

**IN THE PENNSYLVANIA SUPREME COURT
MIDDLE DISTRICT**

NO. 81 M.M. 2008

**IN RE JESSICA VAN REETH; H.T., A MINOR THROUGH HER
MOTHER, L.T.; ON BEHALF OF THEMSEVLES AND SIMILARLY
SITUATED YOUTH**

**APPLICATION FOR AN EXERCISE OF EITHER KING'S BENCH
POWER OR EXTRAORDINARY JURISDICTION FROM
DELINQUENCY DISPOSITIONS ENTERED BY THE LUZERNE
COUNTY COURT OF COMMON PLEAS - JUVENILE DIVISION**

**AMICUS BRIEF OF THE OFFICE OF ATTORNEY GENERAL IN SUPPORT OF THE
APPLICATIONS TO FILE ORIGINAL PROCESS FOR AN EXERCISE OF KINGS
BENCH POWER OR EXTRAORDINARY JURISDICTION**

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INTEREST OF THE AMICUS

The Attorney General is the chief law enforcement officer of the Commonwealth. 71 P.S. §732-206(a). He therefore has a substantial interest in this case, which raises serious questions whether the constitutional and statutory rights of juveniles to counsel in adjudicatory hearings before the Luzerne County Court of Common Pleas are being respected and, concomitantly, whether these proceedings are fair and result in trustworthy determinations of guilt and innocence.

AGRUMENT

THE COURT SHOULD GRANT THE APPLICATIONS FOR ORIGINAL PROCESS AND KING'S BENCH JURISDICTION

The core claim of the applications for leave to file original process and for this Court to Exercise King's Bench on Extraordinary Jurisdiction is that constitutional and statutory rights to counsel in juvenile proceedings in the Court of Common Pleas of Luzerne County are routinely being ignored.

More than forty years ago the United States Supreme Court held that the constitutional guarantees of due process of law require, in juvenile proceedings that may result in loss of liberty, that "[t]he child and his parents must be notified of the child's right to be represented by counsel ... or if they are unable to afford counsel, that counsel will be appointed to represent the child." *In re Gault*, 387 U.S. 1, 41 (1967). Since then, our General Assembly has certified the right in the Juvenile Act:

A Party is entitled to representation at all stages of any proceedings under [the Juvenile Act] and if he is without financial resources or otherwise unable to employ counsel, to have the court provide counsel for him. If a party appears without counsel, the court shall ascertain whether he knows of his right thereto and to be provided with counsel by the court if applicable.

42 Pa. C.S. §6337. In further aid of this right, this Court has adopted a Rule specifying procedures which a juvenile court must follow before it considers the right to counsel waiver. The Rule states that a juvenile "may not waive the right to counsel," unless "the waiver is knowingly, intelligently, and voluntarily made," and "the court conducts a colloquy with the juvenile on the record" Pa. R.J.C.P. 152(A).

The applications state allegations which call into question whether the Court of Common Pleas of Luzerne County is respecting these rights and guarantees or routinely violating them.

The applications point to data from the Pennsylvania Juvenile Court Judges' Commission which show that the percentage of juveniles who were unrepresented by counsel in juvenile proceedings in Luzerne County was nearly ten times the statewide average of 5% in 2005-2006, King's Bench Application, pp. 9-11, and that nearly sixty percent of delinquency dispositions for youth without counsel in Luzerne County resulted in out-of-home placement. *Id.* The data reflect that in 2005-2006 more than 200 children who were unrepresented at juvenile court proceedings were adjudicated delinquent and removed from their homes. *Id.* The applicants say that juveniles did not knowingly waive their right to counsel, as the consequences of waiver were not explained to them, nor was a colloquy on the subject conducted by the Juvenile Court in accordance with this Court's rule. The applications further allege that the juvenile court accepts admissions of guilt without conducting colloquies which explain the juvenile's rights and the consequences of admitting guilt as required by Pa. R.J.C.P. 407(A).

The Court should grant the applications and consider the allegations, which raise serious questions about the fairness and integrity of juvenile proceedings in Luzerne County. In juvenile proceedings, representation by counsel as a component of due process protects both the interests of the juvenile and his family and the interests of justice. The Supreme Court in *Gault* wrote that "The juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, insight upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it." 387 U.S. at 36 (footnotes omitted). Further, it is in the interest of justice that the requirements of federal and state law regarding due process are met — particularly since these requirements are designed to ensure that the right person is adjudicated delinquent, and that any court-imposed treatment serves the individual needs of the juvenile — thus promoting rehabilitation. The interests of justice are not served by punishing the wrong

person – adult or juvenile – and shortcuts in procedures that increase this possibility can only erode public confidence in law enforcement and the juvenile justice system.


We take no position on the merits of the applications, but we are firmly of the view that the applications have raised important issues that ought to be addressed by this Court.

CONCLUSION

For the foregoing reasons, the Court should grant the application to file original process and assume jurisdiction over the case.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, **CALVIN R. KOONS**, Senior Deputy Attorney General for the Commonwealth of Pennsylvania, hereby certify that on May 15, 2008, I caused to be served two copies of the foregoing **AMICUS BRIEF OF THE OFFICE OF ATTORNEY GENERAL IN SUPPORT OF THE APPLICATIONS TO FILE ORIGINAL PROCESS FOR AN EXERCISE OF KING'S BENCH POWER OR EXTRAORDINARY JURISDICTION** by depositing same in the United States Mail, first class, postage prepaid, in Harrisburg, Pennsylvania, upon the following:

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