silent Return of Debtor's Prison, 18 Cornell J. L. & Pub. Pol'y 95, 117 (2008). See also, *e.g.*, *McBride* v. *McBride*, 334 N. C. 124, 131, n. 4, 431 S. E. 2d 14, 19, n. 4 (1993) (surveying North Carolina contempt orders and finding that the "failure of trial courts to make a determination of a contemnor's ability to comply is not altogether infrequent").

On the other hand, the Due Process Clause does not always require the provision of counsel in civil proceedings where incarceration is threatened. See *Gagnon*, 411 U. S.

778. And in determining whether the Clause requires a right to counsel here, we must take account of opposing interests, as well as consider the probable value of "additional or substitute procedural safeguards." *Mathews*, *supra*, at 335.

Doing so, we find three related considerations that, when taken together, argue strongly against the Due Process Clause requiring the State to provide indigents with counsel in every proceeding of the kind before us.

First, the critical question likely at issue in these cases concerns, as we have said, the defendant's ability to pay. That question is often closely related to the question of the defendant's indigence. But when the right procedures are in place, indigence can be a question that in many—but not all—cases is sufficiently straightforward to warrant determination *prior* to providing a defendant with counsel, even in a criminal case. Federal law, for example, requires a criminal defendant to provide information showing that he is indigent, and therefore entitled to state-funded counsel, *before* he can receive that assistance. See 18 U. S. C. §3006A(b).

Second, sometimes, as here, the person opposing the defendant at the hearing is not the government represented by counsel but the custodial parent *un*represented by counsel. See Dept. of Health and Human Services, Office of Child Support Enforcement, Understanding Child Support Debt: A Guide to Exploring Child Support Debt in Your State 5, 6 (2004) (51% of nationwide arrears, and 58% in South Carolina, are not owed to the government). The custodial parent, perhaps a woman with custody of one or more children, may be relatively poor, unemployed, and unable to afford counsel. Yet she may have encouraged the court to enforce its order through contempt. Cf. Tr. Contempt Proceedings (Sept. 14, 2005), App. 44a–45a (Rogers asks court, in light of pattern of nonpayment, to confine Turner). She may be able to provide the court

with significant information. Cf. *id.*, at 41a–43a (Rogers describes where Turner lived and worked). And the proceeding is ultimately for her benefit.

A requirement that the State provide counsel to the noncustodial parent in these cases could create an asymmetry of representation that would "alter significantly the nature of the proceeding." *Gagnon*, *supra*, at 787. Doing so could mean a degree of formality or delay that would unduly slow payment to those immediately in need. And, perhaps more important for present purposes, doing so could make the proceedings *less* fair overall, increasing the risk of a decision that would erroneously deprive a family of the support it is entitled to receive. The needs of such families play an important role in our analysis. Cf. *post*, at 10–12 (opinion of THOMAS, J.).

Third, as the Solicitor General points out, there is available a set of "substitute procedural safeguards," *Mathews*, 424 U. S., at 335, which, if employed together, can significantly reduce the risk of an erroneous deprivation of liberty. They can do so, moreover, without incurring some of the drawbacks inherent in recognizing an automatic right to counsel. Those safeguards include (1) notice to the defendant that his "ability to pay" is a critical issue in the contempt proceeding; (2) the use of a form (or the equivalent) to elicit relevant financial information; (3) an opportunity at the hearing for the defendant to respond to statements and questions about his financial status, (*e.g.*, those triggered by his responses on the form); and (4) an express finding by the court that the defendant has the ability to pay. See Tr. of Oral Arg. 26–27; Brief for United States as *Amicus Curiae* 23–25. In presenting these alternatives, the Government draws upon considerable experience in helping to manage statutorily mandated federal-state efforts to enforce child support orders. See *supra*, at 10. It does not claim that they are the only possible alternatives, and this Court's cases suggest, for

example, that sometimes assistance other than purely legal assistance (here, say, that of a neutral social worker) can prove constitutionally sufficient. Cf. *Vitek*, 445 U. S., at 499–500 (Powell, J., concurring in part) (provision of mental health professional). But the Government does claim that these alternatives can assure the "fundamental fairness" of the proceeding even where the State does not pay for counsel for an indigent defendant.

While recognizing the strength of Turner's arguments, we ultimately believe that the three considerations we have just discussed must carry the day. In our view, a categorical right to counsel in proceedings of the kind before us would carry with it disadvantages (in the form of unfairness and delay) that, in terms of ultimate fairness, would deprive it of significant superiority over the alternatives that we have mentioned. We consequently hold that the Due Process Clause does not *automatically* require the provision of counsel at civil contempt proceedings to an indigent individual who is subject to a child support order, even if that individual faces incarceration (for up to a year). In particular, that Clause does not require the provision of counsel where the opposing parent or other custodian (to whom support funds are owed) is not represented by counsel and the State provides alternative procedural safeguards equivalent to those we have mentioned (adequate notice of the importance of ability to pay, fair opportunity to present, and to dispute, relevant information, and court findings).

We do not address civil contempt proceedings where the underlying child support payment is owed to the State, for example, for reimbursement of welfare funds paid to the parent with custody. See *supra*, at 10. Those proceedings more closely resemble debt-collection proceedings. The government is likely to have counsel or some other competent representative. Cf. *Johnson* v. *Zerbst*, 304 U. S. 458, 462–463 (1938) ("[T]he average defendant does not have

the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, *wherein the prosecution is presented by experienced and learned counsel*" (emphasis added)). And this kind of proceeding is not before us. Neither do we address what due process requires in an unusually complex case where a defendant "can fairly be represented only by a trained advocate." *Gagnon*, 411 U. S., at 788; see also Reply Brief for Petitioner 18–20 (not claiming that Turner's case is especially complex).

IV

The record indicates that Turner received neither counsel nor the benefit of alternative procedures like those we have described. He did not receive clear notice that his ability to pay would constitute the critical question in his civil contempt proceeding. No one provided him with a form (or the equivalent) designed to elicit information about his financial circumstances. The court did not find that Turner was able to pay his arrearage, but instead left the relevant "finding" section of the contempt order blank. The court nonetheless found Turner in contempt and ordered him incarcerated. Under these circumstances Turner's incarceration violated the Due Process Clause.

We vacate the judgment of the South Carolina Supreme Court and remand the case for further proceedings not inconsistent with this opinion.

It is so ordered.