

July 17, 2010

High Court kills lawsuit forcing state to pay more for poor defendants

DOUG GUTHRIE
The Detroit News

Lansing --The Michigan Supreme Court reversed itself Friday and threw out a lawsuit that aimed to force the state to provide more funding to hire lawyers for poor people accused of crimes.

The state's high court in April upheld favorable lower court decisions for the lawsuit brought by eight men and women convicted in Berrien, Genesee and Muskegon counties against the state and Gov. Jennifer Granholm. Intended to become a class-action lawsuit that would include all people convicted of crimes in Michigan while represented by court-appointed counsel, the case appeared headed for trial in Ingham County Circuit Court until Friday's abrupt reversal.

"This was a case that was trying to get the courts to correct one of the worst indigent defense systems in the country," said Detroit attorney Frank Eaman, who helped bring the suit. He said it seeks consistent state funding for the systems operated and funded by the state's 83 counties.

"It is a system that by every measure has failed," Eaman said.

Michigan ranks 44th in the nation for the amount it spends to provide attorneys for the poor, according to the National Legal Aid and Defender Association.

The underlying lawsuit names eight plaintiffs from Berrien, Genesee and Kent counties, and includes allegations that court-appointed attorneys failed to provide adequate defense. The lawyers didn't do such basics as meet with clients or review documents, including police reports, according to the complaint.

The American Civil Liberties Union blasted the decision.

"We are shocked and disturbed by the Supreme Court's about-face," said Michael J. Steinberg, ACLU of Michigan legal director. "Today's order prevents us from proving what most observers already know -- Michigan's justice system is broken for poor people accused of crimes."

Four justices wrote in concurrence with the order, including Justice Stephen Markman, who concluded there is no constitutional precedent that guarantees an indigent defendant a particular attorney or an attorney of a particular skill level or resources.

Chief Justice Marilyn Kelly wrote in dissent that the reconsideration, on request from the state's lawyers, resulted in nothing new to warrant a different conclusion from the court's April order to send the case to trial.

Mary Mullins, a Detroit attorney who filed a brief in the case supporting the plaintiffs on behalf of the National Association of Criminal Defense Lawyers, said the reversal was surprising.

"To grant a motion for reconsideration is rare in the first place, and it was not for the customary narrow purpose," he said.

The plaintiffs had broad support. A brief filed by retired judge and former Wayne County Prosecutor John O'Hair, retired Wayne Circuit Judge William Giovan and retired Livingston County Judge Daniel Burrell pointed out a 2008 National Legal Aid Defender Association report that put Michigan's public defense system among the worst in the country.

David Udell, director of the Brennan Center for Justice at the NYU School of Law, which filed a supporting brief, said the ruling likely will affect only Berrien, Genesee and Muskegon counties.