

**IN THE SUPREME COURT
FOR THE COMMONWEALTH OF PENNSYLVANIA
MIDDLE DISTRICT**

No. _____, M.D. Misc. Docket 2008

IN RE JESSICA VAN REETH; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON
BEHALF OF THEMSELVES AND
SIMILARLY SITUATED YOUTH

APPLICATION FOR LEAVE TO FILE ORIGINAL PROCESS IN THE SUPREME COURT

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TO THE HONORABLE, THE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT:

Introduction

1. Applicants Jessica Van Reeth and H.T., by their counsel, Juvenile Law Center, hereby requests leave to file original process in this Court, on behalf of themselves and similarly situated youth, to end the practice in Luzerne County of conducting delinquency hearings without counsel for children – or without lawful waivers of counsel.
2. This Application for Leave to File Original Process in this Court is filed pursuant to Pennsylvania Rules of Appellate Procedure 3307. This Court is requested to invoke its original jurisdiction pursuant to the Judicial Code, 42 Pa. C.S. §§ 502 and 721.¹
3. This Court should assume jurisdiction because the constitutionally protected right to counsel applies with special force to children charged with delinquency, who are the least likely to understand courtroom proceedings and the most likely, without the aid of counsel, to make poor decisions that could forever change the course of their lives.
4. This application seeks to restore the constitutional rights of these youth, as well as their rights under the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure.

¹ An Application for Leave to File Original Process in the Supreme Court is required under Pennsylvania Rule of Appellate Procedure 3307. Counsel—Juvenile Law Center—for applicants and similarly situated youth simultaneously file an Application for the Exercise of King’s Bench Power or Extraordinary Relief pursuant to this Court’s powers under the Judicial Code, 42 Pa. C.S. §§ 502 & 726, Section 1 of the Schedule to the Judiciary Article of the Constitution of the Pennsylvania, and Rule 3309 of the Pennsylvania Rules of Appellate Procedure. Applicants herein incorporate and reference sections of that document herein. Counsel file this Application for Leave to File Original Process because we believe certain applicants who are class members—*e.g.*, unrepresented youth who were adjudicated delinquent and are presently in court-ordered residential treatment—benefit from this Court’s exercise of original jurisdiction under 42 Pa. C.S. § 721. In contrast, we believe the named applicants—Jessica Van Reeth and H.T.—benefit from this Court’s jurisdiction under 42 Pa. C.S. § 726.

Applicants Claims Are Settled Matters of Constitutional Law

5. More than forty years ago the United States Supreme Court held in In re Gault, 387 U.S. 1 (1987), that the Due Process Clause of the Fourteenth Amendment guarantees youth charged with delinquency a constitutionally protected right to counsel. The Court held that accused youth facing the prospect of incarceration have the right to counsel. Gault recognized that a system in which children's interests are not protected is a system that violates due process. Attorneys are needed in the juvenile justice system to assist clients to "cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether [the client] . . . has a defense and to prepare and submit." 387 U.S. at 36.
6. Consistent with Gault the Pennsylvania's General Assembly and this Court established that the right to counsel extends to juveniles through all stages of the juvenile delinquency process (*e.g.*, detention, pre-trial motions or hearings, adjudication, disposition, post-disposition, probation, appeal). The General Assembly codified a juvenile's right to counsel in the Juvenile Act. Section 6337 of the Act states "a party is entitled to representation by legal counsel at all stages of any proceedings under [the Juvenile Act]." The judiciary's concern about delinquency hearings proceeding without counsel for the child led this Court to require, effective October 1, 2005, that juvenile courts conduct an extensive colloquy to determine a juvenile's comprehension of the consequences of waiver. Pa.R.J.C.P. 152.

Factual & Legal Background

7. Despite these clear constitutional and statutory mandates, youth subject to the jurisdiction of the Luzerne County Court of Common Pleas–Juvenile Division (Luzerne County Juvenile Court) are routinely and tragically denied counsel. State records, statements from adjudicated youth, and transcripts of court proceedings all confirm that since October 1, 2005 hundreds of youth in Luzerne County have appeared without counsel during the most critical phases of delinquency proceedings as a consequence of unlawful waivers of counsel, resulting in unconstitutional admissions of guilt, delinquency adjudications, and out-of-home placements.
8. Data about Luzerne County reveal fifty percent of juveniles appear without counsel in Luzerne County Juvenile Court (*i.e.*, in 2005, there were 285 instances of youth appearing without counsel out of 569 hearings before a master or judge; and, in 2006, there were 281 instances of unrepresented youth out of 544 dispositions that resulted in hearings before a master or judge) nearly ten times the state average for waiver of counsel (*i.e.*, 5.9 percent). Data from 2005 and 2006 alone show more than 200 children that were unrepresented at juvenile court hearings were adjudicated delinquent and removed from their homes. Nearly sixty percent of delinquency dispositions for youth without counsel resulted in out-of-home placement.
9. Data for 2007 and 2008 is not publicly available, however in 2007 named applicants Van Reeth and H.T. were the subjects of delinquency petitions and separately appeared in the Luzerne County Juvenile Court without a lawyer. In each instance the Luzerne County Juvenile Court held a hearing, accepted the youth's unlawful waiver of counsel and un-counseled admission, and adjudicated each delinquent for misdemeanor offenses.

Applicants Van Reeth and H.T. (both first time offenders) were removed from their families and committed to residential treatment programs for three months.

10. In addition to Van Reeth and H.T., counsel is aware that in 2007 at least three other youth appeared in Luzerne County Juvenile Court without counsel and were adjudicated delinquent based on his/her un-counseled admission and sanctioned by the Juvenile Court. These youth—like named applicants—were unrepresented at fundamental and critical stages of the delinquency process—*i.e.*, adjudication, disposition.

No Adequate Legal Remedy

11. Unless this Court grants jurisdiction, applicants and similarly situated youth have no adequate remedy of law.

12. Hundreds of youth appear in Luzerne County Juvenile Court unaware of the consequences of waiving their constitutionally protected rights, and when adjudicated delinquent they do not understand (and cannot exercise in a timely manner) their appellate rights. No appeal can be filed in the Superior Court of Pennsylvania for named applicants Van Reeth and H.T. because thirty days have elapsed since the Juvenile Court's disposition (sentencing) orders, and the Superior Court is without jurisdiction to hear an appeal where an appellant has not filed a timely notice of appeal. Further, unrepresented youth who were adjudicated delinquent and are presently in court-ordered residential treatment cannot raise these claims through a Post-Conviction Relief Action (PCRA) because PCRA does not apply to juveniles. Matter of J.P., 573 A.2d 1057 (Pa. Super. 1990); 42 Pa.C.S.A. § 6354(a) (An order of delinquency "is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction.");

see also In Interest of DelSignore, 375 A.2d 803, 806 n. 3 (Pa. Super. 1977) (PCRA does not apply to juveniles).

Relief Sought

13. Applicants request that this Court (1) order the Luzerne County Juvenile Court to identify to this Court and to applicants' counsel every instance, since the Rules of Juvenile Court Procedure became effective (Oct. 1, 2005), in which a juvenile was subject to a delinquency hearing before a judge or master without legal representation and either adjudicated delinquent or subjected to court supervision; (2) order the Luzerne County Juvenile Court to vacate the adjudication and disposition orders of all youth adjudicated delinquent and sanctioned without legal representation, and who remain in the custody or supervision of the Juvenile Court; (3) order the Luzerne County Juvenile Court to expunge any and all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and (4) award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.
14. Prompt consideration and disposition of this matter is critical. The facts necessary to decide the matter are undisputed and the law is well-established.
15. Although named applicants are no longer under the custody and supervision of the Luzerne County Juvenile Court they can be harmed by the collateral consequences from delinquency adjudication (e.g., disqualification from public housing, limited employment opportunity, loss of driving privileges, sentencing in future criminal proceedings).
16. Scores of youth still under Juvenile Court supervision will suffer irreparable injuries as a consequence of continued placement in residential treatment.

17. Every day that this unconstitutional denial of counsel is allowed to continue, unknown numbers of youth are at risk of being adjudicated delinquent without the assistance of counsel and removed from their families and communities.
18. The Commonwealth will not be irreparably harmed by the relief sought herein. The Commonwealth cannot suffer harm because the Commonwealth has no cognizable legal interest in supporting proceedings that violate the Constitution, the Juvenile Act, and the Rules of Juvenile Court Procedure. As the United States Supreme Court recognized in Goss v. Lopez, unwarranted violations of constitutional rights promote no interests of the State. 419 U.S. 565, 579 (1975).
19. Relief will benefit not only named applicants and similarly situated youth in Luzerne County but will restore and preserve the integrity of the Commonwealth's juvenile justice system. It is in the public's interest that juveniles are tried in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including the assistance of counsel and admissions of juveniles made voluntarily, knowingly and intelligently.

20. WHEREFORE, applicants request this Court accept the attached Application For Extraordinary Relief, exercise original jurisdiction, and grant applicants the relief requested and other such relief as this Court finds just under the circumstances so that the illegal policies and practices described above may be ended once and for all.

Respectfully submitted,

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