

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

**IN RE: EXPUNGEMENT OF JUVENILE RECORDS AND VACATUR OF LUZERNE
COUNTY JUVENILE COURT CONSENT DECREES OR ADJUDICATIONS FROM
2003-2008**

RELATED TO:

<p>In re: J.V.R.; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF THEMSELVES AND SIMILARLY SITUATED YOUTH</p>	<p>: : : : :</p>	<p>No. 81 MM 2008 (Arthur E. Grim, S.J., Special Master)</p>
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ORDER
May 28, 2009

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

The undersigned Special Master is of the view that the following facts are undisputed, based upon existing public records, court filings, and guilty pleas in open Court:

1. PA Child Care, located in Pittston Township, Luzerne County, opened in approximately February 2003.
2. The Luzerne County Juvenile Court began sending juveniles to PA Child Care shortly after it opened.
3. In or about late 2004, Luzerne County entered into a 20 year lease, at a cost of approximately \$58 million, for all beds at PA Child Care.

4. For all juveniles sent to PA Child Care by the Luzerne County Juvenile Court, Luzerne County sought reimbursement for some of the costs from the Pennsylvania Department of Public Welfare.

5. After the \$58 million lease was entered into in 2004, any beds at PA Child Care which were not being used by juveniles sent by the Luzerne County Juvenile Court were made available to juveniles from other courts and jurisdictions. These other courts and jurisdictions would pay Luzerne County for the beds they used.

6. The entity which owned PA Child Care built Western PA Child Care, located in Butler County, Pennsylvania. Western PA Child Care opened in summer or early fall 2005.

7. Luzerne County entered into an agreement with Western PA Child Care whereby Luzerne County leased 12 beds at Western PA Child Care.

8. The Luzerne County Juvenile Court sent juveniles to Western PA Child Care after it opened.

9. Sometime during the period 2000 through 2006 or 2007, PA Child Care, or its owners or principals, made, or participated in making, hundreds of thousands of dollars of improper and illegal payments to Judge Mark A. Ciavarella, Jr. and Judge Michael T. Conahan.

10. The Special Master believes, but has been unable to verify as of this date, that for each juvenile sent to PA Child Care by the Luzerne County Juvenile Court from early 2003 until the 20 year lease was entered into in late 2004, Luzerne County paid a per-person fee to PA Child Care.

NOW, THEREFORE, BASED UPON THE FOREGOING AND UPON THE IN-CHAMBERS CONFERENCE WITH COUNSEL ON MAY 13, 2009, IT IS HEREBY ORDERED AS FOLLOWS:

1. On or before June 9, 2009, counsel for the Petitioners-Plaintiffs shall file with the Prothonotary of the Pennsylvania Supreme Court in Harrisburg, and shall serve upon the Special Master and all counsel in this case, including counsel for *amicus* parties, a memorandum of law addressing the following issues, said due date having been extended in light of Paragraph 1.2 below:

1.1. Does *In re McFall*, 533 Pa. 24, 617 A.2d 707 (1992), require this Court to vacate all adjudications of delinquency and all consent decrees entered by Judge Mark A. Ciavarella, Jr. between 2003 and May 2008, regardless of whether or not a juvenile was represented by counsel; or does *McFall* only require vacation of a smaller set of delinquency adjudications and consent decrees?

1.2. In their memorandum of law, counsel for the Petitioners-Plaintiffs shall, to the extent the information is reasonably available, inform the Special Master whether any other Philadelphia judge disciplined or removed from the bench as a result of the "Roofers' Union scandal" had all, or a substantial number of, his or her rulings, decisions, verdicts, or sentences vacated pursuant to *McFall* or the concepts explained in *McFall*.

1.3. Does the Double Jeopardy Clause of the Fifth Amendment to the U.S. Constitution, or the Double Jeopardy Clause of the Pennsylvania Constitution (Article I, Section 10), apply to proceedings in juvenile court in Pennsylvania? See *Breed v. Jones*, 421 U.S. 519, 95

S.Ct. 1779 (1975); *Benton v. Maryland*, 395 U.S. 784, 89 S. Ct. 2056 (1969). A brief citation to the applicable caselaw or statute is sufficient for this issue.

1.4. Given the facts of the instant case, and the "judicial overreaching" or bad-faith judicial conduct, component of Double Jeopardy jurisprudence, are juveniles who have their adjudications of delinquency or consent decrees vacated pursuant to *McFall* entitled to dismissal of the charges against them on the theory that new hearings or re-trials would be barred by the Double Jeopardy Clause of the U.S. Constitution or the Double Jeopardy Clause of the Pennsylvania Constitution? See *United States v. Jorn*, 400 U.S. 470, 91 S.Ct. 547 (1971), and *United States v. Dinitz*, 424 U.S. 600, 96 S. Ct. 1075 (1976); modified by *Oregon v. Kennedy*, 456 U.S. 667, 102 S. Ct. 2083 (1982); see also *Commonwealth v. Smith*, 532 Pa. 177, 615 A.2d 321 (1992) (Double Jeopardy Clause of the Pennsylvania Constitution).

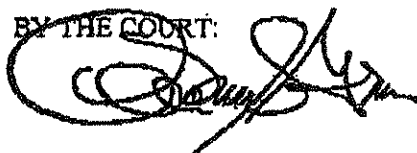
2. On or before July 10, 2009, the District Attorney of Luzerne County and any *amicus* party may file with the Prothonotary of the Pennsylvania Supreme Court in Harrisburg a responsive brief. Any party who files a responsive brief shall serve a copy of same upon the Special Master and all counsel in this case.

3. The Special Master may be served either by attachment to an e-mail, or by traditional means, and shall be served at:

Honorable Arthur Grim
Berks County Courthouse
Senior Judges' Chambers
633 Court Street
Reading, PA 19601-3540
AGrim@countyofberks.com

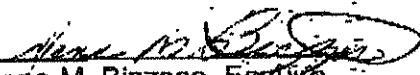
4. Oral argument shall be held on Friday, July 17, 2009, commencing at 10:00 A.M., in the Third Floor Courtroom, Penn Place Building, 20 North Pennsylvania Avenue, Wilkes-Barre, Pennsylvania.

BY THE COURT:



Arthur E. Grim, S.J.
Special Master

TRUE & CORRECT COPY
ATTEST: May 28, 2009



Marie M. Bizzoso, Esquire
Deputy Prothonotary