

IN THE SUPREME COURT OF THE STATE OF KANSAS

In the Matter of L.M.,

Respondent/Appellant.

Response to Motion for Rehearing and Clarification

On June 20, 2008, the Court in this case held that the Kansas juvenile justice system has become so akin to an adult criminal prosecution that juveniles prosecuted under the Kansas Juvenile Justice Code now have a constitutional right to a jury trial under the Sixth and Fourteenth Amendments to the United States Constitution and under Section 10 of the Bill of Rights of the Kansas Constitution. The State has now moved this Court to rehear this case in order to clarify its decision. For the reasons set forth below, L.M. submits that this motion should be denied.

The State does not contend or even suggest that the Court's decision was erroneous in any respect. Rather, it simply states that the decision has raised questions concerning the manner in which it is to be implemented in other cases and other potential ramifications which are not answered in the decision itself, and it asks the Court to clarify six separate questions. The State makes no claim that any of these questions was directly at issue in the case before the Court; rather, it is merely seeking to use this case as a vehicle to get the Court to render an advisory opinion for the State's future reference in other cases.

The Court should decline the State's request. It is not uncommon for appellate court decisions to raise questions about the scope and applicability of the decision and its implications for other situations not before the court. But that does not give license for the litigants to seek answers to those questions from the court by requesting an expansion of its opinion, and if a

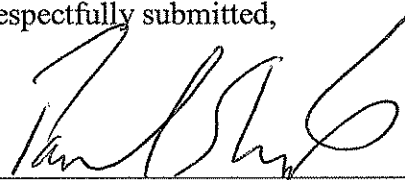
court were to address all of these peripheral issues in its opinion in the first instance, it would in all likelihood be regarded as dicta. Courts do not have the authority to render advisory opinions, for reasons recently discussed by this Court at length in *State ex rel. Morrison v. Sebelius*, 285 Kan. 875, 888-906, 179 P.3d 366 (2008). These questions are not justiciable in this case. The Court decided the issues presented to it by the parties; there is no case or controversy with respect to the additional “clarifications” sought by the State.

The State does not even offer any reasons to believe that many of the questions it raises will ever become issues. It poses a law school exam type hypothetical concerning the retroactive application of the Court’s decision that is entirely unrelated to the facts of this case and with nothing to suggest that it will ever be asserted by any litigant. It asks the Court to rule on the power of the legislature to enact legislation affecting jury trials under the Kansas Juvenile Justice Code, with no showing that the legislature has any intent of, or even any interest in, doing so, and it seems apparent that this issue is raised to assist the State in formulating its own potential legislative agenda. It asks the extremely broad and open-ended question of whether any other constitutional and/or statutory rules of adult criminal procedure should now be applied to juvenile justice cases as well, but the only example it gives—the requirement of K.S.A. 38-2354 that the rules of evidence of the code of civil procedure apply in proceedings under the Kansas Juvenile Justice Code—would seem to be a nonissue, since K.S.A. 60-402 provides that those rules are applicable in civil and criminal proceedings alike. And the State suggests no reason to believe that those issues that may be more likely to arise in future cases will not be susceptible of easy resolution. The Court’s ruling in this case was based on its holding that the requirements of the Sixth Amendment to the United States Constitution and Section 10 of the Kansas Bill of Rights are now applicable to juveniles charged with offenses under the Kansas Juvenile Justice

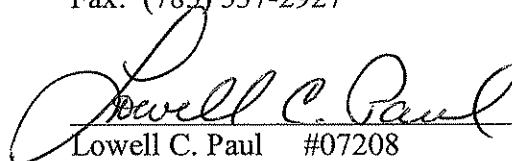
Code. There is a substantial body of jurisprudence that has developed under both of those provisions, and the State offers no reason to believe that it will not provide sufficient guidance to lower courts in addressing these issues.

In short, the State's motion for rehearing and clarification should be denied. It has shown no need for clarification of the Court's opinion in any respect. Rather, the "clarifications" that it seeks go to issues which were not before the Court in this case and may never come before this Court. These issues are not justiciable in this case, and any opinion the Court might render would be merely advisory. That is not the proper function of this Court.

Respectfully submitted,



Paul Shipp #20263
Attorney for Respondent/Appellant
Kansas Legal Services
104 S. 4th St., Second Floor
Manhattan, Kansas 66502
Tel.: (785) 537-2943
Fax: (785) 537-2927



Lowell C. Paul #07208
Attorney for Respondent/Appellant
Kansas Legal Services
712 S. Kansas, Suite 200
Topeka, Kansas 66603
Tel.: (785) 233-2068
Fax: (785) 354-8311

CERTIFICATE OF SERVICE

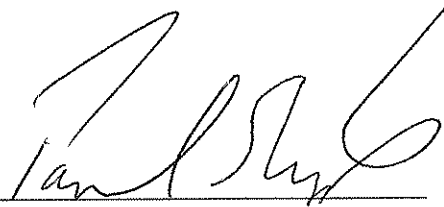
I hereby certify that I deposited in the United States mail, postage prepaid, one (1) copy of the foregoing Response to Motion for Rehearing and Clarification, addressed to each of the following:

Steven R. McAllister, Solicitor General
Jared S. Maag, Deputy Solicitor General
Office of the Attorney General
120 SW 10th Avenue, Room 200
Topeka, KS 66612-1597

Lara Blake Bors
John P. Wheeler, Jr.
409 North Ninth Street
Garden City, Kansas 67846

Steven N. Six
Kansas Attorney General
120 S.W. 10th Street, 2nd Floor
Topeka, Kansas 66612-1597

on this 14th day of July, 2008.



Paul Shipp
Attorney for Respondent/Appellant