

FILED

FEB 28 2019

WASHINGTON STATE
SUPREME COURT

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

COLLEEN DAVIDSON, et al.,

Plaintiffs,

v.

STATE OF WASHINGTON, et al.,

Defenders.

No. 9 6 7 6 6 - 1

**RULING GRANTING DIRECT
DISCRETIONARY REVIEW**

The State of Washington and the Washington State Office of Public Defense (collectively the State) seek direct discretionary review of a Thurston County Superior Court order denying the State's motion for summary judgment in an action filed by a group of plaintiffs represented by Colleen Davidson, legal guardian of juvenile K.B (collectively Ms. Davidson). At issue is whether the State has an actionable duty to cure alleged systemic deficiencies in the provision of indigent defense services to juvenile criminal defendants in Grays Harbor County. The superior court certified the question for immediate review pursuant to RAP 2.3(b)(4). Ms. Davidson agrees with the State that direct review in this court is warranted pursuant to RAP 4.2(a)(4). As explained below, the motion for direct discretionary review is granted.

Ms. Davidson filed the underlying action against the State in Thurston County Superior Court under cause number 17-2-01968-34. She alleged that Grays Harbor County has systematically failed to provide constitutionally sufficient indigent defense

services to the county's juvenile criminal defendants, and that the State by way of the Office of Public Defense has failed to take action to correct these deficiencies. The county was not named as a defendant. The State moved to dismiss the action on summary judgment, arguing that it was not under the legal duty urged by Ms. Davidson, that she did not have standing to sue, and that she failed to state a claim for which she was entitled to relief. Ms. Davidson filed a cross-motion for summary judgment.

The superior court denied the State's motion for summary judgment and certified that its order presents a controlling question of law—whether the State has a duty to act to correct alleged systemic problems in the county's juvenile indigent defense services—warranting immediate review. *See* RAP 2.3(b)(4). The court declined to act on Ms. Davidson's motion for summary judgment, holding the matter in abeyance pending appellate court consideration of the order denying the State's summary judgment motion.

The State then filed a notice for discretionary review directly in this court, a motion for discretionary review, and a statement of grounds for direct review. RAP 2.3; RAP 4.2(a). Ms. Davidson filed an answer to the motion for discretionary review and a response to the statement of grounds for direct review, agreeing with the State as to the desirability of immediate review in this court. Now before me for determination is whether to grant discretionary review and if so, whether to retain the case in this court or transfer it to the Court of Appeals.

The availability of constitutionally sufficient indigent defense services for juveniles is a matter of great importance for every county of Washington and the indigent juveniles prosecuted within those counties. *See generally State v. A.N.J.*, 168 Wn.2d 91, 225 P.3d 956 (2010) (allowing juvenile to withdraw guilty plea in part because of ineffective assistance of counsel); *Gideon v. Wainwright*, 372 U.S. 335, 83 S. Ct. 792, 9 L. Ed. 2d 799 (1963) (indigent defendant has constitutional right to trial

counsel). When denying the State's motion for summary judgment, the superior court indicated that it was persuaded by Ms. Davidson's argument (which was supported by decisional authority from several other states) that the State may not wholly delegate its constitutional duty to ensure functioning juvenile indigent defense services to individual counties. The court recognized that this is an issue of first impression in Washington and is worthy of immediate appellate review. The court thus did not hesitate to certify the matter as one involving "a controlling question of law as to which there is substantial ground for a difference of opinion and that immediate review of the order may materially advance the ultimate termination of the litigation." RAP 2.3(b)(4). While I am not bound by the superior court's certification, I do agree in this instance that interlocutory review is justified.

As for direct review, while the parties disagree as to the central merits of the case, they are in complete agreement that the matter involves a "fundamental and urgent issue of broad public import which requires prompt and ultimate determination." RAP 4.2(a)(4). I concur with this assessment. As indicated, this issue potentially affects every county of the State, as well as indigent juveniles subject to criminal proceedings.

The motion for discretionary review is granted and the matter is retained for a decision by this court. The clerk's office will contact the parties regarding further proceedings in this court.


COMMISSIONER

February 28, 2019