

**IN THE SUPREME COURT
STATE OF GEORGIA**

CASE No. S20A1522

**RYAN ALEXANDER DUKE
APPELLANT,**

v.

**STATE OF GEORGIA,
APPELLEE.**

**BRIEF OF THE DISTRICT ATTORNEYS' ASSOCIATION OF
GEORGIA AS *AMICUS CURIAE***

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RYAN ALEXANDER DUKE,
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DOCKET No.: S20A1522

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Appellee.

BRIEF OF THE DISTRICT ATTORNEYS' ASSOCIATION OF GEORGIA,
AS AMICI CURIAE

COME NOW the parties named above as *amici curiae* pursuant to Supreme Court Rule 23, and respectfully urge this Court to consider the following analyses and arguments of law along with the briefs of the parties to this important case:

PART ONE

IDENTITY & INTEREST OF AMICI CURIAE

The District Attorneys' Association of Georgia is comprised of all district attorneys of the forty-nine judicial circuits of the State of Georgia. Since its founding in 1934, and especially since 1951, the Association has worked to enhance "the proficiency of the ... prosecuting attorneys of the state"¹ through continuing education

¹Ga. L. 1970, p. 938.

programs, and to provide a forum through which the District Attorneys may fulfil their obligation to “reform and improve the administration of criminal justice.”²

This Court granted Appellant’s interlocutory appeal noting its concern with whether the trial court committed error “in holding that an indigent defendant in a criminal case who is represented by private, pro bono counsel does not have a constitutional right or a statutory right under the Indigent Defense Act, OCGA § 17-12-1 et seq., to state-funded experts and investigators?”

The case at bar carries significant impact on the statewide judicial system. Indigent defendants have a right to have representation provided by the State to assist them with their case. Having a properly functioning and funded Public Defender’s office is vital to the administration of justice. Allowing one case to bankrupt the public defender system will severely impact the ability of amicus to fulfill their role in the criminal justice process.

PART TWO

ARGUMENT & CITATION OF AUTHORITY

Prior to 2003, indigent criminal defendants in Georgia were represented in one of three ways: (1) a contract system; (2) an appointed attorney system; or (3) a county public defender’s office.³ This Court created a Commission “to study the status of indigent defense in Georgia, to develop a strategic plan and to set a timetable for its

²A.B.A STANDARDS FOR CRIM. JUST. § 3-1.2(f) (4th Ed. 2015); *see also*, GA. R. PROFESSIONAL CONDUCT (GRPC), R. 6.4.

³ Bill Rankin, *Three Systems. Is One Superior?*, ATLANTA J. CONST., Apr. 19,2002, at A21

implementation.”⁴ The introduction, debate, and ultimate passage of 2003 Ga. Gen. Assem. HB 770, created a state-wide agency to oversee and provide representation for indigent criminal defendants in Georgia.⁵ Codified at O.C.G.A. § 17-12-1 et seq, that legislation created a Council to administer a state-wide agency tasked with fulfilling the mandate under *Gideon v. Wainwright*, 372 U.S. 335 (1963), and Art. I, Sec. I, Par. XIV of the Ga. Const. to provide constitutionally effective counsel for criminal defendants who cannot afford them.

The Legislature did allow single county judicial circuits the ability to “opt out” under certain conditions.⁶ Six circuits – Bell-Forsyth, Blue Ridge, Cobb, Douglas, Gwinnett, and Houston – opted out of the GPDC at its inception in 2003. Each of those circuits continues to administer its own public defender program “from funds available to the council.”⁷ Amicus joins with the brief filed by the District Attorney for the Tifton Judicial Circuit as to the argument that Appellant is a person who “has other resources that might reasonably be used to employ a lawyer without undue hardship on the person, his or her dependents....”⁸

⁴ Georgia Judicial Branch, *Frequently Asked Questions-Indigent Defense*, at www.georgiacourts.org/laocJidcreports

⁵ For further reading and more information, Georgia State University Law Review, CRIMINAL PROCEDURE Legal Defense of Indigents: Create the Georgia Public Defender Standards Council to Set State-Wide Standards for the Legal Representation of Indigent Defendants and Provide Budget Authority to Such Council, 20 Ga. St. U. L. Rev. (2012).

Available at: <https://readingroom.law.gsu.edu/gsulr/vol20/iss1/34> is highly recommended

⁶ O.C.G.A. § 17-12-36

⁷ For FY 2021, that amount is \$0. 2020 HB 793

⁸ O.C.G.A. § 17-12-2(6)(C)

The interest of the Association does not end merely in support of the Tifton District Attorney in this case. Every prosecutor in this State has a vested interest in the operation of a fully functioning indigent criminal defense system providing representation and assistance to those who need and are entitled to those services. However, this Court has not extended indigent criminal defendants the right to compel an attorney to represent them.⁹ No court or person has the ability to compel a lawyer to work for them without compensation. But lawyers in Georgia are encouraged to “render at least (50) hours of pro bono publico legal services per year.”¹⁰ The Commentary to the rule explains “Accordingly, services rendered cannot be considered pro bono if an anticipated fee is uncollected ... Lawyers who do receive fees in such cases are encouraged to contribute an appropriate portion of such fees to organizations or projects that benefit persons of limited means.”¹¹

The Association does not want to discourage competent members of the Bar from freely giving of their time in criminal matters. What the Association urges this Court to do is to safeguard the statewide Public Defender Council’s limited financial resources from private attorneys’ attempts to raid them. This Court is painfully aware of the consequences when the costs of one trial are allowed to be assessed against the state without any oversight. Judge Hilton Fuller required both Fulton County and the State of Georgia to fund Brian Nichols’s defense without any oversight by the

⁹ McCullough v. State, 304 Ga. 290, 296, 818 S.E.2d 520, 525 (2018)

¹⁰ State Bar of Georgia Rule 6.1

¹¹ State Bar of Georgia Rule 6.1, Comment 4

respective governments or the ability to object to any costs.¹² The defense in the Nichols case cost the State of Georgia \$2.3 million.¹³

However, the cost of the Nichols defense had statewide repercussions well beyond its dollar amount. Because of the costs of that one case, the Public Defender Council was unable to provide funds to other cases - and this resulted in delayed trials and further litigation. In both *Weis v. State*¹⁴ and *Phan v. State*,¹⁵ this Court was forced to confront situations where defendants facing capital charges were unable to proceed because funds needed for their defense had been consumed by the Nichols case. If this Court grants the relief Appellant seeks, in the absence of legislative action our court system will see the Nichols situation repeated over and over again, to the detriment of indigent defendants throughout our state.

Appellant requests access to already appropriated state funds to hire experts and further assist his pro bono attorneys as they mount his defense. The relief requested would either provide Appellant and his team a blank check to the state's coffers or have the trial judge or some other official be put in the position of auditor, wherein they receive bills from the Appellant and remit payment. The Georgia Public Defender Council, who is not a party to this action and has clearly stated that Appellant cannot use their funds, does not have a statutory obligation to pay these

¹² Daily Citizen-News "Judge says state and county must pay some Nichols' defense costs" link at https://www.dailycitizen.news/news/judge-says-state-and-county-must-pay-some-nichols-defense-costs/article_cc8cdabd-b9f1-5350-a271-66643c7dc336.html

¹³ AJC August 20, 2012 Nichols' defense costs \$3.2 million link at <https://www.ajc.com/news/local/nichols-defense-costs-million/xazeVQwMAyFKe4j0U8ZRGJ/>

¹⁴ 287 Ga. 46 (2010)

¹⁵ 290 Ga. 588 (2012)

costs. Their statutory obligation to reimburse costs does not include pro bono attorneys. In that there is neither a mechanism to provide State funds to private attorneys nor an agency or official to exercise oversight over the request and usage of the funds, granting Appellant's relief is equivalent to this Court unconstitutionally exercising Legislative authority.

Georgia's Constitution enumerates many rights and protects them. One of the obligations of Government is for the education of Georgia's children. "Public education for the citizens prior to the college or postsecondary level shall be free and shall be provided for by taxation, and the General Assembly may by general law provide for the establishment of education policies for such public education."¹⁶ Georgia's General Assembly sets a budget each year to provide funds for the Department of Education to execute this right. This Court cannot grant a single private-school student access to the State's budget – and therefore a blank check to hire teachers and materials for that one student's education – even if asked to do so. Appellant's demand for relief is no different and demands the same result.

In a year where the Judicial Branch was subjected to drastic budget cuts in the face of a pandemic¹⁷, the Public Defenders were ultimately spared from significant

¹⁶ Georgia Constitution of 1983, Art. VIII, Sec I, Para. I.

¹⁷ AJC June 2, 2020 "Georgia courts predict avalanche of cases while state cuts budgets" by James Salzer link at <https://www.ajc.com/news/state--regional-govt--politics/georgia-courts-predict-avalanche-cases-while-state-cuts-budgets/aWZuUAY42FUTz675Rug7IO/>

cuts.¹⁸ Nevertheless, Appellant and his amici imply that the Georgia Public Defender Council Office staffing the Tifton Judicial Circuit lacks resources or means to be able to handle this case. It should be noted that the Tifton Judicial Circuit District Attorney's Office has the same staffing levels, is responsible for all criminal matters including those that are dismissed prior to accusation or indictment, and has responsibility for a misdemeanor traffic court that the Public Defender's Office does not staff.¹⁹ There is no similar argument from the State. In fact, the State's prosecution team demonstrates how limited state resources can be pooled for a case without imposing costs to the system itself. Appellant's choice to decline the services of the Public Defender was a conscious decision to forgo the State's resources and use his own.

Appellant invites this Court to reconstruct the statutes creating the state-wide system of indigent defense in Georgia. The Georgia Public Defender Council has limited resources but uses them effectively to service their clients. Allowing the Appellant to use those funds to help fund his defense is contrary to the statutory enactments of the Legislature and potentially threatens the representation of all indigent defendants in Georgia. Amicus requests this Court to affirm the trial court's decision.


¹⁸ AJC June 29, 2020 "Ga. defender system dismantles appellate office spared from budget cut" by Bill Rankin link at <https://www.ajc.com/news/local/defender-system-dismantles-appellate-office-spared-from-budget-cut/d8Xh5dBdOpxHvgcwgQiF6O/>; 2020 HB 793

¹⁹ The Public Defender's Office does staff one of the State Courts in the Circuit whose cases are prosecuted by a Solicitor-General and their staff.


CONCLUSION

For the reasons stated above and those set forth in Brief, Amicus asks this Court to affirm the decision of the trial court and affirm that an indigent defendant who has waived the services of the Public Defender does not have a right to access state funds for his defense.

Respectfully submitted this 7th day of October, 2020.



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CERTIFICATE OF SERVICE

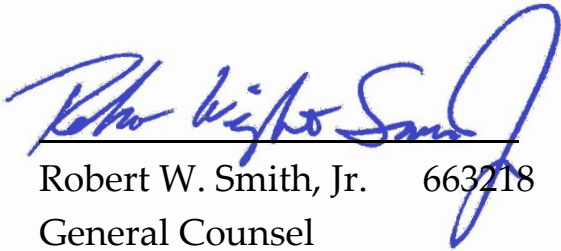
I hereby certify that I have this date served the following, with a true and correct copy of the foregoing "Brief of Amicus" by United States mail by mailing said brief to the following address with sufficient postage:

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This 7th day of October, 2020.



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