

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

No. 81 M.M. 2008

IN RE J.V.R.; H.T, A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF
THEMSELVES AND SIMILARLY SITUATED YOUTH

APPLICATION OF J.V.R. ET AL. FOR LEAVE TO FILE RESPONSE

Laval S. Miller-Wilson, Esq. (ID No. 77585)
Marsha L. Levick, Esq. (ID No. 22535)
Mia Carpiniello, Esq. (ID No. 88560)
Attorneys for Applicants

JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107
(215) 625-0551 (phone)
(215) 625-2808 (facsimile)

APPLICATION FOR LEAVE TO FILE A RESPONSE

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Applicants J.V. and H. T., on behalf of themselves and similarly situated youth, seek leave of this Court to respond to the recent submissions of Respondent Luzerne County Juvenile Court (Juvenile Court) in response to Applicants' Applications for Original Jurisdiction and Extraordinary Relief. On behalf of the Juvenile Court, submissions were filed by both the Luzerne County District Attorney and the Administrative Office of Pennsylvania Courts. For the reasons set forth below, neither submission actually addresses Applicants' claims and thus neither submission provides a basis for this Court to decline jurisdiction.

1. Respondents address only the waiver of counsel allegations, ignoring Applicants' second but equally important claim that every unconstitutional waiver of counsel is followed by an unconstitutional admission (guilty plea) by the juvenile.
2. Respondents declare the matter "moot" because the Juvenile Court has put new procedures in place. Past constitutional violations cannot be remedied by printing new forms for use after Applicants' cases were heard.¹ Indeed, the offer of new procedures is more nostrum than cure; by making this offer, Luzerne County has effectively conceded the merits of Applicants' claims.
3. The District Attorney denies that Applicants' claims rise to the level of "immediate public importance." This response trivializes the systemic breakdown of the rule of law in Luzerne County, whose citizens rightly expect their courts to administer justice and promote fairness. Applicants' cases are not isolated events. The pervasive and persistent

¹ This argument is akin to a defendant asserting in a personal injury case that plaintiff's claims for compensation are moot because the defendant promises not to injure anyone else in the future.

violations of citizens' constitutional rights are indeed a matter of "immediate public any importance." The filings by the Pennsylvania Department of Public Welfare and Pennsylvania Attorney General are more to the point: they affirm the public's powerful interest in how justice is delivered to its young.

4. The District Attorney incredibly asserts that Applicants' claims of more than 200 children appearing without counsel in Luzerne County since October 2005 are unsubstantiated and speculative—yet Applicants obtained those figures from the Court's own data: Luzerne County Juvenile Court annually submits statistics on waiver of counsel to the Pennsylvania Juvenile Court Judges' Commission.
5. The District Attorney's assertion that Applicants need only seek expungement of their records to fix the problem is without merit. Most importantly, expungement cannot be used as a surrogate post-conviction remedy to collaterally attack an adjudication of delinquency. Additionally, expungement is neither automatic nor simple; it is a contested proceeding with no certain outcome.²

WHEREFORE, Applicants request this Court accept the attached Response, exercise jurisdiction and grant Applicants the relief requested and other such relief as this Court finds just under the circumstances so that Luzerne County youth will no longer suffer from the illegal policies and practices of Respondent Juvenile Court.

Respectfully submitted,

Laval S. Miller-Wilson, Esq.
Marsha L. Levick, Esq.
Mia Carpiniello, Esq.
JUVENILE LAW CENTER

² Setting aside the limitations of expungement to fully address the gravity of Applicants' claims here, it is also ironic that the District Attorney has suggested that over 200 youth in Luzerne County who are currently and always have been unrepresented should pursue a remedy that requires the advice and guidance of counsel.

RESPONSE OF APPLICANTS J.V.R, H. T., ON BEHALF OF THEMSELVES AND SIMILARLY SITUATED YOUTH

I. RESPONDENTS IGNORE APPLICANTS' SECOND BUT EQUALLY IMPORTANT CLAIM THAT EVERY UNCONSTITUTIONAL WAIVER OF COUNSEL IS FOLLOWED BY AN UNCONSTITUTIONAL ADMISSION (GUILTY PLEA) BY THE JUVENILE

Applicants' claims fall into two large and related categories. The first relates to the Respondents' failure to provide counsel at adjudicatory hearings. The second relates to the summary quality of scores of admissions (guilty pleas) that are routinely accepted by the Juvenile Court.

As explained in detail in the Application for King's Bench Power or Extraordinary Jurisdiction,³ in addition to denying youth the right to counsel, the Juvenile Court has violated a second well-settled principle of constitutional law—admissions from juveniles must be voluntary, knowing, and intelligent. Henderson v. Morgan, 426 U.S. 637, 644-45 (1976); Boykin v. Alabama, 395 U.S. 238, 242-43 (1969). See also Gault, 387 U.S. 1, 55 (1967) ("If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair") (emphasis added).

Pennsylvania's Rules of Juvenile Court Procedure accord with this constitutional standard. Rule 407(A)(1) states "[b]efore the court can accept an admission" it shall elicit specific information to determine if the child's admission is voluntarily and

³ See Application for King's Bench, Section IV.D, pp. 29-31.

knowingly made.⁴ The Comment to Rule 407 permits juvenile courts to use a written admission form provided the questions are asked “on the record” to authenticate the juvenile’s completion and understanding of the form and the juvenile’s agreement with the statements made.

In the instant matter, there is no evidence that named Applicants received such colloquies prior to their admissions. They received no paperwork reviewing the consequences of their admissions. Even in the minimal exchange that did take place during the adjudicatory hearing, the Juvenile Court did not advise Applicants of their rights and that they would be giving up these rights if they entered an admission. The Juvenile Court failed to apprise Applicants of the possible dispositions that the court could impose if they pled guilty. Nothing in the forms attached to Respondents’ briefs suggests that Applicants were elsewhere informed of these rights, or that they understood these rights. Moreover, Applicants lacked counsel to explain their rights and the possible consequences of admissions.

⁴ In its entirety Rule 407(A)(1) states:

Before the [juvenile] court can accept an admission, the court shall determine that the admission is made voluntarily and knowingly. The court, at a minimum shall ask questions to elicit the following information:

- a. Does the juvenile understand the nature of the allegations to which he or she is admitting?
- b. Is there a factual basis for the admission?
- c. Does the juvenile understand that he or she has the right to hearing before the judge?
- d. Does the juvenile understand that he or she is presumed innocent until found delinquent?
- e. Is the juvenile aware of the dispositions that could be imposed?
- f. Is the juvenile aware that the judge is not bound by the terms of any agreement tendered unless the judge accepts such agreement?
- g. Has the juvenile spoken with his or her attorney or waived the right to counsel in accordance with Rule 152?
- h. Does the juvenile have any questions about admitting to the facts or delinquency based on the allegations?
- i. Has the juvenile had the opportunity to speak with a guardian about his or her decision?

Pa.R.J.C.P. 407(A)(1) (emphasis added)

Finally, Applicants allege that constitutionally required colloquies were not undertaken in hundreds of other cases since October 1, 2005, in which similarly situated juveniles appeared without counsel in Luzerne County Juvenile Court, entered admissions, and were then placed on probation or committed to residential programs.

II. APPLICANTS' CLAIMS ARE NOT MOOT

Respondents' declaration that new procedures put in place since April 2007 make the Applications before this Court moot lacks legal and factual merit. The forms offered by Respondent Juvenile Court do not cure either past or current constitutional violations of the right to counsel.

Respondents have submitted neither evidence nor arguments to rebut Applicants' allegations about the deficient policies and procedures in the courtroom: the Juvenile Court permits waiver of counsel without conducting a colloquy on the record to determine whether the juvenile waived that right knowingly, intelligently and voluntarily. None of the forms attached to the letter brief of Respondent Juvenile Court remedy this contravention of constitutional principles and Rule 152 of Juvenile Court Procedure.⁵ State records, statements from adjudicated youth, and court transcripts suggest that in virtually every instance a juvenile appears for a court proceeding without counsel, Respondent Juvenile Court permits waiver of counsel without conducting a colloquy on the record.

Respondent Juvenile Court also does not contest constitutional violations prior to April

⁵ Moreover, the parent/guardian signature line on several of the forms accompanying Respondent Juvenile Court's response suggest the Juvenile Court still does not appreciate that parents may not waive their children's constitutional right to counsel. The Pennsylvania Rules of Juvenile Court Procedure specifically instruct that even in the presence of a parent or guardian, the child must still make the waiver of her right to counsel on her own. Pa.R.J.C.P. 152. "A guardian may never waive the juvenile's right to counsel." Comment, Pa.R.J.C.P. 152.

2007.⁶ Past constitutional violations cannot be remedied by printing new forms for future use. Respondent Juvenile Court's argument is akin to a defendant asserting in a personal injury case that plaintiff's claims for compensation are moot because the defendant promises not to injure anyone else in the future. Indeed, the offer of new procedures is more nostrum than cure; by making this claim, Luzerne County has effectively conceded the merits of Applicants' claims.

Respondents' assert that the constitutional deficiencies have been remedied since April 2007 also lacks factual merit. Since the filing of the Applications in this matter, Applicants' counsel has received scores of telephone and e-mail inquiries from Luzerne County families whose children appeared in Juvenile Court without counsel and were adjudicated delinquent based on the children's admissions. Now, in addition to named Applicants and the three juveniles identified by initials in the King's Bench Application, counsel is aware of additional youth who appeared in Juvenile Court without counsel since April 2007; each was adjudicated delinquent at hearings nearly identical to the hearings of named Applicants J.V.R. and H.T.:

- On April 29, 2008, M.Y., a 16-year-old who resides with her parents in Luzerne County, appeared before Respondent Juvenile Court for an adjudicatory hearing on a delinquency petition for violations of the Controlled Substance, Drug, Device and Cosmetic Act. M.Y. did not have private counsel, nor was she appointed counsel. At the courthouse, prior to the adjudication hearing, M.Y.'s parents signed a form waiving their daughter's right to counsel. At no point during the adjudication hearing did the Juvenile Court explain the consequences of proceeding without counsel nor did the Juvenile Court conduct a colloquy with M.Y. on the record to explain her rights and make a determination as to the appropriateness of her admission. At the conclusion of the hearing the Juvenile Court adjudicated M.Y. delinquent, and immediately committed her to a residential treatment facility. Attached as Exhibit A is a transcript of the April 28, 2008

⁶ Respondent Juvenile Court alleges that policies procedures were adopted in April 2007 to advise juveniles of their right to counsel; however, because none of the attachments to their letter brief are dated, it is unclear when any of these polices or procedures were enacted.

adjudicatory and disposition hearing.⁷

- P.S., who resides with his mother in Luzerne County, was the subject of a delinquency petition. In September 2007, the Juvenile Court adjudicated P.S. delinquent, removed him from the custody of his mother and committed him to a residential treatment program. At all stages of his delinquency proceedings P.S. appeared without counsel. See Exhibit B, Affidavit of A.S., parent of P.S.
- B.W., who resides with his parents in Luzerne County, was the subject of a delinquency petition. In January 2008, B.W. appeared before the Juvenile Court without counsel. Based on his admission B.W. was removed from the custody of his father and committed by the Juvenile Court to a residential treatment program. At all stages of his delinquency proceedings B.W. appeared without counsel.

The data provided by Luzerne County to the Juvenile Court Judges' Commission suggest the breadth of the Juvenile Court's practice to conduct trials without lawyers. Plenary jurisdiction is necessary because it is the only way to identify and obtain relief for the hundreds of youth adjudicated delinquent and sanctioned in violation of their constitutional and statutory rights. Until this Court enters an appropriate order, or unless families make contact with counsel, there is no way for Applicants' lawyers—who have limited access to juvenile court files⁸—to describe in detail additional specific instances of illegal waiver.

III. THE PERVASIVE AND PERSISTENT VIOLATIONS OF CONSTITUTIONAL RIGHTS, WHICH HAVE PROVEN IMPERVIOUS TO CASE BY CASE REMEDIES, ARE MATTERS OF “IMMEDIATE PUBLIC IMPORTANCE”

Respondent District Attorney denies that Applicants' claims rise to the level of

⁷ On May 1, 2008, new counsel for M.Y. timely filed a notice of appeal in the Superior Court and simultaneously filed motions—application for supersedes and petition for a writ of habeas corpus—in Luzerne County Juvenile Court seeking M.Y.'s immediate release. On May 13, 2008, the Juvenile Court granted M.Y.'s application for supersedes and petition for a writ of habeas corpus, and ordered her immediate release from residential placement.

⁸ See Application for King's Bench, Section III.B. pp. 18-19.

“immediate public importance.” This response trivializes the systemic breakdown of the rule of law in Luzerne County, whose citizens rightly expect their courts to administer justice and promote fairness. Instead, citizens are subjected to wholesale violations of constitutional rights.

First, the large numbers alleged by Applicants suggest that the Luzerne County Juvenile Court system has been operating under its own rules, and that the Juvenile Court’s constitutional violations are wide, deep and systematic.

Second, successful case-by-case appeals have failed to change the Juvenile Court’s behavior. For example, six years ago, in a case remarkably similar to the instant matter, a unanimous panel of the Pennsylvania Superior Court vacated Respondent’s delinquency adjudication of a juvenile, A.M., because the Juvenile Court failed to inform A.M. of his right to counsel. *In re A.M.*, 766 A.2d 1263 (Pa. Super. 2001).

Third, individual habeas corpus appeals, such as that brought by Applicant H.T. a year ago, failed to change the Juvenile Court’s behavior.

In the wake of the filing of the Application to this Court, leading Northeast Pennsylvania newspapers have published editorials urging this Court to take jurisdiction. Obviously, editorials do not make a legal argument. However, this Court may take judicial notice of the editorials supporting the legal arguments Applicants have made: it is not only constitutionally required, but it is also in the public interest to try accused youth in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including the assistance of counsel and admissions that are voluntarily, knowingly and intelligently made.⁹

⁹ See Exhibit C containing: Editorial, *Juvenile Jailing Excessive In County*, Wilkes-Barre Citizens Voice, May 17, 2008; Editorial, *Juvenile Reply In Luzerne Case*, Scranton Times Tribune, May 15, 2008; Editorial, *Juvenile Court Judge Facing Serious Questions*, Wilkes-Barre Times Leader, May 11, 2008; Editorial, *Juveniles Denied Attorneys Are Being Unjustly Served*, Wilkes-Barre Times Leader, May 2, 2008.

IV. THE APPLICANT CLASS IS READILY IDENTIFIABLE FROM RESPONDENT'S OWN DATA

Respondent District Attorney incredibly asserts that Applicants' claims of more than 200 children appearing without counsel in Luzerne County since October 2005 is unsubstantiated and speculative—yet Applicants obtained those figures from the Juvenile Court's own data: Luzerne County Juvenile Court annually submits statistics on waiver of counsel to the Pennsylvania Juvenile Court Judges' Commission (JCJC). This data identifies *every* juvenile subject to a delinquency hearing, including the juvenile's name, residence, date of birth, date of arrest, charging information, outcome and attorney representation (*i.e.*, court appointed, public defender, private or waived). See JCJC Affidavit ¶ 3, attached as Exhibit E to the Application for King's Bench.

Respondent District Attorney's suggestion that named Applicants are not representative class members is undeveloped and inattentive to Pennsylvania court decisions favoring class action. Cambanis v. Nationwide Ins. Co., 501 A. 2d 681, 688 (Pa. Super. 1985) (recognizing motions for class actions should be construed liberally); See also Lilian v. Commonwealth, 354 A.2d 250, 253 (Pa. 1976) (“The class action in Pennsylvania is a procedural device designed to promote efficiency and fairness in the handling or large numbers of similar claims.”).¹⁰

This Court should assume plenary jurisdiction to conserve judicial resources and because this issue is likely to recur. See, e.g., Commonwealth v. Morris, 565 Pa. 1, 18-19, 771 A.2d 721, 731 (2001) (assuming jurisdiction under 42 Pa.C.S. § 726 to determine constitutionality of statute regarding stay of execution because issue was likely to recur, the trial court exceeded its bounds of authority in granting the stay, and the Commonwealth demonstrated its rights). The

¹⁰ A formal application to this Court for class certification is premature; however, Applicants meet the criteria set forth in the Pennsylvania Rules of Civil Procedure for class action status.

Court should hear the cases of Applicants and similarly situated youth together. See, e.g., Blackwell v. Commonwealth, State Ethics Comm'n, 524 Pa. 403, 404, 573 A.2d 536, 536 (1990) (assuming plenary jurisdiction and consolidating five cases raising the same issue of the retroactivity of a decision holding part of the Sunset Act unconstitutional); Commonwealth v. Lutz, 508 Pa. 297, 302, 495 A.2d 928, 930 (1985) (assuming plenary jurisdiction in nine Common Pleas Court cases at various procedural postures and consolidating them for determination of whether a criminal defendant may be admitted to program of accelerated rehabilitative disposition over the Commonwealth's objection).

V. EXPUNGEMENT CANNOT BE USED AS A SURROGATE POST-CONVICTION REMEDY TO COLLATERALLY ATTACK AN ADJUDICATION OF DELINQUENCY

Respondent District Attorney's argument—that individual youth can cure unconstitutional adjudications by individually filing petitions for expungement—is without merit. In individual cases, expungement is governed by the Criminal History Record Information Act (CHRIA), 18 Pa.C.S. § 9102 *et seq.* Expungement cannot be used as a surrogate post-conviction remedy to collaterally attack an adjudication of delinquency.

Although Applicants include expungement of their records among the equitable remedies that this Court may order, it is farfetched to argue that individual aggrieved youth use 18 Pa.C.S. § 9123 as a vehicle for collateral attack on unconstitutional adjudications of delinquency.¹¹ Additionally, expungement is neither automatic nor simple; it a contested proceeding with no

¹¹ One can only imagine the Commonwealth's response to a juvenile who seeks to challenge the underlying adjudication on constitutional grounds, well after the time for appeal has lapsed, by filing a petition for expungement. The Commonwealth would argue (correctly) that due process challenges must be made on appeal or through post conviction collateral relief, but cannot be made through CHRIA.

certain outcome.¹² See, e.g., 18 Pa.C.S. § 9123(a)(4) (requiring that in certain instances consent of the Commonwealth is required before the Court can grant an expungement).

CONCLUSION

WHEREFORE, Applicants and similarly situated youth pray that this Court exercise jurisdiction and issue relief that causes right and justice to be done. Because the adjudicatory and disposition proceedings at issue in Luzerne County Juvenile Court have been, and continue to be constitutionally and statutorily infirm, Applicants respectfully request that this Court take jurisdiction of this matter.

Respectfully submitted,

Laval S. Miller-Wilson, Esq.
Marsha L. Levick, Esq.
Mia Carpiniello, Esq.
JUVENILE LAW CENTER

¹² Setting aside the limitations of expungement to fully address the gravity of Applicants' claims here, it is also ironic that the District Attorney has suggested that over 200 youth in Luzerne County who are currently and always have been unrepresented should pursue a remedy that requires the advice and guidance of counsel.

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2008 I served by U.S. Postal Service (first class) this Application for a Response, and attachments thereto, upon the persons indicated below, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

David Donaldson
Administrative Office of Pennsylvania Courts
1515 Market Street, Suite 1414
Philadelphia, PA 1910

Basil G. Russin
Luzerne County Public Defender's Office
20 North Pennsylvania Avenue, Suite 235
Wilkes-Barre, PA 18701

Calvin Koons
Office of the Attorney General
Appellate Litigation
Strawberry Square, 15th Floor
Harrisburg, PA 17120

Jacqueline Musto Carroll
District Attorney of Luzerne County
200 North River Street
Wilkes-Barre, PA 18711

Howard Ulan
Office of General Counsel
Department of Public Welfare
Health & Welfare Bldg., 3rd Floor West
Harrisburg, PA 17120

Robert Listenbee
Juvenile Defender Assoc. of Pennsylvania
1414 Sansom Street
Philadelphia, PA 19107

Laval S. Miller-Wilson, Esq.
JUVENILE LAW CENTER
1315 Walnut Street, Suite 400
Philadelphia, PA 19107