

Thursday, December 2, 2010

SUPREME COURT FLIP-FLOP-FLIPS ON INDIGENT DEFENSE

The Ingham Circuit Court will again review the state's policy on appellate counsel for indigent defendants under a re-reversal of the Supreme Court's position issued Wednesday.

The high court, in a 4-3 decision, reconsidered and vacated its July 16 order in the case *Duncan v. State of Michigan*, SC docket No. 139345). That order had reversed an April 30 order to allow the case to move forward.

Justice Alton Davis gave the deciding vote to reconsider an indigent defense case.

The American Civil Liberties Union, which had argued the case on behalf of the indigent defendants, praised the order.

"The unanimous Supreme Court was correct in April and is correct again today," said Michael Steinberg, ACLU Michigan legal director. "It is widely accepted that Michigan's criminal justice system is broken for poor people accused of crimes. When the indigent defense system is broken, everyone suffers. Innocent men and women end up in prison while the perpetrators are left on the streets to commit more crimes."

But the three Republicans on the panel, Justice Maura Corrigan, Justice Stephen Markman and Justice Robert Young Jr., argued there was no reason to overturn the prior order, and particularly not to do it so quickly.

The April order, which had been strictly on the issue of certification of a class action, had been approved unanimously, but the July order split the court 4-3 in finding there was nothing in the case the courts could decide.

The Democrats on the panel, at that time a minority of Chief Justice Marilyn Kelly, Justice Michael Cavanagh and Justice Diane Hathaway, had argued nothing had changed to provide a basis for overturning the earlier order and stopping the case.

Mr. Markman made the same argument in Wednesday's order. "Because plaintiffs have not presented anything in the present motion for reconsideration, that causes me to believe that the above reasons do not continue to justify our decision to reverse the Court of Appeals, I would deny plaintiffs' motion for reconsideration," he said after quoting the majority reasoning from the July order.

Justice Alton Davis, whose appointment to succeed Justice Elizabeth Weaver shifted the majority on the court, pointed to Ms. Kelly's dissent on the July order as the reason for issuing the current order.

Ms. Corrigan, who joined Mr. Markman's dissent, argued the court should at least have given her time to complete her own dissent before issuing the order.

"The majority has decided to grant the motion for reconsideration, and to reverse our previous order, without affording disagreeing Justices sufficient time to adequately respond to this decision," she said. "This is contrary to our practice during the 11 years I have served on this Court. The court's decision to suddenly expedite this case seems designed to prevent the new court after January 1, 2011, from considering a motion for reconsideration."

Mr. Young also joined Mr. Markman's dissent.