

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

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No. 81 M.M. 2008

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IN RE J.V.R.; H.T., A MINOR THROUGH HER MOTHER, L.T.; ON BEHALF OF  
THEMSELVES AND SIMILARLY SITUATED YOUTH

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**MOTION OF J.V.R. *ET AL* FOR LEAVE TO FILE  
POST-SUBMISSION COMMUNICATION**

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## APPLICATION FOR LEAVE TO FILE A POST-SUBMISSION COMMUNICATION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Applicants J.V.R. and H.T., on behalf of themselves and hundreds of similarly situated youth, seek leave to file a post-submission communication urging this Court to exercise jurisdiction to restore the constitutional rights of hundreds of youth who have been the subject of delinquency proceedings in Luzerne County without counsel or without lawful waiver of counsel.

1. In April 2008, Applicants, by their counsel, Juvenile Law Center, simultaneously filed an Application for Leave to File Original Process and an Application for the Exercise of King's Bench Power or Extraordinary Relief.
2. The Applications were filed on behalf of all youth adjudicated delinquent without lawyers in Luzerne County since October 2005. The applicant class also includes youth adjudicated delinquent without lawful waivers of their right against self-incrimination since October 2005.
3. Previous submissions detail the reasons this Court should assume jurisdiction. See Application for Leave to File Original Process (April 2008), Application for the Exercise of King's Bench Power or Extraordinary Relief (April 2008), and Response of Applicants (June 2008).
4. Applicants' claims are not moot and continue to require the immediate attention of this Court. Hundreds of past violations have not been remedied, nor is their any other legal or equitable remedy at hand. Delinquency adjudications without counsel and based on un-counseled, unconstitutional admissions have resulted in irreparable injuries:

- a. Members of the applicant class may still be in the custody (*i.e.*, residential placement) of Luzerne County Juvenile Court or on probation (supervision), and
  - b. Youth no longer under juvenile court supervision remain subject to collateral consequences from their constitutionally and statutorily deficient adjudications (*e.g.*, limited employment opportunities, loss of driving privileges, enhanced sentencing exposure in future criminal proceedings, and disqualification from public housing).
5. Applicants renew their request that this Court accept plenary jurisdiction.
6. Applicants renew their request that this Court (1) order the Luzerne County Juvenile Court to identify to this Court and to Applicants' counsel every instance, since the Rules of Juvenile Court Procedure became effective (Oct. 1, 2005), in which a juvenile was subject to a delinquency hearing before a judge or master without legal representation and either adjudicated delinquent or subjected to court supervision; (2) order the Luzerne County Juvenile Court to vacate the adjudication and disposition orders of all youth adjudicated delinquent and sanctioned without legal representation, and who remain in the custody or supervision of the Juvenile Court; (3) order the Luzerne County Juvenile Court to expunge any and all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and (4) award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.
7. Plenary jurisdiction remains necessary because it is the only way to identify and obtain relief for the hundreds of youth adjudicated delinquent and sanctioned in violation of their constitutional and statutory rights.

WHEREFORE, Applicants request this Court accept the attached communication, exercise jurisdiction, and grant Applicants the relief requested and other such relief as this Court finds just under the circumstances so that Luzerne County youth will no longer suffer from the illegal policies and practices of the Respondent Juvenile Court.

Respectfully submitted,

s/LMW  
Laval S. Miller-Wilson, Esq.  
Marsha L. Levick, Esq.  
JUVENILE LAW CENTER

## **POST SUBMISSION COMMUNICATION OF APPLICANTS J.V.R. & H.T. ON BEHALF OF THEMSELVES AND SIMILARLY SITUATED YOUTH**

Applicants J.V.R. and H.T., on behalf of themselves and similarly situated youth, urge this Court to exercise jurisdiction to restore the constitutional and statutory rights of hundreds of youth adjudicated delinquent in proceedings lacking basic constitutional safeguards. Earlier submissions detail the reasons this Court should assume jurisdiction. Applicants file this communication to notify the Court that their claims are not moot, that with every passing day they suffer harm, and that they have no adequate remedy unless the Court grants relief.

### Background

In April 2008, Applicants, by their counsel, Juvenile Law Center, simultaneously filed an Application for Leave to File Original Process and an Application for the Exercise of King's Bench Power or Extraordinary Relief. The applications were filed on behalf of all youth adjudicated delinquent without lawyers in Luzerne County since October 1, 2005 (when Pennsylvania's new juvenile court rules became effective). The applicant class also includes youth adjudicated delinquent without lawful waivers of their right against self-incrimination. Both applications seek to restore the constitutional rights of these youth, as well as their rights under the Pennsylvania Juvenile Act and the Pennsylvania Rules of Juvenile Court Procedure.

Named Applicants were the subjects of separate delinquency petitions for alleged violations of the Pennsylvania Crimes Code. In each instance the Luzerne County Juvenile Court (Juvenile Court) held a hearing (trial), permitted the youth to appear without a lawful voluntary, knowing and intelligent waiver of counsel, accepted the youth's admissions, adjudicated each delinquent, and then issued sanctions. Applicants J.V.R. and H.T. were each committed by the Juvenile Court to residential programs away from their families and community. Neither Applicant was represented by counsel, nor is there evidence the Juvenile

Court conducted an inquiry with them about the consequences of waiving counsel or admitting to the underlying conduct, or in any other way conducted a constitutionally adequate colloquy with Applicants prior to accepting their uncounseled admissions and waiver of counsel.

State records, statements from adjudicated youth, and transcripts of Juvenile Court proceedings all confirm that since October 1, 2005 hundreds of youth in Luzerne County have appeared without counsel during the most critical phases of delinquency proceedings as a consequence of unlawful waivers of counsel, resulting in unconstitutional admissions of guilt, delinquency adjudications, and out-of-home placement.

Applicants request that the Court (1) order the Luzerne County Juvenile Court to identify to this Court and to Applicants' counsel every instance, since the Rules of Juvenile Court Procedure became effective (Oct. 1, 2005), in which a juvenile was subject to a delinquency hearing before a judge or master without legal representation and either adjudicated delinquent or subjected to court supervision; (2) order the Luzerne County Juvenile Court to vacate the adjudication and disposition orders of all youth adjudicated delinquent and sanctioned without legal representation, and who remain in the custody or supervision of the Juvenile Court; (3) order the Luzerne County Juvenile Court to expunge any and all adjudications and dispositions since October 1, 2005 which occurred without legal representation for youth no longer under Juvenile Court supervision; and (4) award reasonable attorneys' fees, as well as such additional or alternative relief as this Court deems just, proper, or equitable.

Briefing in this matter was completed at the end of May 2008. The Luzerne County District Attorney and the Administrative Office of Pennsylvania Courts (AOPC), on behalf of Respondent Juvenile Court, each filed briefs opposing Supreme Court jurisdiction. The

Pennsylvania Department of Public Welfare<sup>1</sup> and the Pennsylvania Attorney General<sup>2</sup> each filed briefs urging the Court to take jurisdiction. Moreover, in the wake of the filing of the Applications to this Court, leading Northeast Pennsylvania newspapers published editorials urging this Court to take jurisdiction.<sup>3</sup>

### Applicants' Claims Are Not Moot

Hundreds of past violations have not been remedied. State records confirm constitutionally required colloquies (about the right to counsel and the right against self-incrimination) were not undertaken in hundreds of cases since October 1, 2005, yet these same youth were adjudicated delinquent and either placed on probation or committed to residential programs. Members of the applicant class may still be in the custody (*i.e.*, residential placement) of Luzerne County Juvenile Court or on probation (supervision). See Response of Applicants (June 2008) at 4-5 (naming additional class members in residential placement).

Deprivation of liberty is not the only injury. For the majority of the applicant class juvenile court jurisdiction has ended but records of these adjudications have significant consequences: they follow an individual through his or her adulthood, and affect young people's

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<sup>1</sup> DPW's brief says the high number of youth appearing in Luzerne County Juvenile Court indicates a "systemic deprivation of constitutional rights" of juveniles accused of committing crimes. DPW argues the absence of counsel has likely contributed to the county's high rate of out-of-home placements of delinquent youth. "That dramatic differential suggests many of the Luzerne County out-of-home placements were inappropriate and therefore harmful," wrote DPW. Brief of the Commonwealth Department of Public Welfare at 4. "And there can be no serious question that the rate of such placements would have been significantly lower if more juveniles had been represented by counsel." Id. at 5.

<sup>2</sup> The Attorney General's brief says the statistics raise serious questions regarding whether juvenile proceedings "are fair and result in trustworthy determination of guilt and innocence." Brief of the Office of Attorney General at 1. "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." Id. at 3-4.

<sup>3</sup> See Exhibit C, Response of Applicants (June 2008). Obviously, editorials do not make legal argument. However, this Court may take judicial notice of the editorials supporting the legal arguments Applicants have made: that it is not only constitutionally required, but it is also in the public interest to try accused youth in a fair and appropriate manner, with the full panoply of constitutional and statutory rights, including assistance of counsel and admissions that are voluntarily, knowingly and intelligently made.

abilities to grow into productive members of society by creating barriers to education or employment.

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.

Pennsylvania Juvenile Court Judges Commission, JUVENILE DELINQUENCY RECORDS: HANDBOOK AND EXPUNGEMENT GUIDE (2008) at 1.

Although the Juvenile Act provides that an order of disposition or adjudication in a proceeding under the Juvenile Act is not a conviction of a crime, juvenile court dispositions affect a person in a variety of ways. An increasing number of institutions of higher learning now inquire about the prior juvenile court involvement of applicants who desire admission, 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, *id.* at 20; if an adjudicated juvenile, upon reaching the age of majority, or at 17 with parental consent, chooses to enter the military he or she may have difficulty gaining entrance, *id.* at 9; the ability to obtain a driver's license is affected, *id.* at 11; and, delinquency adjudications can be used for criminal sentencing purposes, *id.* at 16-17.

Unless this Court grants extraordinary jurisdiction hundreds of Applicants will continue to suffer irreparable injuries stemming from the unlawful delinquency adjudications described herein: the stigma of adjudication, direct sanctions (*e.g.*, placement in juvenile residential treatment), and the above-referenced collateral consequences.

### Applicants Have No Adequate Remedy At Law

Plenary jurisdiction remains necessary because it is the only way to identify and obtain relief for the hundreds of youth adjudicated delinquent and sanctioned in violation of their constitutional and statutory rights.

No appeal can be filed in the Superior Court of Pennsylvania because thirty days have elapsed since the juvenile court's disposition (sentencing) orders and the Superior Court is without jurisdiction to hear an appeal where an appellant has not filed a timely notice of appeal. Moreover, youth appearing in Luzerne County Juvenile Court are not aware of the consequences of waiving their constitutionally protected rights, and when adjudicated delinquent they do not understand their appellate rights. Finally, Applicants cannot raise these claims through a Post-Conviction Relief Action (PCRA) because PCRA does not apply to juveniles. In the Matter of J.P., 573 A.2d 1057, 1062 (Pa. Super. 1990).

Applicants' request—that this Court order the Luzerne County Juvenile Court to identify to Applicants' counsel every instance in which a juvenile appeared before a judge or master without legal representation and was adjudicated delinquent—is not burdensome. The applicant class is readily identifiable from respondent's own data. The Luzerne County Office of Juvenile Probation already documents and reports every juvenile subject to a delinquency hearing, including the juveniles' name, residence, date of birth, date of arrest, charging information, outcome and attorney representation. Unless this Court exercises jurisdiction, it remains impossible for counsel to identify the hundreds of youth who have, and will be subject to, irreparable injury.

Conclusion

Applicants and similarly situated youth pray that this Court immediately exercise jurisdiction and issue relief that causes right and justice to be done. Because the adjudicatory and disposition proceedings at issue in Luzerne County have been, and continue to be constitutionally and statutorily infirm, Applicants respectfully request that this Court grant relief with all deliberate speed.

Respectfully submitted,

s/ LMW  
Laval S. Miller-Wilson, Esq.  
Marsha L. Levick, Esq.  
JUVENILE LAW CENTER

**CERTIFICATE OF SERVICE**

I hereby certify that on December 22, 2008 I served by U.S. Postal Service (first class) this Motion For Leave To File A Post-Submission Communication, 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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