

**IN THE SUPREME COURT
STATE OF GEORGIA**

CHARLES LLOYD,)	
)	
Appellant,)	
)	
v.)	Case No. S10C1611
)	
STATE OF GEORGIA)	
)	
Appellee.)	
)	

**BRIEF OF AMICUS CURIAE THE SOUTHERN CENTER FOR HUMAN
RIGHTS IN SUPPORT OF APPELLANT CHARLES LLOYD'S
PETITION FOR CERTIORARI**

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TABLE OF CONTENTS

TABLE OF CONTENTS.....ii

TABLE OF AUTHORITIES.....iii

INTRODUCTION.....1

IDENTITY AND INTEREST OF AMICUS CURIAE.....1

STATEMENT OF FACTS.....5

ARGUMENT.....7

CONCLUSION.....10

CERTIFICATE OF SERVICE.....11

TABLE OF AUTHORITIES

Cases

<i>Sentinel Offender Services, LLC v. Harrelson</i> , 286 Ga. 665, 690 S.E.2d 831 (2010).....	3
<i>State v. Reid</i> , 298 Ga. App. 235, 679 S.E.2d 802 (2009).....	8
<i>State v. Tennin</i> , 674 N.W.2d 403 (Minn. 2004).....	3
<i>State v. Webb</i> , 591 S.E.2d 505 (N.C. 2004).....	3

Constitutional Provisions

GA. CONST. art. I, § 1, ¶ XXIV.....	3
U.S. CONST. amend. VI and XIV.....	3

Statutes

O.C.G.A. § 15-21A-6.....	2
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Rules

Uniform State Court Rule 33.11.....	3
-------------------------------------	---

Other Authorities

American Bar Association, Criminal Justice Section Standards, Speedy Trial, § 12-3.1.....	7
<i>Br. of Amicus Curiae the Southern Center for Human Rights on Behalf of Cross-Appellant Lisa Harrelson</i> , Case No. S09X1626 (Ga. Sept. 24, 2009).....	2
Letter from Sarah Geraghty to Chief Judge Gayle B. Hamrick, State Court of Richmond County, Jan. 30, 2008.....	4
Letter from Stephen Bright to John B. Long, Richmond County Tripartite Committee, Apr. 29, 2003.....	2
Murfee Faulk, <i>Making Crime Pay</i> , METRO SPIRIT, July 16, 2008.....	9
Nat'l Assoc. of Criminal Defense Lawyers, <i>Minor Crimes, Massive Waste: The Terrible Toll of America's Broken Misdemeanor Courts</i> , April 2009.....	8
Order of Jan. 28, 2010, <i>McGee v. Campanaro</i> , Civil Action No. 2018-RCHM-1 (Richmond County Superior Court).....	3
Petition to Modify Probation Sentence at 1, <i>State v. Conner</i> , No. 07-RCST-15889 (Dec. 1, 2007).....	4
Sandy Hodson, <i>Judge Rules Hearing, Jail Sentence Unlawful</i> , AUGUSTA CHRONICLE, Jan. 28, 2010.....	8

Sandy Hodson, *A Modern-Day Debtors' Prison? Critics Contend Private Probation System Punishes the Poor Unfairly*, AUGUSTA CHRONICLE, Nov. 15, 2009.....4, 8
Stacey Eidson, *State Court Chaos*, METRO SPIRIT, Feb. 10, 2010.....8

INTRODUCTION

The Southern Center for Human Rights (“the Center”) files this amicus brief on behalf of Charles Lloyd, Appellant, whose misdemeanor case was one of many that languished in the Richmond County State Court for years before being placed on the trial calendar, in violation of the right to a speedy trial. The systemic delays in adjudication in the Richmond County State Court, combined with other unconstitutional practices historically present in Richmond County’s state court system, have led to a disturbing loss of public trust and confidence in the Richmond County State Court, a matter deserving of this Court’s attention. The Center respectfully asks this Court to grant Appellant’s Petition for Certiorari.

IDENTITY AND INTEREST OF AMICUS CURIAE

The Center is a non-profit, public interest law firm dedicated to enforcing the civil and human rights of people in the criminal justice system. Specifically, the Center aims to ensure that the quality of justice received by individuals is not dependent on one’s income, and that defendants with financial means and those without are treated equally within the criminal justice system.

Over the last decade, the Southern Center for Human Rights has had occasion to observe the operations of the Richmond County State Court and to represent the interests of indigent defendants who have appeared before the Court.

In so doing, the Center has been witness to the following unconstitutional practices historically present in the Court:

First, it has been the regular practice of the State Court in Richmond County to have Assistant Solicitors involved in prosecuting the defendant *also* assist defendants in making their decision to enter a plea and in actually entering the plea. As evidenced by a letter written by Stephen Bright of the Southern Center for Human Rights to John Long, formerly of the Richmond County Tripartite Committee in 2003, this problem is not new. *See* Letter from Stephen Bright to John B. Long, Richmond County Tripartite Committee, Apr. 29, 2003 (Appendix A) (reporting that Assistant Solicitors routinely approached indigent defendants and encouraged them to sign forms purporting to waive the right to counsel, in violation of the constitutions of Georgia and the United States, the Uniform Superior Court Rules, and the Georgia Rules of Professional Conduct). Mr. Lloyd, who asserted his right to counsel, was placed behind those entering un-counseled pleas and his trial was delayed.

Second, in more recent years, the State Court has unlawfully burdened the right to counsel by requiring indigent defendants to pay an up-front \$50 fee before they can talk to a public defender. *See* O.C.G.A. § 15-21A-6; *Br. of Amicus Curiae the Southern Center for Human Rights on Behalf of Cross-Appellant Lisa Harrelson*, Case No. S09X1626 (Ga. Sept. 24, 2009) at 6. Indigent individuals

who are not able to pay the \$50 fee are “assisted” by Assistant Solicitors, who encourage and help them fill out waiver of counsel forms. *See id.*¹ Thus, indigent defendants in Richmond County continue to be shepherded through the process of entering a guilty plea by state prosecutors. Again Mr. Lloyd, who asserted his right to counsel, had his case placed behind those indigent defendants entering pleas to avoid payment of an application fee.

Third, even though State Rule 33.11 requires the use of a recording device, court reporter, or another device to record the taking of pleas in every case, guilty pleas in Richmond County have been accepted for years without such recordation. *See Sentinel Offender Services, LLC v. Harrelson*, 286 Ga. 665, 668, 690 S.E.2d 831, 834 (2010) (affirming grant of habeas corpus where plea was not recorded and State could not show that defendant was advised of her right to counsel).²

¹ Requiring indigent defendants to pay a fee before they may speak with appointed counsel violates U.S. Const. amend. VI and XIV, as well as Article I, Section 1, Paragraph XXIV of the Georgia Constitution, which states that “[n]o person shall be compelled to pay costs in any criminal case except after conviction on final trial.” GA. CONST. art. I, § 1, ¶ XXIV. Other state courts have struck down similar policies requiring payment of a public defender fee at the time of appointment. *See State v. Webb*, 591 S.E.2d 505 (N.C. 2004); *State v. Tennin*, 674 N.W.2d 403 (Minn. 2004).

² In one recent habeas corpus case, *McGee v. Campanaro*, Civil Action No. 2018-RCHM-1, Richmond County Superior Court Judge Michael Annis ruled that the Richmond County State Court had unlawfully jailed a man with schizophrenia for two months, without providing him counsel or eliciting an appropriate waiver of rights on the record. *See Order of Jan. 28, 2010, McGee v. Campanaro*, Civil Action No. 2018-RCHM-1 (Richmond County Superior Court).

Fourth, Richmond County State Court unfairly punishes those who are unable to pay fines at the time of sentencing by requiring them to pay amounts far above the fees imposed by the court. *See* Sandy Hodson, *A Modern-Day Debtors' Prison? Critics Contend Private Probation System Punishes the Poor Unfairly*, AUGUSTA CHRONICLE, Nov. 15, 2009. When a defendant in the State Court cannot immediately pay his fine, he must enter into a payment plan with Sentinel Offender Services, Inc., a private probation company. This payment plan adds hefty monthly probation fees to the fine that an indigent defendant must pay, in some cases doubling the amount of money that a person of means would pay for the same offense. In December 2007, the Center challenged Richmond County's practice of placing nearly all indigent persons on probation with a private company when it filed a petition on behalf of Marietta Conner, a 63-year-old disabled woman who was convicted of "failure to yield to a pedestrian in the crosswalk" and subsequently required to pay nearly double the amount of her initial fine, due solely to her indigence.³

³ Ms. Conner was placed on probation with Sentinel and charged \$39 per month in probation fees in addition to her \$140 fine. *See* Petition to Modify Probation Sentence at 1, *State v. Conner*, No. 07-RCST-15889 (Dec. 1, 2007); *see also* Letter from Sarah Geraghty to Chief Judge Gayle B. Hamrick, State Court of Richmond County, Jan. 30, 2008 (Appendix B). By scrounging up what she could – and on one occasion, baking pies for a neighbor to raise money to make her payment – Ms. Conner was able to make five payments, totaling \$185.99 – more than the amount of her initial fine. *Id.* at 2-3. Of that amount, only \$56.99 was

In short, the systemic delays in adjudication at issue in Mr. Lloyd's case must be viewed against the backdrop of a criminal court that is operating without core protections necessary to ensure a fair, speedy, and just process for poor defendants. The Center has an interest in ensuring that indigent persons who come before the Richmond County State Court are adjudicated in accordance with constitutional norms.

STATEMENT OF FACTS

1. On June 30, 2007, Appellant Charles Lloyd was arrested for driving under the influence, driving with a suspended license, and speeding. (R. 5-16).
2. On July 31, 2007, Mr. Lloyd was arraigned, appointed counsel, and demanded a jury trial. (R. 9-20).
3. The State took no action on Mr. Lloyd's case for nearly one year.
4. In June 2008, one year after Mr. Lloyd's arrest, the State produced discovery to the defense. (R. 22).
5. The State then took no action on Mr. Lloyd's case for one additional year.

applied to her fine, whereas Sentinel collected \$93, and \$36 went to the state victims' crime fund. *Id.* at 3. Because she was unable to pay each month, the amount she originally owed more than doubled to a total of \$305. *Id.* at 1. The Center filed a petition to terminate Ms. Conner's probation sentence and the motion was granted on December 12, 2007. Order for Modification of Probation, *State v. Conner*, No. 07RCST15889 (Dec. 12, 2007). While Ms. Conner's situation was resolved, it was only because she had the good fortune to get *pro bono* legal assistance.

6. On April 15, 2009, nearly two years after Mr. Lloyd's arrest, Mr. Lloyd filed a motion to dismiss on speedy trial grounds. (R. 36).
7. The State took no action on Mr. Lloyd's case for an additional two-and-one-half months.
8. The State then placed Mr. Lloyd's case on the July 2009 trial calendar.
9. Mr. Lloyd was one of many persons whose cases languished for years in Richmond County's state court system before being adjudicated. Between March 2009 and July 2009, the Richmond County Office of the Public Defender filed motions to dismiss for lack of a constitutional speedy trial in 57 cases. (Petition for Certiorari at 1).
10. On December 7, 2009, the Richmond County State Court held a hearing on Mr. Lloyd's motion to dismiss. (R. 155). At the hearing, the State stipulated that its negligence caused the delay in Mr. Lloyd's adjudication. (T. 31). In addition, at the hearing, Mr. Lloyd testified that he suffered anxiety and concern as a result of the delay in adjudication (T. 40); that he could not have his driver's license reinstated while the case was pending (T. 39); and that, because he could not drive, he was forced to seek alternative employment that paid \$200-\$300 less per week than what he otherwise would have earned. (T. 40).
11. On December 14, 2009, the Richmond County State Court denied Mr. Lloyd's motion to dismiss. (R. 155).

12. On December 30, 2009, Mr. Lloyd submitted a Plea in Bar, which the State Court denied on January 21, 2010. (R. 168, 176).

ARGUMENT

Amicus would like to highlight three points with respect to the matter presented by Mr. Lloyd's Petition.

First, systemic delays in the adjudication of misdemeanors in Richmond County frustrate the interest of the public, including defendants, victims and witnesses, in the fair, accurate, and timely resolution of criminal cases. Such delays have the effect of: (1) limiting the deterrent effects of prosecution and conviction; (2) reducing the likelihood that rehabilitative purposes of a sentence will be achieved; (3) increasing the length of the periods of anxiety for victims, witnesses and defendants; (4) increasing costs for jail operation; and (5) fostering public distrust in the justice system. *See* American Bar Association (ABA), Criminal Justice Section Standards, Speedy Trial, § 12-3.1, available at: <http://www.abanet.org/crimjust/standards>. The ABA recommends a "presumptive speedy trial time limit" of 180 days from the defendant's first appearance in court, but notes that "[s]horter presumptive speedy trial time limits should be set for persons charged with minor offenses." *Id.* at § 12-2.1. *The delay in Mr. Lloyd's case was three times the ABA's recommended 180-day speedy trial time limit.*

Second, systemic delays in the adjudication of misdemeanors unfairly coerce defendants to forego counsel and plead guilty. A person who pleads guilty in the Richmond County State Court gains the benefit of an immediate resolution to his case, not to mention avoiding a fee levied against indigent defendants requesting counsel. A person who requests appointed counsel and a trial, however, may be punished with years of anxiety and delay before his case is resolved. *See, e.g., State v. Reid*, 298 Ga. App. 235, 240-41, 679 S.E.2d 802, 808 (2009) (recognizing that excessive pre-trial delays force defendants to “liv[e] under a cloud of anxiety, suspicion, and often hostility.”). *See also* Nat’l Assoc. of Criminal Defense Lawyers, *Minor Crimes, Massive Waste: The Terrible Toll of America’s Broken Misdemeanor Courts*, April 2009, at 18 (finding that systemic, undue delays in adjudication discourage requests for counsel in misdemeanor cases).

Finally, as demonstrated by numerous recent newspaper articles, the combination of undue delays and other constitutional deficiencies has led to a disturbing loss of public confidence in the Richmond County State Court.⁴

⁴ *See, e.g.,* Stacey Eidson, *State Court Chaos*, METRO SPIRIT, Feb. 10, 2010 (reporting on allegations of improper practices by Sentinel Offender Services, Inc. and the Richmond County State Court); Sandy Hodson, *Judge Rules Hearing, Jail Sentence Unlawful*, AUGUSTA CHRONICLE, Jan. 28, 2010 (reporting that Superior Court granted habeas petition brought by a mentally ill man jailed for two months, without counsel, for his inability to pay probation fees to private probation company); Sandy Hodson, *A Modern-Day Debtors’ Prison? Critics Contend Private Probation System Punishes the Poor Unfairly*, AUGUSTA CHRONICLE, Nov. 15, 2009 (reporting on complaints of unfair practices by private probation

When indigent defendants are discouraged from being represented by a public defender through the pre-trial announcement of a \$50 application fee; when they are instead shepherded through the process of entering a guilty plea by a state prosecutor; when there is no device or court reporter to record the proceedings to provide a record so that errors may be addressed on appeal; when cases are lost in the system for years on end; and when convicted defendants are subject to excessive fees by a private probation system that privileges its own profits over the recoupment of state-imposed fines, this Court can hardly have confidence that poor people accused of crimes in Richmond County State Court are given the fair and just process to which they are entitled under the state and federal constitutions.

company and cost to taxpayers of housing indigent misdemeanants); Murfee Faulk, *Making Crime Pay*, METRO SPIRIT, July 16, 2008 (reporting that “[a] customer who gets behind on payments [in the Richmond County State Court] could end up paying 200 percent interest on an original court fine.”).

CONCLUSION

For the reasons presented above, amicus requests that this Court grant Mr. Lloyd's Petition and that a Writ of Certiorari be issued.

Respectfully submitted this _____ day of _____ 2010.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served, by first-class mail, United States Postal System, on counsel for the Appellant and for the Appellee at the following addresses:

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