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Post-Adjudication Relief In Juvenile Court Delinquency Proceedings

REPORT

From
The Office of the Executive Director
David R. Kenagy

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is housed at the Willamette
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which also provides executive,
administrative and research
support for the Commission.*

THE PROBLEM:

Recently, on direct appeal from a juvenile court order finding him to be within the jurisdiction of the court, under ORS 419C.005 (delinquency), a juvenile sought to challenge the adequacy of his appointed counsel.¹ *State ex rel Juv. Dept. v. Curtis Jones*, CA 106772. Implicit in the statutory right to appointed counsel in delinquency proceedings, ORS 419C.200, is the right to adequate counsel, and, *if no statutory procedure exists for vindicating the statutory right*, the appellate court may fashion one.² See *State ex rel Juv. Department v. Geist*, 310 Or 176, 185, 796 P2d 1193 (1990). Moreover, the Due Process Clause of the United States Constitution and Article I, section 20, of the Oregon Constitution would appear to require that a person adjudicated delinquent under ORS 419C.005, be afforded some procedure to have the adjudication set aside, if it appears that the adjudication is the result of a constitutional violation that would constitute grounds for post-conviction or habeas corpus relief in an adult criminal case.³

In the *Curtis Jones* appeal, the juvenile relied on the decision in *State ex rel Juv. Department v. Geist*, *supra*, 310 Or at 186-87, to support his contention that he could challenge the adequacy of his counsel (and have his delinquency adjudication set aside on that ground) on direct appeal. In *Geist*, the Oregon Supreme Court concluded that the unique exigencies of termination-of-parental-rights cases required review of such challenges on direct appeal:

We conclude that after an adjudication terminating parental rights, appellate courts must not permit children to remain in the limbo of impermanent foster care (which we believe often will be detrimental to their best interests) any longer than is absolutely necessary. Because of the importance of expeditious resolution of termination proceedings, and absent statutes providing otherwise, we hold that any challenges to the adequacy of appointed trial in such proceedings must be reviewed on direct appeal.

The Court of Appeals has applied the holding in *Geist* in juvenile court dependency proceedings. See, e.g., *State ex rel Juv. Dept. v. Charles*, 106 Or App 628, 633-34, 810 P2d 389, *rev den* 312 Or 150 (1991). However, the

¹ The juvenile asked the Court of Appeals to hold the appeal in abeyance and “remand[*] this case to the trial court for an evidentiary hearing on the issue of the adequacy of his court-appointed counsel.”

² A youth in a delinquency proceeding also has a constitutional right to appointed counsel in delinquency proceedings. See *In re Gault*, 387 US 1, 87 S Ct 1428, L Ed 2d 527 (1967).

³ A person’s juvenile court delinquency adjudications under ORS 419C.005 are used to determine the person’s “criminal history” for purposes of sentencing, if the person is convicted of a crime when he or she becomes an adult.

considerations that require resolution of inadequacy-of-counsel claims on direct appeal in termination-of-parental-rights cases and juvenile court dependency cases do not exist in delinquency proceedings.

ORS 419C.610, which the juvenile the *Curtis Jones* case did not cite or discuss, authorizes the juvenile court to “modify or set aside any order made by it.” The broad grant of authority in ORS 419C.610 appears to provide a vehicle for setting aside adjudications of delinquency, based on claims of inadequate counsel and other constitutional violations, after a juvenile has exhausted his direct appeal rights, as in adult post-conviction proceedings under ORS 138.510 to ORS 138.687. However, ORS 419C.610 does not expressly provide for such “post-adjudication relief,” much less resolve the question whether a juvenile seeking to set aside an adjudication because of inadequate representation by counsel first must pursue a direct appeal.

HISTORY: (to be added)

SOLUTION:

The Work Group proposes that ORS 419C.610 be amended to state expressly that a person under the age of 18 or currently within the jurisdiction of the juvenile court under ORS 419C.005 may petition the juvenile court to set aside a delinquency adjudication on the same grounds that may be asserted by an adult to set aside a criminal conviction under ORS 138.510 to ORS 138.687, and that, where appropriate, the same limitations apply.