

IN THE
SUPREME COURT OF INDIANA

COURT OF APPEALS CASE NO. 18A-JV-618

A.M.)	Appeal from the
Appellant (Respondent Below))	Kosciusko Superior Court 1
)	
v.)	Cause No. 43D01-1708-JD-292
)	
STATE OF INDIANA)	The Honorable David C. Cates,
Appellee (Petitioner Below))	Judge

APPELLANT'S REPLY IN SUPPORT OF TRANSFER

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ARGUMENT

I. The Issue of Whether Children Deserve Effective Counsel Warrants This Court's Attention.

A. Transfer is Warranted to Address Published Authority

The State requests that this Court refrain from “offering an advisory opinion” on the question as to whether the *Baum* standard or the *Strickland* standard applies here. [State's Br. in Response, at 6]. However, the Court of Appeals issued a published opinion establishing precedent for trial courts that children do not require *effective* assistance of counsel at any phase during a delinquency proceeding other than the adjudication phase. *A.M. v. State*, 109 N.E.3d 1034, 1042 (Ind. Ct. App. 2018), *reh'g denied*.

It should also be noted that this application of the *Baum* standard came at the request of the State, when it argued that this Court had applied *Strickland* previously in delinquency cases, either without thinking through that application or as a result of not understanding the law.¹

¹ “However, *Strickland* is not the correct standard as this is not a criminal proceeding. Indiana Courts have applied the *Strickland* standard *with no analysis of its applicability*, simply assuming that a juvenile has the same right as an adult criminal defendant.” [Appellee's Br., at 23 (emphasis in original)].

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Despite the fact that the State has now shifted its position on transfer to say that it does not want guidance on this issue, three judges from the Court of Appeals directly requested such guidance. *Id.* at 1041.

B. Transfer is Warranted Because the Decision Below Undermined the Role of Counsel for Children

Moreover, the State's position that this is merely an academic issue not warranting this Court's attention hinges on the assumption that A.M.'s counsel rendered effective assistance under any standard. Not so. A.M.'s counsel abandoned his own client by assuming the role of a prosecutor and contending that A.M. needed to be held accountable by imposition of the most severe punishment, not just for the things he admitted to but also for allegations the State had not even attempted to prove. [R. Vol. 2, pgs. 6-7].

By doing so, A.M.'s counsel both violated the adversarial process and committed a structural error, which excuses A.M. from demonstrating prejudice. *See McCoy v. Louisiana*, 138 S. Ct. 1500, 1511 (2018); *United States v. Cronin*, 466 U.S. 648 (1984).

Structural error affects the framework within which the trial proceeds, as distinguished from lapse or flaw that is simply an error in the trial process itself. An error may be ranked structural if the right at issue is not designed to protect the defendant from

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erroneous conviction but instead protects some other interest, such as a fundamental legal principle that a defendant must be allowed to make his own choices about the proper way to protect his own liberty.

McCoy, 138 S. Ct. at 1511 (cleaned up).

A.M. deserved to have counsel advocating for him throughout the entirety of his court process; he was denied that right and therefore received *per se* ineffective assistance of counsel. To hold otherwise on this case undermines the role of counsel for children.

C. By Denying Children the Right to Advocacy, the Potential for Rehabilitation is Undermined.

The right to advocacy throughout the entirety of the juvenile process is extremely important as well, because allowing such structural errors and deviation from the adversarial process as happened here undermines the overarching goal of juvenile court: rehabilitation. “[T]he appearance as well as the actuality of fairness, impartiality and orderliness – in short the essentials of due process – may be a more impressive and more therapeutic attitude so far as the juvenile is concerned.” *In re Gault*, 387 U.S. 1, 26 (1967). “Unless appropriate due process of law is followed, even the juvenile who has violated the law may not feel that he is being fairly treated and may therefore resist the

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rehabilitative efforts of court personnel." *Id.* If children such as A.M. have no right to advocacy at hearings determining their liberty, then the fairness of the proceeding, both in appearance and actuality, is lacking and we cannot expect juveniles to accept their court-ordered treatment as a product of fairness. And in turn, we cannot expect that they will reform their conduct.

CONCLUSION

A.M. respectfully requests that this Court grant transfer and reverse the modification of his disposition.

Respectfully submitted,



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WORD COUNT CERTIFICATE

I verify that this Reply contains no more than 1,000 words, according to Microsoft Word 2016's word count function.

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing has been delivered through IEFS to the following, this 18th day of December, 2018:

Stephen R. Creason, Office of the Indiana Attorney General

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