

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF GREENVILLE)

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STANDING ORDER

THE SIXTH AMENDMENT to the United States Constitution states that an accused in a criminal prosecution shall “have the assistance of counsel for his defense.” As interpreted by the United States Supreme Court this protection includes indigent defendants. The Sixth Amendment’s constitutional mandate is effectuated in Greenville County through the Office of Indigent Defense and the Office of the Circuit Public Defender. The Greenville County Office of Indigent Defense is managed by nonattorney personnel who screen applications for indigency determination and appoint criminal defense counsel.

PREVIOUSLY the Office of Indigent Defense has only been required to screen defendants charged with General Sessions Court offenses. However, the United States Supreme Court has expanded the right to court appointed counsel in the cases of Alabama v. Shelton, 535 U.S. 654 (2002) and Rothgery v. Gillespie 554 U.S. ____ (2008).

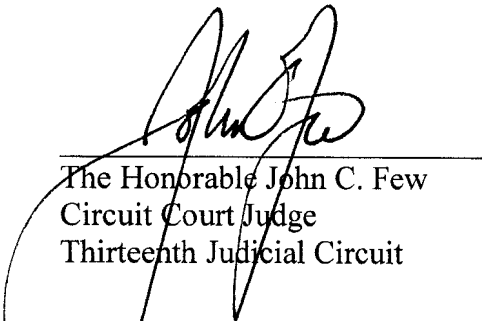
PRIOR TO THE SHELTON CASE, the Court drew the line at “actual imprisonment”, holding that counsel need not be appointed when a defendant is fined for the charged crime, but is not directly sentenced to a term of imprisonment. Argersinger v. Hamlin, 407 U.S. 25 (1972); Scott v. Illinois, 440 U.S. 367 (1979). LeReed Shelton was convicted of third degree assault following a bench trial where he represented himself. Shelton was sentenced to thirty days in jail, but the trial court suspended the jail term and then placed him on probation for two years. The issue in Shelton was whether, in spite of the fact that the defendant was not imprisoned at the time he was sentenced, he was entitled to a free lawyer at the time of his trial. The Supreme Court concluded that Mr. Shelton was entitled to a lawyer at trial because his suspended sentence was the type of penalty, which may “end up in the actual deprivation of a person’s liberty” and may not be imposed unless the defendant was accorded “the guiding hand of counsel” in the prosecution for the crime charged.

DEFENDANTS charged with magistrate court crimes would qualify for Shelton's protections, provided that their sentences may "end up in the actual deprivation of a person's liberty". Alternative sentences of thirty days or a fine would qualify. Sentences to "time served" would also qualify. Magistrate court defendants held in pretrial detention are entitled by statute for jail credit when sentenced. §24-13-40, South Carolina Code of Laws. These defendants face sentences, which may end up in and often do end up in the actual deprivation of their liberty thus triggering the right to counsel under the Shelton decision. Sentences of a fine without an alternative jail term would not qualify for free counsel under Shelton.

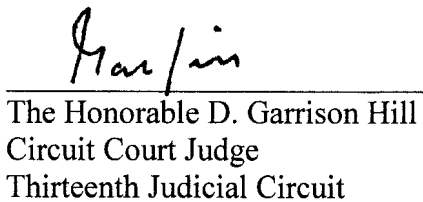
THE ROTHGERY decision clarified the point during the criminal process at which the right to counsel attaches and needs to be addressed. The Supreme Court in Rothgery determined that the adversary process begins, and the right to counsel attaches, when a defendant learns of the charges against him and his liberty is subject to restriction. In the magistrate court process, a defendant is told of the charges against him upon his first appearance before the magistrate and his bond is also set at that time. If the defendant cannot immediately post bond or is not released on a personal recognizance bond, he is placed in detention. The right to counsel attaches at this point in the magistrate court criminal procedure.

AS APPLIED to the magistrate court system in Greenville County, it is the order of the Court, that upon a defendant's appearance before the committing magistrate, each defendant who cannot immediately post bond or is not released on a personal recognizance bond shall be informed of his right to counsel, as is currently the procedure. In addition, however, at the time the defendant is to be detained in jail, the magistrate shall ask the defendant if he would like the assistance of counsel. If the defendant responds in the affirmative the committing magistrate shall immediately fill out Defense of Indigents Act Form IV and fax it to the Greenville Office of Indigent Defense. Upon receipt of the Form IV, the Office of Indigent Defense shall interview the inmate in jail within forty-eight (48) hours and determine the defendant's eligibility for a court appointed attorney. If the defendant is determined to qualify for a free attorney, the Office of Indigent Defense shall immediately assign the defendant to the Circuit Defender Office for representation.

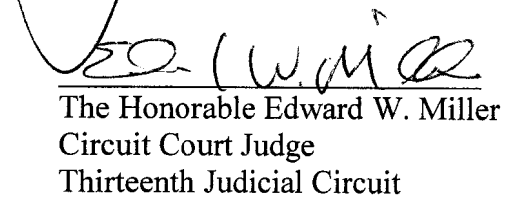
IT IS SO ORDERED.



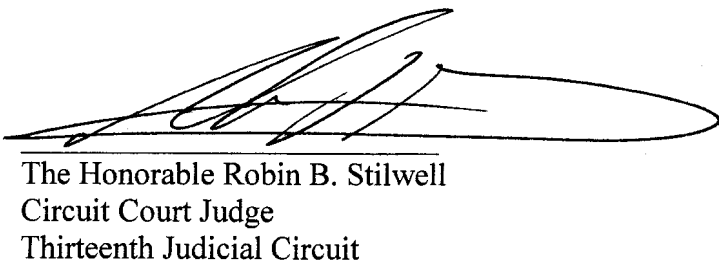
The Honorable John C. Few
Circuit Court Judge
Thirteenth Judicial Circuit



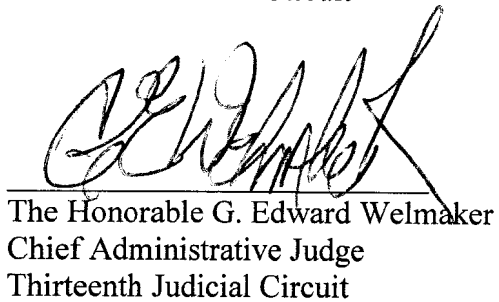
The Honorable D. Garrison Hill
Circuit Court Judge
Thirteenth Judicial Circuit



The Honorable Edward W. Miller
Circuit Court Judge
Thirteenth Judicial Circuit



The Honorable Robin B. Stilwell
Circuit Court Judge
Thirteenth Judicial Circuit



The Honorable G. Edward Welmaker
Chief Administrative Judge
Thirteenth Judicial Circuit

Dated: December 1, 2009
Greenville, South Carolina