

No. 2003-SA-02658

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI,

Plaintiff-Appellant,

vs.

STATE OF MISSISSIPPI, Haley Barbour,
in his official capacity as GOVERNOR, and James Hood,
in his official capacity as ATTORNEY GENERAL,

Defendants-Appellees.

APPEAL FROM THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL DISTRICT
FOR QUITMAN COUNTY, MISSISSIPPI

BRIEF OF *AMICUS CURIAE*, THE MISSISSIPPI ASSOCIATION OF SUPERVISORS,
IN SUPPORT OF APPELLANT, QUITMAN COUNTY, MISSISSIPPI

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Elizabeth Lambert, Tommie S. Cardin, and members of the law firm of Butler, Snow, O'Mara, Stevens & Cannada, PLLC, Post Office Box 22567, Jackson, Mississippi 39225-2567, attorneys for the Mississippi Association of Supervisors;
2. The Mississippi Association of Supervisors, Mr. Jack Gregory, Executive Director, 793 North President Street, Jackson, Mississippi 39201.

INTRODUCTION

The Mississippi Association of Supervisors, Inc. (“MAS”) submits this *amicus curiae* brief in support of Appellant, Quitman County, Mississippi’s (“Quitman County”) position. MAS is a statewide organization comprised of supervisors elected from all 82 Mississippi counties and maintains an active interest in county governments and the citizens which they govern. In working to foster better government for all Mississippi counties, MAS serves as a liaison between the counties and the State government, particularly the Mississippi Legislature. It is through this role that MAS has a keen appreciation for the issues posed to the Legislature and this Court in ensuring that adequate, effective assistance of counsel as required by the United States and Mississippi constitutions is received by every indigent defendant in criminal proceedings.

MAS is sensitive to the serious financial constraints facing our State and appreciates the efforts made by the State’s legislative and executive branches to limit financial burdens placed upon county governments. MAS is aware that a solution to such a difficult issue is not arrived at easily but only after careful consideration of the parties’ interests, the historical and current facts, and, most importantly, the constitutional requirements with which the State is charged. In submitting this brief, MAS hopes to advance the decision-making process in which this Court is engaged. All 82 county members of MAS will be directly impacted by this Court’s ruling and, therefore, MAS seeks to ensure that this Court is aware of all relevant facts and law.

ARGUMENT

- A. Mississippi counties cannot sustain the terrible financial burden of a constitutionally effective system of indigent defense

It is beyond dispute that indigent defendants in criminal actions are guaranteed the fundamental right to effective assistance of counsel under both the United States and Mississippi

constitutions. 6th Amend., U.S. Const; Art. 3, § 26, Miss. Const.;¹ Triplett v. State, 666 So. 2d 1356, 1358 (Miss. 1995) (concluding that Mississippi Constitution encompasses all rights to counsel as provided in federal constitution). Furthermore, case law is unequivocal that the obligation to provide effective assistance of counsel in criminal proceedings under the Sixth Amendment is incumbent upon the State by the Fourteenth Amendment.² Gideon v. Wainwright, 372 U.S. 335, 341-42 (1963); Triplett, 666 So. 2d at 1357. The question posed to this Court in the case *sub judice*, however, is whether the State may delegate its constitutional obligation of indigent defense and *funding* of that system of indigent defense to financially strapped counties when the existing county-based system results in an inadequate system of indigent defense.

Mississippi counties are ill-prepared and financially unable to provide adequate funding for an effective system of indigent defense. County treasuries across Mississippi are limited and inadequate to pay for significant expenditures which would be required to provide sufficient resources for adequate defense. Insufficient funding of defense services denies lawyers who represent indigent defendants the time and resources to provide competent representation. Effective assistance of counsel is not necessarily limited to fees incurred by defense counsel but

¹ “In all criminal prosecutions the accused shall have a right to be heard by himself or counsel, or both” Art. 3, § 26, Miss. Const.

² In Gideon, the United States Supreme Court held:

[R]eason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to be an obvious truth. . . . The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours.”

372 U.S. 335, 346 (1963).

also expert witness assistance and investigation costs. Jackson v. State, 732 So. 2d 187, 188-189 (Miss. 1999). The payment of these expenses and fees would only be possible at the significant sacrifice of county resources devoted to other areas for which the county is responsible such as education, public safety, and public works. As this Court is aware, these traditional obligations of the county are currently under tremendous budgetary constraints without the added financial pressure of paying for the legal representation of indigent defendants. The unfunded mandate through which the State is attempting to transfer its constitutional duties would literally break the coffers of many Mississippi counties.

An even more devastating, but perhaps more realistic, result of the unfunded mandate would be that legal counsel provided by the county would not be effective. See Triplett, 666 So. 2d at 1357 (finding that Sixth Amendment right to counsel means “the right to effective assistance of counsel”) (quoting McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970)). If the county is forced to provide legal representation in the face of existing financial trouble, it logically would seek the least expensive counsel and provide the minimal resources while hoping that it is effective under Gideon and its progeny. As a result, the indigent defendants are unable to vindicate their constitutional rights to investigative, expert or other services necessary for an adequate defense. Furthermore, the right to effective assistance of counsel is more vulnerable when the burden of providing it is passed to 82 separate county governments, instead of being funded and administered by the State. See, e.g., State Tax Comm’n v. Fondren, 387 So. 2d 712, 719-20 (Miss. 1980) (requiring State Tax Commission to equalize assessments of ad valorem taxes among counties where practically each county maintained differing standards of assessment). As there would be no uniformity in providing defense counsel to criminally accused indigents, the inherent constitutional tightrope created by the unfunded mandate

virtually ensures that their rights would be violated. The State's attempted delegation of its constitutional obligation would defeat the very purpose which it purports to obtain, i.e., securing the right of effective assistance of counsel to every indigent defendant in criminal proceedings.

B. Mississippi's existing county-based system fails to provide indigent defendants with the tools of an adequate defense

Fundamental fairness entitles indigent defendants to "an adequate opportunity to present their claims fairly within the adversary system." Ross v. Moffitt, 417 U. S. 600, 612 (1974). In implementing this principle, the Supreme Court has focused on identifying the "basic tools of an adequate defense or appeal." Britt v. North Carolina, 404 U. S. 226, 227 (1971). A criminal trial is fundamentally unfair if the State proceeds against an indigent defendant without making certain that he has access to the raw materials integral to the building of an effective defense. Harrison v. State, 635 So.2d 894, 901 (Miss. 1994).

The chronic underfunding of Mississippi's existing county-based system adversely affects the administration of an adequate defense. Indigent defendants are entitled to the basic tools of an adequate defense, other than mere counsel at the county's expense, as a necessary corollary to the right to counsel. The right of counsel means the right to effective assistance of counsel, which allows for the opportunity to investigate, consult with experts or utilize other services necessary in proving the facts of their case where such opportunity is appropriate. In Mississippi, however, these services necessary to an adequate defense are often limited to the span of one day. In many cases, public defenders are often appointed to represent indigent defendants at the arraignment, and then a guilty plea is entered on the same day. This type of practice abuses the basic tools of attorney/client contact, fact investigation and motion practice, which are essential to building an adequate defense in any case. The Supreme Court warned that the "denial of opportunity for appointed counsel to confer, to consult with the accused and to

prepare his defense, could convert the appointment of counsel into a sham and nothing more than a formal compliance with the Constitution's requirement that an accused be given the assistance of counsel." Avery v. Alabama, 308 U. S. 444, 446 (1940). Furthermore, this type of practice prohibits counsel from securing the necessary information on which to construct a defense. To construct an adequate defense, counsel should have the opportunity to interview material witnesses, view the scene of the alleged crime and consult wit experts where such opportunity is appropriate.

The existing county-based system in Mississippi lacks the raw materials essential to the building of an effective defense. As a result, indigent defendants are unable to vindicate their constitutional right of effective assistance of counsel.

CONCLUSION

The State of Mississippi is required to provide effective assistance of counsel to indigent defendants in criminal proceedings and stands in better financial condition to execute its constitutional charge. Counties are not able to bear the financial burden nor to uniformly apply the State's constitutional obligation. Accordingly, the Mississippi Association of Supervisors, Inc. respectfully requests this Court to reverse the decision of the Circuit Court and require implementation of a statewide, state-funded indigent defense system.

RESPECTFULLY SUBMITTED, this the 26th day of July, 2004.

MISSISSIPPI ASSOCIATION OF SUPERVISORS, INC.

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CERTIFICATE OF SERVICE

I, Elizabeth Lambert, one of the attorneys for the Mississippi Association of Supervisors, Inc., do hereby certify that I have this day served a true and correct copy of the above and foregoing document, by mailing same by United States Mail with postage fully prepaid thereon to the following:

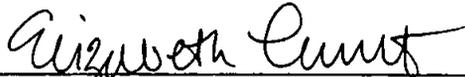
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