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Brief of Amicus Curiae in Support of Appellants, Quinton Richmond, et al., v. The District Court of Maryland, et al., No. 08-54

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In The
COURT OF APPEALS OF MARYLAND

SEPTEMBER TERM, 2008

No. 54

QUINTON RICHMOND, ET AL.

Appellants

v.

THE DISTRICT COURT OF MARYLAND, ET AL.

Appellees

ON APPEAL FROM THE CIRCUIT COURT FOR BALTIMORE CITY

BRIEF OF *AMICUS CURIAE* FACULTY MEMBERS OF
THE UNIVERSITY OF BALTIMORE SCHOOL OF LAW AND
THE UNIVERSITY OF MARYLAND SCHOOL OF LAW
IN SUPPORT OF APPELLANTS

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BRIEF OF *AMICUS CURIAE* FACULTY MEMBERS OF THE
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AND THE UNIVERSITY OF MARYLAND SCHOOL OF LAW

INTERESTS OF *AMICI CURIAE*

This *amici curiae* brief is submitted on behalf of seventy-eight Maryland law school faculty members, who teach at either the University of Baltimore

School of Law or the University of Maryland School of Law.¹ As law professors who educate future lawyers, legislators, and judges about their “special responsibility[ies] for the quality of justice” (MARYLAND RULES OF PROF’L CONDUCT, Preamble (2002)), the undersigned faculty members concluded that they should comment on a case that bears so directly on the “quality of justice” afforded criminal defendants in the state’s criminal justice process. This case’s central question of the nature and scope of the right to counsel for indigent defendants in criminal cases goes to the very core of the criminal justice system’s promise of fairness and equal treatment for indigent people accused of a crime.

As legal educators who are concerned with the nature and quality of legal institutions in the State of Maryland, *amici* also feel a responsibility to comment on a particular aspect of this case: the application and implications of the statutory right to counsel under Maryland law for indigent criminal defendants. This case presents the Court with important questions about the nature and scope of the statutory right to counsel, as established by the Maryland Legislature in the Public Defender Act of 1970, MD. CODE ANN., art. 27A § 4 (2001) [*hereinafter* “PDA”], and Maryland Rule 4-214(b) (2008), and previously defined by this Court in *McCarter v. State*, 363 Md. 705 (2001). In the view of *amici*, this statutory issue is

¹ For a complete list of the *amici* please consult Appendix A-1 for the list of faculty from the University of Baltimore School of Law and Appendix A-2 for the list of faculty from the University of Maryland School of Law.

sufficient to resolve the case and obviates the need to reach the broader, meritorious constitutional issues raised by the plaintiff class.

QUESTION PRESENTED

Did this Court's holding in *McCarter v. State*, 363 Md. 705 (2001), that the plain language of the Maryland Public Defender Act created a right to counsel during all stages of a criminal proceeding, establish that criminal defendants have a statutory right to representation at bail hearings?

STATEMENT OF FACTS

Amici accept and adopt the Statement of Facts that is set forth in the Brief of Appellants.

SUMMARY OF ARGUMENT

In the Maryland Public Defender Act and Maryland Rule 4-214(b), the Maryland Legislature established a statutory guarantee of counsel for indigent criminal defendants "at all stages of proceedings." *See*, MD. CODE ANN., art. 27A § 4 (2001) and Md. Rule 4-214 (2008). In *McCarter v. State*, 363 Md. 705 (2001), this Court recognized that the plain language of art. 27A, § 4, creates a right to representation that "extends to *all stages* in the proceedings." *McCarter*, 363 Md. at 716 (emphasis added).

While the practice of no representation at the initial appearance is profoundly troubling as a constitutional matter, in the view of *amici*, the statute, as

construed in *McCarter*, is sufficient to resolve the issues in this case. A right to representation at “all stages in the [criminal] proceedings” necessarily includes the initial setting of bail, an integral part of the criminal process that has immediate implications for the accused and for the subsequent development of the case. Representation at the initial appearance reduces the likelihood of unnecessary pretrial detention and affords an accused the opportunity to investigate the allegations, prepare a defense and obtain a fair trial. Accordingly, it is *amici*’s view that the statutory right to counsel compels the Court to grant the relief the plaintiff class seeks: the enforcement of the right to counsel at initial assessments of bail.

ARGUMENT

As This Court Has Held, Maryland Law Requires Counsel’s Presence and Advocacy at All Stages in Criminal Proceedings, Including A Defendant’s Initial Appearance, Without Regard to Whether a Given Stage Has Been Determined to be A “Critical Stage” for Purposes of the Sixth Amendment Right to Counsel

In the State of Maryland, individuals accused of crime and taken into custody and charged in Maryland’s District Court, are brought to a Commissioner, an appointed judicial officer, within twenty-four hours for a bail and probable cause hearing. MD. CTS. & JUD. PROC. CODE ANN., § 2-607 (2002). Most of these accused are indigent, with limited resources and education, and they lack the ability to advocate effectively for themselves. The initial bail hearing presents a

unique challenge as it lacks the formal safeguards usually associated with a judicial proceeding. The Commissioner who makes the bail and probable cause determinations is a judicial officer, but is not required to be a lawyer. The hearing is usually held privately, not in a public courtroom, and only rarely in a place where the public has access. In Baltimore City, Commissioner hearings occur inside the Central Booking jail; the proceeding is neither recorded nor transcribed, and therefore not subject to review. No defense lawyer is present, but a prosecutor is able to communicate directly with the Commissioner. A Commissioner can, and routinely does, question the defendant in the course of making a bail determination. *Miranda* warnings are not required, and Commissioners may record information learned at the hearings and make it available to the court and accessible to the prosecution.

Forty-five years ago, in the landmark case of *Gideon v. Wainwright*, 372 U.S. 335 (1963), the Supreme Court of the United States held that a “poor man” charged with a crime cannot be forced to face his accuser without the assistance of a lawyer. As the Court declared in *Gideon*, “any person haled into court, too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.” *Id.* at 344. Indeed,

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with a crime, he is incapable, generally, of determining for himself

whether the indictment is good or bad. . . . He requires the guiding hand of counsel *at every step in the proceedings* against him.

Gideon, 372 U.S. at 344-45 (quoting *Powell v. Alabama*, 287 U.S. 45, 69 (1932) (emphasis added)). *Gideon* recognized that the accused “[i]n all criminal prosecutions” has a Sixth Amendment right “to have the Assistance of Counsel for his defense,” and a Fourteenth Amendment due process right to the protection of individual liberty before trial. *See also Rothgery v. Gillespie County, Texas*, 128 S. Ct. 2578 (2008) (criminal defendant’s initial appearance, where he is informed of the charges against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger the right to counsel for purposes of the Sixth Amendment). Both the Sixth Amendment and due process rights are reflected in Maryland’s Constitution, which provides “[t]hat in all criminal prosecutions, every man hath a right . . . to be allowed counsel,” MD. CONST., art. XIX; see *also* MD. CONST. art. XXIV (“That no man ought to be taken or imprisoned . . . or deprived of his liberty . . . but . . . by the law of the Land”).

In the Maryland Public Defender Act (“PDA”) and Maryland Rule 4-214(b), the Maryland legislature incorporated the fundamental right to counsel principle and provided a statutory right to counsel to criminal defendants “at all stages of proceedings.” *See* MD. CODE ANN., art. 27A § 4 (2001) and Md. Rule 4-214 (2008). The PDA provides that the representation of the Office of the Public Defender “shall *extend to all stages in the proceedings*,” including in criminal

proceedings “custody, interrogation, preliminary hearing, arraignment . . . [etc].” MD. CODE ANN., art. 27A, § 4(d) (2001). Maryland Rule 4-214 likewise states that “representation *extends to all stages in the proceedings*, including but not limited to custody, interrogations . . . [etc].”

In *McCarter*, this Court unanimously held that “‘All’ means ‘all’” and entitles the defendant to representation at his initial appearance. *McCarter*, 363 Md. at 716. The issue before the Court was whether McCarter, who had been accused of a crime, possessed a statutory right to counsel at the initial stage of the criminal proceedings where he was asked to make a jury trial election. *Id.* at 707. McCarter attended his initial appearance without the assistance of counsel. *Id.* Upon the court’s inquiry, McCarter waived his right to jury trial. *Id.* at 708. McCarter did not waive his right to an attorney. *Id.* at 708-09.

This Court found that McCarter had a right to counsel under the broad language of the PDA and Maryland Rule 4-214, which provide that the right to counsel “extends to all stages of the proceedings.” *Id.* at 716. The Court rejected the government’s argument that McCarter’s court proceeding was not an “arraignment” as that term was understood for purposes of the PDA and, therefore, did not require counsel’s presence. *McCarter*, 363 Md. at 715. In reaching the conclusion that McCarter had a statutory right to counsel at his initial appearance, the Court held that the “all stages” statutory language “encompasses the [initial

appearance] regardless of its characterization”. *Id.* at 716. The Court indicated that it was not important whether the proceeding at issue qualified as an “arraignment” within the meaning of the statute. *Id.* Indeed, the Court found that “the specific types of proceedings listed in the statute and rule are for purposes of illustration only.” *Id.* The Court’s focus was squarely on the unambiguous language of the statute: “representation extends to *all stages* in the proceedings.” *Id.* at 715 (emphasis added).

After reaching its conclusion, this Court reiterated that because an accused has a right to counsel at all stages of his criminal proceeding, “a trial judge should not ask a criminal defendant who appears at an initial appearance without a lawyer, and who has not waived his or her right to a lawyer, to elect between a jury or nonjury trial.” *Id.* at 716. Likewise, a criminal defendant appearing alone at the initial appearance should not be asked to advocate for his freedom and liberty without the aid of counsel. As this Court has held, “‘All’ means ‘all.’” *See McCarter*, 363 Md. at 716.

In *McCarter*, the Court found it unnecessary to reach the issue of whether the proceeding at issue there was a “critical stage” of criminal prosecution for purposes of the Sixth Amendment right to counsel. *Id.* at 713. In analyzing the Sixth Amendment right to counsel, courts have limited the constitutional guarantee to the “critical stages” of a proceeding. But, as the Court emphasized in

McCarter, the PDA contains no such limitation: “[i]nstead of being limited to ‘critical stages’ . . . § 4(d) expressly includes ‘all stages.’” *Id.* at 715. In this respect, “the right to counsel under the Public Defender Act is significantly broader than the constitutional right to counsel.” *Id.* at 713 (quoting *State v. Flansburg*, 345 Md. 694, 700 (1997), and citing *Harris v. State*, 344 Md. 497 (1997); *Webster v. State*, 299 Me. 581 (1984)). Because *McCarter* had a statutory right to counsel and this statutory guarantee was sufficient to resolve the issue before the Court, the Court found that “we need not and do not reach the issues of whether the . . . proceeding was a ‘critical stage’” *Id.* at 713. The Court in *McCarter* reiterated the oft-recognized rule that a constitutional issue need not and should not be reached if “a case can properly be disposed of on a non-constitutional ground.” *McCarter*, 363 Md. at 712 (internal citations omitted).

In the present case, the statutory right to counsel -- which, although founded upon Sixth and Fourteenth Amendment jurisprudence invoked by the plaintiff class, is based upon an explicit statutory guarantee -- is sufficient to resolve this case without reaching the constitutional issues. Accordingly, the Court should hold that the statutory right to counsel, as set forth in Maryland state statutes and expressly recognized by this Court in *McCarter*, establishes the plaintiff class’s right to representation by counsel at initial assessments of bail.

CONCLUSION

Under prevailing Maryland law, criminal defendants have the right to representation at bail hearings. The revised Public Defender Act unambiguously states that the “policy of the State of Maryland [is] to provide for the constitutional guarantees of counsel in the representation of indigents, including related necessary services and facilities.” MD. CODE ANN., art. 27A § 1 (2008). Further, in *McCarter v. State*, this Court explicitly held that the right begins when an indigent accused is taken into custody. 363 Md. 705, 716 (2001). Both statutory law and precedent afford criminal defendants the right to counsel at bail hearings; therefore we respectfully request the Court overturn the ruling of the Circuit Court for Baltimore City that criminal defendants do not have the right to representation at an initial bail proceeding.

WHEREFORE, for the foregoing reasons, faculty of the University of Maryland School of Law and the University of Baltimore School of Law respectfully submit this *amicus curiae* brief on behalf of Appellee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 5th day of September, 2008, a copy of the foregoing *Amicus Curiae* Brief was mailed, first-class postage prepaid, to Kendra Y. Ausby, Assistant Attorney General, 200 Saint Paul Place, Baltimore, Maryland 21202, to Michael Schatzow, Private Counsel, 750 East Pratt Street, Suite 900, Baltimore, Maryland 21202, and to Douglas L. Colbert, Private Counsel, 500 West Baltimore Street, Baltimore, Maryland 21201.

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