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IN THE SUPREME COURT OF MISSISSIPPI

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SUPREME COURT
COURT OF APPEALS

QUITMAN COUNTY, MISSISSIPPI,)
)
 Plaintiff-Appellant,)
)
 vs.)
)
 STATE OF MISSISSIPPI, Haley Barbour,)
 in his official capacity as GOVERNOR,)
 and James Hood, in his official capacity as)
 ATTORNEY GENERAL,)
)
 Defendants-Appellees,)

No. 2003-SA-Q2568

2658

**On Appeal From The Circuit Court of the Eleventh Judicial District In and For
Quitman County, Mississippi**

**BRIEF OF AMICUS CURIAE DISTRICT
ATTORNEY ELEANOR J. PETERSON**

The criminal justice system is founded on two basic tenets: (1) accountability and (2) due process. As officers of the court and public officials, prosecutors are concerned about both. First, prosecutors have a responsibility to hold individuals accountable for criminal activity and to protect the public by removing guilty defendants from the streets and deterring other would-be criminals. This duty includes a duty not to convict and incarcerate innocent defendants. Second, prosecutors have a responsibility to uphold the integrity of the system. This requires prosecutors to respect the defendants' constitutional rights to due process, including where appropriate: lawful searches and seizures based upon probable case; reading of defendants' rights before detention and/or interrogation; speedy arraignment and trial; and access to a competent and adequate

defense lawyer and an appeal. If any of these basic constitutionally mandated rights are violated, it is the prosecutor's as well as the defense lawyer's duty to the court and public to prevent an unlawful conviction.

In *Stringer v. State*, 500 So. 2d 928 (Miss. 1987), the Mississippi Supreme Court stated that all prosecutors are:

duty bound and sworn by oath to uphold the laws of the State of Mississippi. We are thus entrusted with the responsibility of ensuring that the criminal justice system of this State works to guarantee that every defendant brought before its tribunals receive a fair and impartial trial.

Id. at 930. In *Stringer*, this Court reversed a death penalty sentence and made very clear that prosecutors and trial judges, as well as defense counsel, have a responsibility to be mindful of the defendant's rights to due process. This responsibility is heightened when the prosecutor is aware that defense counsel has inadequate resources to provide constitutionally effective assistance of counsel. Without effective assistance of defense counsel, the likelihood of conviction of an innocent defendant increases dramatically. Ineffective assistance of defense counsel also increases the likelihood that illegally obtained evidence may be used against a defendant whose lawyer did not have the time, resources, or competence to move to exclude such evidence. This ultimately undermines the credibility of the system of law enforcement. For these reasons, every prosecutor in Mississippi has a unique interest in ensuring that indigent defendants are represented by competent and constitutionally effective counsel.

I. A STATE-FUNDED FULL-TIME PUBLIC DEFENDER SYSTEM WOULD INCREASE THE DEPENDABILITY OF THE CRIMINAL JUSTICE SYSTEM IN MISSISSIPPI

A. The Current Method Of Funding The Criminal Justice System In Mississippi Results In Highly Disparate Resources Available To The Prosecution And Defense

There is a great disparity between the resources provided by the State to the prosecution and the resources available to public defenders from counties. District Attorneys and their offices are funded by State appropriations and also have discretion to use bad check proceeds to cover their office expenses. Unlike the usually part-time public defenders, the District Attorneys are full time. Multiple offices represent the State in criminal matters – the District Attorneys prosecute felonies in Circuit Court, county prosecutors handle matters in Justice Court, and the Attorney General’s office is responsible for appeals. In contrast, the public defenders are required to represent their clients at all three levels, in Justice Court, in Circuit Court and on appeal.

The District Attorneys are aided by multiple full time assistant district attorneys, staff investigators, secretarial support, and often a victim assistance coordinator and a bad check fund administrator. District Attorneys use the investigative resources of local police departments, sheriffs’ departments, the Gaming Commission, the Bureau of Narcotics, the Highway Patrol and the Crime Lab. Furthermore, the Attorney General’s office provides numerous training sessions and extensive written training materials for District Attorneys and county prosecutors and their staffs.

Part-time public defenders usually must take on additional private employment to make a living and are not provided with any of the resources provided to State prosecutors. Rather, the public defenders are expected to find, fund, and staff their own

office accommodations and research facilities. In short, the current system, under which the State funds most of the prosecution efforts and only provides funds for defense in some capital cases, results in a huge disparity of resources between the State-funded prosecution and the county-funded defense. This is particularly true in many poor rural counties which lack the financial resources to support an adequate public defender system.

This Court and numerous study commissions have recognized the seriousness of the disparity in resources caused by county-funded public defenders and urged the Legislature to implement a statewide public defender system to ensure that defendants receive effective assistance of counsel regardless of the financial circumstances of the county in which they are tried. As public servants, prosecutors have the same interest in the overall integrity and dependability of the system as this Court. Regrettably, the reality of Mississippi's current funding scheme is that part-time public defenders often are not aware of recent legal authority, rarely hire investigators or utilize forensic expertise, spend insufficient time interviewing and counseling their clients, and as a result may not adequately represent their clients in negotiating plea agreements or trying their case. Prosecutors have seen these cases first-hand and know the difference State-funded full-time representation would make.

B. Prosecutors Have Specific Responsibilities To Ensure Defendants Receive Effective Assistance of Counsel

As an officer of the Court and the State, every prosecutor in the State of Mississippi must take a special oath of office to faithfully support the Constitution of the United States and Constitution of the State of Mississippi. Moreover, each prosecutor is

bound by codes of ethical conduct, including the Mississippi Rules of Professional Conduct, “Special Responsibilities of a Prosecutor.” The Constitutions and ethical canons require prosecutors to be mindful of defendants’ rights, including their constitutional right to receive effective assistance of defense counsel. The official commentary to the Mississippi Rules of Professional Conduct regarding prosecutors states:

A prosecutor has the responsibility of a minister of justice and not simply that of an advocate. This responsibility carries with it specific obligations to see that the defendant is accorded procedural justice. . . .

Comment, Mississippi Rules of Professional Conduct, Rule 3.8.

This obligation puts prosecutors in an untenable position when defendants are not provided with effective assistance of defense counsel. In that case, the prosecution is not free to zealously present the State’s case, confident that the defense will zealously and competently present its case and the jury will make an informed decision. Rather, when defense counsel has an excessive caseload, inadequate or no staffing and administrative support, inadequate compensation and resources or a lack of proper training and supervision, the prosecution must step in and act both as prosecutor and ensure that an adequate defense is provided.

The prosecutor must always be mindful of these obligations to reduce the likelihood that an innocent defendant is convicted. Moreover, prosecutors are aware of at least two other very important reasons why effective assistance of defense counsel is essential. First, the public’s faith in the justice system depends on strict adherence to the due process rights of every defendant. When defense lawyers do not challenge illegal

searches and seizures or unlawful confessions, everyone's constitutional rights are diminished. Second, when prosecutors secure convictions where counsel are inadequate, there often is an enormous waste of resources when the case is appealed and reversed. Such a situation is unworkable and cannot be sustained over the long run. Yet, this is what now occurs in counties which cannot afford to adequately support public defenders, who must focus on their private practices at the expense of their indigent clients.

Moreover, as public servants, prosecutors generally enjoy special deference from jurors who are comfortable with the belief that it would be highly unlikely for the police and prosecution to be pursuing conviction without very good cause. Even though jurors are instructed that a defendant's guilt must be demonstrated beyond a reasonable doubt, if an indigent defendant is provided an ineffective lawyer who does not pursue forensic evidence, potential witnesses and alibis, the jury is likely to follow its instincts and assume the prosecution has a good case. Again, no prosecutor wants a conviction that is not based on proof establishing guilt beyond a reasonable doubt.

II. A STATE-FUNDED FULL-TIME PUBLIC DEFENDER SYSTEM WOULD REDUCE FISCAL WASTE BY INCREASING THE LIKELIHOOD THAT DEFENDANTS MOVE THROUGH THE SYSTEM IN THE MOST COST-EFFECTIVE, TIMELY MANNER

Mindful of their duties to the court, public, and the defendant, when there is an enormous disparity of resources between prosecution and defense, prosecutors must spend more time evaluating the defense's case and cannot focus on prosecution. Being a successful prosecutor is not to "win a case, but [to ensure] that justice [is] done."

Berger v. United States, 295 U.S. 78-88 (1935). Given the burdens placed on law enforcement to make quick arrests when crimes are committed, the natural desire of

potential witnesses to want criminal accountability, and the incentives often placed on persons with criminal records to make deals, in some cases the wrong person will be tried on criminal charges.

It is never a prosecutor's job or desire to convict the wrong person. Accordingly, when defendants are represented by counsel with inadequate resources or time to explore possible defenses, interview potential witnesses, and evaluate whether there are procedural or other grounds for dismissal, the prosecution also must fill the role of assistant defense counsel. This takes time, resources and energy away from the prosecutor's duty to represent the state zealously in prosecuting. If the State implements a state-funded full-time public defender system, and prosecutors throughout the State can focus on presenting their cases, ultimately this would save the State enormous resources. It is regrettable to see the resources that have been wasted when cases are reversed on appeal because of ineffective counsel and even when cases are given extra scrutiny by the appellate courts because of questionable assistance of counsel, even when error ultimately is found "harmless."

Conclusion

For the foregoing reasons, the Court should reverse the Circuit Court's judgment and order implementation of a statewide and state-funded full-time public defender system.

Dated: July 26th, 2004

Respectfully submitted,



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CERTIFICATE OF SERVICE

This is to certify that I have caused to be served on this 26th day of July, 2004 a true and correct copy of the foregoing Motion for Leave to File Brief of Amicus Curiae District Attorney Eleanor J. Peterson in Support of Appellant Quitman County and the accompanying brief on the following:

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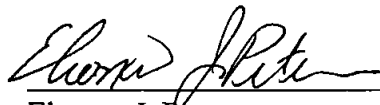
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