

**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

BRIEF OF THE JUVENILE DEFENDERS ASSOCIATION OF
PENNSYLVANIA, AMICUS CURIAE, IN SUPPORT OF APPLICATIONS TO
FILE ORIGINAL PROCESS FOR AN EXERCISE OF EITHER KING'S
BENCH POWER OR EXTRAORDINARY JURISDICTION

JUVENILE DEFENDERS
ASSOCIATION OF PENNSYLVANIA (JDAP)
1414 Sansom Street
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Barbara Krier, Esq. (ID No. 35608), Treasurer
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INTEREST OF AMICUS

The Juvenile Defenders Association of Pennsylvania (JDAP), a membership organization of attorneys throughout the Commonwealth whose primary responsibility is juvenile delinquency representation, was created for the following purposes:

- to promote quality and ethically mandated representation for all juveniles charged with acts of delinquency in the Commonwealth of Pennsylvania;
- to provide a forum and opportunity to be heard and to organize those persons responsible for the defense of children arrested for delinquent conduct;
- to coordinate all delinquency defense providers in the Commonwealth and to promote legislative, administrative or judicial change in the Commonwealth to enhance the ethical representation of and defense of children charged with delinquent conduct; and
- to provide for the resource and training needs of our membership whenever possible to enhance quality of representation.

JDAP formed to promote fair and effective representation for all youth involved in the juvenile or criminal justice systems in the Commonwealth of Pennsylvania. We believe that in every Pennsylvania judicial district and county:

- All children in the juvenile and criminal justice systems must have ready and timely access to capable, well-resourced, well-trained legal counsel;
- All children are entitled to legal representation that is individualized; developmentally and age appropriate; and free of racial, ethnic, gender, social, and economic bias;
- All children have strengths and the potential to become productive members of society and each has the right to constitutional and statutory protections.

Accordingly, amicus JDAP has a powerful interest in the fair and lawful treatment of those accused of delinquent acts.

ARGUMENT

I. THIS COURT ESTABLISHED RULES OF LAW THAT ACCUSED YOUTH HAVE A RIGHT TO COUNSEL & AGAINST SELF-INCRIMINATION THAT CANNOT BE WAIVED BY ANYONE BUT THE ACCUSED

In the landmark case In re Gault, the United States Supreme Court established a constitutional right to appointed counsel for accused youth, rejecting arguments that probation officers or the juvenile court itself could appropriately represent a child. The Court recognized that a system in which children's interests are not protected by counsel is a system that violates due process. 387 U.S. 1 (1967).

In keeping with these constitutional principles, in 2005 this Court adopted Pennsylvania Rule of Juvenile Court Procedure 152 instructing all juvenile courts throughout the Commonwealth not to permit waiver of the right to counsel unless “1) the waiver is knowingly, intelligently, and voluntarily made; and 2) the court conducts a colloquy with the juvenile on the record.” The Comment to Rule 152 suggests a specific colloquy to make juveniles themselves aware of their rights, rather than parents, counselors or others. The Rules Committee determined:

This rule requires the juvenile to waive the right to counsel. A guardian may not waive the juvenile's right to counsel. To implement this rule, Rule 800 suspends 42 Pa.C.S. § 6337 only to the extent that the right to waiver of counsel belongs to the juvenile and the guardian may not waive the right for the juvenile.

Comment, Pa.R.J.C.P. 152 (emphasis added).

This Court should accept jurisdiction because the Luzerne County Juvenile Court has ignored the above referenced legal principles in hundreds of instances. See data of Pennsylvania Juvenile Court Judges' Commission, attached as Exhibit E to the Application of J.V.R. et. al. Because Pennsylvania has one of the best data collection systems in the country, we are confident, but distressed, that the transcript of applicant H.T.'s juvenile court hearing is a common pattern in Luzerne County.

JDAP is equally distressed by applicants' allegations, also demonstrated in H.T.'s transcript, that the Luzerne County Juvenile Court violated another well-settled legal principle—that admissions of guilt be voluntary, knowing, and intelligent. Here too, this Court adopted a Rule of Juvenile Court Procedure, No. 407, instructing juvenile courts not to permit waiver of the right to counsel absent a colloquy on the record. In H.T.'s case, the Juvenile Court did not advise H.T. of any of the rights she would be giving up if she entered an admission, and failed to apprise her of the possible dispositions that could be imposed.

This Court adopted Rules of Juvenile Court Procedure to “secure uniformity and simplicity in procedure throughout juvenile courts in this Commonwealth.”¹ The rights referenced above are core features of those rules. The conduct of the Luzerne

¹ Explanatory Report of the Juvenile Court Procedural Rules Committee, April 1, 2005, pp. 1-2. available at <http://www.courts.state.pa.us/INDEX/SupCtCmtes/juvct/366juvctfinal.pdf>.

The Supreme Court initiated the Juvenile Court Procedural Rules Project ten years ago to undertake a close analysis of national standards, statutory and case law, and local practice. In 2001, a nine-member advisory Committee to the Court, drawn from members of the bench and bar across Pennsylvania, conducted a formal review of procedural practice in juvenile court and with developing a comprehensive set of statewide rules for the Court's consideration. In 2003, the Committee published its proposed recommendation for public comment. After receiving comment, the Committee met to discuss the comments and issues raised. The Committee then revised its recommendation that it subsequently sent to the Court.

County Juvenile Court is an affront to the integrity of the Commonwealth's justice system. As urged in the submissions of applicants, this Court must exercise jurisdiction to restore the rule of law, especially the Pennsylvania Rules of Juvenile Court Procedure.

II. PERSONS ACCUSED OF CRIME, ESPECIALLY CHILDREN, REQUIRE COUNSEL

Lack of legal counsel is particularly devastating to children who cannot express their own views and may not fully understand the decisions they are making. Children and adolescents are not little adults. Although young people can approach decisions in a manner similar to adults under some circumstances, many decisions that juveniles make involve unfamiliar tasks, choices with uncertain outcomes, and ambiguous circumstances. Young people are liable to overestimate their own understanding of a situation, underestimate the probability of negative outcomes, and make judgments based on incorrect or incomplete information. Although adults are also prone to these misperceptions, juveniles' lack of experience increases their vulnerability.

Further, even juveniles who are represented may have lawyers who are not sufficiently knowledgeable about their developmental and linguistic limitations to communicate effectively with them. Lawyers may actually compromise the client's case by arguing against the child's own wishes or by failing to convey the juvenile's perspective to the court, providing the child with only the illusion of representation.

Legislative trends at the state and federal levels have exacerbated the problems associated with inadequate representation. Since 1995, Pennsylvania has adopted amendments to the state's Juvenile Act, 42 Pa. Cons. Stat. § 6301 et seq. (the Act), which significantly altered the operation and purpose of Pennsylvania's juvenile courts. Juveniles in Pennsylvania's delinquency system are now subject to increasingly harsher penalties at younger and younger ages, and the protections afforded by judicial discretion, procedural requirements and confidentiality have been eroded.

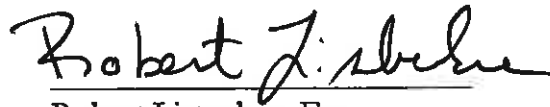
In addition to protecting the liberty interests of their accused clients, well trained and well-resourced defenders also enhance the overall functioning of the juvenile justice system. With the extraordinarily high number of youth in the justice system with mental health or special learning needs, defender assistance in suggesting effective treatment programs and monitoring the adequacy of rehabilitative services is essential. A number of studies of youth in the juvenile justice system have found psychiatric disorders to be three to five times higher than in the general population of young people. Many children and adolescents in the juvenile justice system have fared poorly in school and have significant educational needs.

Defense representation at disposition and post-disposition can ensure that youth fully understand and participate in all phases of the justice system, including rehabilitation. The adjudicated child who feels that he has been dealt with fairly and not merely expeditiously or speedily as possible will be a better prospect for rehabilitation.

CONCLUSION

For the reasons stated above the applications of J.V.R. and similarly situated youth should be granted.

Respectfully submitted,

A handwritten signature in cursive script, reading "Robert Listenbee". The signature is written in black ink and is positioned above a horizontal line.

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Mark Waitlevertch, Esq.

Barbara Krier, Esq.

Gabrielle Hall

JUVENILE DEFENDERS ASSOCIATION
OF PENNSYLVANIA

CERTIFICATE OF SERVICE

I hereby certify that on May 16, 2008 I served by U.S. Postal Service (1st Class), this Application for Leave to File Original Process in the Pennsylvania Supreme Court upon the persons indicated below, which service satisfies the requirements of Rules 121 and 122 of the Pennsylvania Rules of Appellate Procedure:

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