

**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

**Motion of J.V.R., H.T. *et al* for
Reconsideration of Denial of Application for
the Exercise of King's Bench Power or Extraordinary Jurisdiction
and
to Amend Application**

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TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

J.V.R., H.T. *et al.*, on behalf of themselves and all other children who were the subject of delinquency proceedings in Luzerne County from 2003 through May 23, 2008, by and through their undersigned counsel, Juvenile Law Center, ask this Court to reconsider its order of January 8, 2009 denying their Application for extraordinary jurisdiction and to immediately exercise either its King's Bench Power or extraordinary jurisdiction over their claims, as well as allow movants to amend their original application to add additional named parties and broaden the class of youth for whom relief is sought.

Movants' application initially sought to redress the widespread and persistent practice of the Luzerne County Juvenile Court to deny youth their constitutional right to counsel. Today movants seek reconsideration and amendment of their original application as this case is now about the wholesale subversion of the Luzerne County juvenile justice system over a period of many years. The Pennsylvania Juvenile Act has many purposes, one of which is to provide the means through which the law is enforced, and "in which the parties are assured a fair hearing and their constitutional and other legal rights recognized and enforced." 42 Pa.C.S. § 6301. Only by assuming jurisdiction can this Court assure the citizens of Luzerne County and the Commonwealth that justice will be done. Only by assuming jurisdiction can this Court demonstrate to the children of the county and the Commonwealth that it will not ignore values of fairness and justice.

In support of this motion, movants state the following:

1. Movants incorporate by reference herein all the facts, claims and allegations in its original application to this court filed on April 28, 2008. *See* Exhibit D,

Application of J.V.R., H.T. & Similarly Situated Youth for Exercise of King's Bench Power or Extraordinary Jurisdiction.

2. This urgent request for reconsideration is necessitated by the United States Attorney's filing on January 26, 2009 of a bill of information alleging two counts of fraud against Mark A. Ciavarella, Jr., then President Judge in Luzerne County, and former President Judge Michael T. Conahan, also of Luzerne County. *See* Exhibit 1, United States of America v. Michael T. Conahan and Mark A. Ciavarella, Jr., Bill of Information (hereinafter "bill of information"). The bill of information, to which both judges have already agreed to plead guilty and serve more than seven years in federal prison, describes, *inter alia*, a conspiracy among the judges and at least two other unnamed parties to conceal \$2.6 million in payments to the judges from owners of juvenile correctional facilities, in exchange for referring children who appeared before Judge Ciavarella to these juvenile correctional facilities. *See* Exhibit A, bill of information; Exhibit B, United States of America v. Mark A. Ciavarella, Jr., Plea Agreement; and Exhibit C, United States of America vs. Michael T. Conahan, Plea Agreement.
3. As the information further states:

The Defendants Michael T. Conahan and Mark A. Ciavarella, Jr., through their actions, facilitated the construction of juvenile detention facilities and an expansion to one of those facilities by PA Child Care and Western PA Child Care and directed that juvenile offenders be lodged at juvenile detention facilities operated by PA Child Care and Western PA Child Care. Through their actions, the defendants assisted PA Child Care and Western PA Child Care to secure agreements with Luzerne County worth tens of millions of dollars for the placement of juvenile offenders, including an agreement in late 2004 worth approximately \$58,000,000. It was further a part of the scheme and artifice to defraud that, on numerous occasions, accused juvenile offenders were ordered detained by the

defendant Mark A. Ciavarella, Jr. even when Juvenile Probation Officers did not recommend detention. The defendant Mark A. Ciavarella, Jr., and others operating at his behest, also exerted pressure on staff of the Court of Common Pleas to recommend detention of juvenile offenders. On some occasions, probation officers were pressured to change recommendations of release to recommendations of detention.

It was further a part of the scheme and artifice to defraud that the defendants Michael T. Conahan and Mark A. Ciavarella, Jr. violated their duties of independence, impartiality and integrity in the exercise of their discretionary actions on behalf of the Court of Common Pleas for Luzerne County by failing to recuse themselves from acting in matters in which they had a material conflict of interest and in failing to disclose to parties appearing before the court their conflict of interest and their financial relationship with Participant #1, Participant #2, PA Child Care and Western PA Child Care, which were material matters.

See Exhibit 1, bill of information, ¶¶ 35-36.

4. In their previous application to this Court filed on April 28, 2008, *see* No. 81 MM 2008, *In Re: J.V.R.: H.T., a Minor though her Mother, L.T.*, children who had been the subject of delinquency proceedings in Luzerne County since October 1, 2005 asked this Court to exercise either its King's Bench Power or extraordinary jurisdiction to end and redress Judge Ciavarella's practice of conducting delinquency hearings of children without counsel and without lawful waivers of counsel, in violation of their rights under the United States Constitution. *See* Exhibit D, Application of J.V.R., H.T. & Similarly Situated Youth for Exercise of King's Bench Power or Extraordinary Jurisdiction. This Court denied that application on January 8, 2009. *See* Exhibit E, No. 81 MM 2008, *In Re: J.V.R.: H.T., a Minor though her Mother, L.T.*, order dated 1/8/09.

5. The U.S. Attorney's allegations against Judge Ciavarella, detailing his unprecedented abuses of power, only underscore the harm inflicted by his unconstitutional practice of conducting delinquency hearings without counsel. Unquestionably, by eliminating counsel for children from the proceedings, Judge Ciavarella removed advocates who would have been in a position to argue for their clients' innocence, or their right to remain at home with their families or be placed in less restrictive settings.
6. The filing of the information and plea agreements shed new light on the extent of the harms suffered by children in Luzerne County at the direction of Judge Ciavarella. Accordingly, movants now respectfully ask this Court to reconsider its denial of their previous application and exercise jurisdiction not only over the class of youth named in that previous application, but over the cases of all youth who were adjudicated delinquent by Judge Ciavarella during the period 2003 through May 23, 2008. Movants thus seek to enlarge the class to include *all* children whose cases were adjudicated by Judge Ciavarella throughout the entire period during which he is alleged to have received illegal payments from the owners of the juvenile correctional facilities. (Judge Ciavarella ceased presiding over delinquency proceedings in Luzerne County on May 23, 2008.)¹

¹ According to data collected by the Juvenile Court Judges' Commission, from 2003 through 2006 (the most recent year for which data is available), the Luzerne County Juvenile Court handled 5,160 delinquency dispositions; 22% of these dispositions resulted in placement, almost double the Pennsylvania state average. (A *disposition* is defined as a referral disposed of by the juvenile probation department and/or the court. Within a single delinquency referral, a youth may be charged with a number of offenses that may result in multiple petitions. Any one youth may be involved in a number of dispositions within a calendar year. In addition, a youth may be referred on more than one occasion and receive only one disposition.) See Pennsylvania Juvenile Court Judges' Commission, PENNSYLVANIA JUVENILE COURT DISPOSITIONS (2003-2006), available at <http://www.jcjc.state.pa.us/jcjc/cwp/browse.asp?A=3&BMDRN=2000&BCOB=0&C=41835>.

7. Movants request leave to amend their previous application to include the following movants as representatives of this broader class:
- a. ***Lisa Scarbrough*** is currently a 21 year old college student at Penn State. On December 1, 2003, Lisa, then 16, appeared before Judge Ciavarella in Luzerne County Juvenile Court for an adjudication hearing on a delinquency petition listing a single violation of the Pennsylvania Crimes Code, 18 Pa.C.S. § 2706(a)(1), Terroristic Threats. Lisa had no prior contact with law enforcement. The charge against her resulted from an incident at school in which Lisa wrote a prank note with a group of other students during a literary club meeting. Lisa admitted to writing the note and was suspended from school for three days. On the first day of her suspension, two police officers came to her house, handcuffed her, and brought her to the police station. The officers held her at the station for about an hour and subsequently escorted her to PA Child Care. She was unrepresented at the time. Lisa spent Thanksgiving weekend at PA Child Care and was permitted only two four-minute phone calls and one one-hour visit with her family during the six days she was incarcerated. Lisa was brought from PA Child Care to the Luzerne County Courthouse in shackles; her hands and feet remained shackled throughout the hearing. Lisa brought several witnesses to testify on her behalf at the hearing; however, Judge Ciavarella did not allow them to speak. Lisa's principal, however, was permitted to testify on behalf of the state. *See* Exhibit F, Transcript of December 1, 2003 hearing. Judge Ciavarella released Lisa

from PA Child Care and sent her to Camp Adams for an indefinite period. He stated that Lisa would remain at Camp Adams “until she successfully completes the program” and “learns to make right decisions.” Exhibit F, Transcript of December 1, 2003 hearing.

- b. ***Paul Morgan*** is an eighteen-year-old male who resides with his mother in Luzerne County, Pennsylvania. On January 2, 2005, Paul, then 14 years of age, appeared before Judge Ciavarella of the Luzerne County Juvenile Court for an adjudicatory hearing. Paul, along with two other students at Crestwood High School, was alleged to have purchased prescription drugs from another student at school in October 2004. Paul’s mother, Tracy Stair, attempted to secure counsel before the adjudicatory hearing but was told by a private attorney that it would be futile to hire him because Judge Ciavarella does not permit defense attorneys to speak in court. *See* Exhibit G, Affidavit of Tracy Stair. Paul appeared in court unrepresented. The court did not administer a colloquy to Paul explaining the consequences of proceeding without counsel. Judge Ciavarella read the charges and asked how Paul wished to plead. At no point did the Judge verify whether Paul understood the charges against him or the consequences of admission. Without the assistance of counsel, Paul pleaded guilty. Judge Ciavarella adjudicated Paul delinquent and placed him in PA Child Care. In January 2007, Paul appeared at a second adjudicatory hearing on unrelated charges where, again, he was unrepresented by counsel.

c. ***Edward Kenzakoski*** is a 22-year-old male from Luzerne County, Pennsylvania. In September 2003, Edward, then 17 years of age, appeared before Judge Ciavarella of the Luzerne County Juvenile Court for an adjudicatory hearing on a delinquency petition alleging a single violation of the Controlled Substance, Drug, Device and Cosmetic Act, 35 P.S. § 780-113(a)(32). Specifically, Edward was charged with Possession of Paraphernalia, a misdemeanor. Before the filing of the delinquency petition Edward had no prior contact with law enforcement. He was an all-star wrestler going into his senior year of high school. Edward appeared in juvenile court without private counsel, nor was he appointed counsel. Prior to the hearing, Edward was not advised of his right to counsel, nor did the Juvenile Court administer a colloquy with Edward on the record to explain the consequences of proceeding without counsel. During the September 2003 adjudication hearing, and without the assistance of counsel, Edward admitted to the charge. The Juvenile Court did not conduct a colloquy with Edward on the record to explain his rights and make a determination as to the appropriateness of his admission. At the conclusion of the evidentiary portion of the September 2003 hearing, the Juvenile Court adjudicated Edward delinquent and immediately committed him to PA Child Care in Pittston for more than thirty days. Edward had not been in custody prior to the hearing. In October 2003, Edward, then in custody of PA Child Care, appeared before Judge Ciavarella, again without counsel, and was then ordered into placement at

the Northwestern Boot Academy, for 120 days. Edward was released four months later and was placed on probation for several months. One week before his probation would have expired Edward failed to appear at a scheduled delinquency review hearing, and the Juvenile Court issued a bench warrant. In the fall of 2005, Edward then 19 years-old, was involved in a traffic accident. When police at the accident scene learned Edward had an outstanding juvenile bench warrant he was taken into custody and appeared, without counsel, before Judge Ciavarella in Juvenile Court for a violation of probation hearing. (Juvenile court may retain jurisdiction in cases even after a juvenile's 18th birthday.) Edward was immediately committed to PA Child Care in Western Pennsylvania for 120 days. Upon his release, in the winter of 2006, Juvenile Court jurisdiction ended.

8. Unless this Court accepts jurisdiction of this application, hundreds of youth will have no adequate legal remedy. While Judge Ciavarella will be severely sanctioned for his unconscionable violation of his obligations to the children and citizens of Luzerne County, his punishment will do nothing to redress the harm caused to movants and their families by the judge's unconstitutional and illegal actions. Plenary jurisdiction by this Court is essential to restore the rule of law in Luzerne County. The hundreds of youth adjudicated delinquent in violation of their constitutional and statutory rights must be identified and their cases reviewed for the appropriate disposition.

9. No appeal can be filed on individual movants' behalf in the Superior Court of Pennsylvania because thirty days have elapsed since the juvenile court's disposition (sentencing) orders; the Superior Court is without jurisdiction to hear an appeal where an appellant has not filed a timely notice of appeal. Indeed, as set forth in movants' original application to this Court, youth appearing in Luzerne County Juvenile Court are not even aware of their right to appeal delinquency proceedings as they are not advised of this and other legal rights when permitted to waive counsel in violation of the United States Constitution. Additionally, movants cannot raise these claims through a Post-Conviction Relief Action (PCRA) because PCRA does not apply to juveniles under Pennsylvania law. *In the Matter of J.P.*, 573 A.2d 1057, 1062 (Pa. Super. 1990).
10. Past deprivation of liberty is not the only injury that many of these youth have suffered. While juvenile court jurisdiction has now concluded for the majority of applicant class members, the court records of these adjudications continue to burden these children. These records follow an individual through his or her adulthood, and can impair young people's abilities to grow into productive members of society by creating barriers to education or employment. *See* Pennsylvania Juvenile Court Judges' Commission, JUVENILE DELINQUENCY RECORDS: HANDBOOK AND EXPUNGEMENT GUIDE (2008) at 1 ("There is a general misconception that juvenile court records remain confidential, or are completely destroyed, when a juvenile reaches the age of majority. The reality is that records pertaining to a juvenile's involvement with the juvenile justice

system can have longstanding and significant consequences upon the future of that individual.”)

11. Additionally, although the Juvenile Act provides that an order of disposition or adjudication under the Act is not a conviction of a crime, juvenile court dispositions can adversely affect a person in a variety of ways. For example, an increasing number of post-secondary institutions now inquire about an applicant’s prior juvenile court involvement, and certain drug offenses make an individual ineligible for financial aid or public benefits, *id.* at 10. Employers can access juvenile law enforcement records maintained by the Pennsylvania State Police and use them as a basis for denying employment, *id.* at 20; juvenile records may prevent an individual from gaining entrance to the military, *id.* at 9; or obtaining a driver’s license, *id.* at 11; and delinquency adjudications can be used for criminal sentencing purposes, *id.* at 16-17.
12. Most importantly, as this Court has previously held, the tainted delinquency adjudications of movants are *per se* reversible. In *In the Interest of McFall*, 617 A.2d 707 (Pa. 1992), this Court held that once even the appearance of impartiality of the court is called into question – as it has been in the Luzerne County Juvenile Court – defendants have been denied their right to a fair and impartial tribunal; their convictions must be set aside, and they must be granted new trials. *McFall*, 617 A. 2d at 711 (holding that defendants must be granted new trials in their criminal cases when judge failed to reveal circumstances that raised questions

about her impartiality).² In *McFall*, this Court’s ruling that the defendants be granted new trials was based on its finding that the judge’s “agreement . . . presents a situation palpably creating a circumstance where she would have an interest in the outcome of the criminal cases tried before her.” 617 A.2d at 713. Similarly, in the instant case, Judge Ciavarella’s alleged financial dealings with PA Child Care and Western PA Child Care gave him an interest in the juvenile delinquency proceedings over which he was presiding. *See also Connally v. Georgia*, 429 U.S. 245 (1977) (holding that criminal conviction must be vacated where justice of the peace issuing search warrants received a fee for each warrant he issued; justice of the peace was not neutral and detached magistrate because he had pecuniary interest in issuing warrant in defendant’s case). *And see Vasquez v. Hillery*, 474 U.S. 254, 263 (1986) (“When constitutional error calls into question the objectivity of those charged with bringing a defendant to judgment, a reviewing court can neither indulge a presumption of regularity nor evaluate the resulting harm. Accordingly, when the trial judge is discovered to have had some basis for rendering a biased judgment, his actual motivations are hidden from review, and we must presume that the process was impaired.”) As this Court has stated:

[T]he impartiality of the court, a fundamental prerequisite of a fair trial, must be deemed compromised by appearance alone, thus eliminating the need for establishing actual prejudice.

McFall, 617 A.2d at 711,

² Notably, the defendants in *McCall* filed motions for post-verdict relief in their criminal cases, an avenue not open to movants as they are juveniles. *See In the Matter of J.P.*, 573 A.2d 1057, 1062 (Pa. Super. 1990).

13. Juvenile court judges are uniquely positioned to positively influence the lives of the children who come before them. At their best, juvenile court judges can teach youth to respect the rule of law, they can teach them about fairness, and they can teach them about justice. Judge Ciavarella has demonstrated the worst of the judiciary, allowing greed and self-interest to trump his obligation to rule in the best interests of children. Surely self-dealing at the expense of children is the most egregious violation of the public trust. A large shadow has been cast over the reputation of the Luzerne County Juvenile Court by his actions, severely compromising its integrity and impartiality. As evidenced by the extraordinary outcries of shock, disbelief and condemnation, the community's trust in the judiciary has been severely shaken, and youths' respect for the rule of law diminished.³ By assuming jurisdiction, this Court can take the necessary legal steps to remedy the harm caused to countless youth and their families and restore the public's faith in the fairness and integrity of their judicial system. The circumstances underlying this application plainly meet this Court's test for assuming jurisdiction only over matters of great and immediate public importance

³ See, for example, the following articles and editorials, which are attached at Exhibit H: *Judges Sentenced, Kids for Cash*, PHILADELPHIA INQUIRER, January 28, 2009, available at http://www.philly.com/inquirer/opinion/20090128_Editorial_Judges_Sentenced.html; Peter Hall and Leo Strupczewski, *Judges to Serve More Than Seven Years in Prison After Pleading Guilty in Kickbacks Probe*, THE LEGAL INTELLIGENCER, January 28, 2009, available at <http://www.law.com/jsp/nlj/PubArticleNLJ.jsp?id=1202427800493>; John Sullivan, *Luzerne judge broke his vow to reform*, PHILADELPHIA INQUIRER, January 28, 2009, available at http://www.philly.com/inquirer/local/20090128_Luzerne_judge_broke_his_vow_to_reform.html; Dave Janoski and Michael R. Sisak, *Corrupt judges facing prison; Luzerne pair admit to \$2.67M kickback scheme*, SCRANTON TIMES TRIBUNE, January 27, 2009, available at http://www.thetimes-tribune.com/articles/2009/01/27/news/sc_times_trib.20090127.a.pg1.tt27judgesmain_s1.2261119_top2.txt; Terrie Morgan-Besecker, *Feds: Judges used system to enrich selves*, WILKES-BARRE TIMES LEADER, January 27, 2009, available at http://www.timesleader.com/news/Feds_Judges_used_system_to_enrich_selves_01-26-2009.html; *Opinion: Fraud allegations shake public trust*, WILKES-BARRE TIMES LEADER, January 27, 2009, available at http://www.timesleader.com/opinion/Fraud_allegations_shake_public_trust_01-26-2009.html

and such action will reaffirm to the public the Court's commitment to "focus on restoring justice to [those] whose rights to an impartial tribunal have been trampled upon and ... repair any damage to the public's confidence in the courts of this Commonwealth." *McFall*, 617 A2d at 712.

14. Through this Application, the wronged children – and now, young adults -- of Luzerne County respectfully request that this Court assume jurisdiction and take steps to ensure that justice is served. These steps include, *inter alia*, appointing a judge or master to review each juvenile case disposed of in Luzerne County 2003-2008, which will lead in appropriate cases to reversals of adjudication, the expungement of records, or other relief as may be required. Movants ask the Court to exercise jurisdiction and allow them discovery so that they may identify all the youth whose constitutional rights to counsel were violated and all the youth who were referred to and placed at facilities that were paying illegal financial consideration to Judge Ciavarella. Once all the affected youth have been identified and their cases reviewed, this Court can fashion the relief that it deems appropriate.

WHEREFORE, for the foregoing reasons and any other reasons that may appear to this Court, movants respectfully request that this Court assume plenary jurisdiction of this matter and the facts complained of herein and in their previous application for relief, pursuant to its authority under the Judicial Code, 42 Pa. C.S. §§ 502, 721 & 726, Section 1 of the Schedule to the Judicial Article of the Pennsylvania Constitution, and Rules 3307 & 3309 of the Pennsylvania Rules of Appellate Procedure.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2009 I served by U.S. Postal Service (first class) this Motion for Reconsideration of Denial of Application for the Exercise of King's Bench Power or Extraordinary Jurisdiction and to Amend Application, 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:

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