

MSC Order: Duncan v. State of Michigan

19. July 2010 By Matthew Nelson

In an extraordinary development, the Michigan Supreme Court dismissed the putative class action brought by indigent criminal defendants against the State's public defender system. In May, the Court issued a unanimous [order](#) holding that a decision on the defendants' motion for summary disposition was premature. On defendants' motion for reconsideration, the Court adopted the [dissent](#) from the Court of Appeals and concluded that the plaintiffs' claims are not justiciable. Chief Justice Kelly and Justices Cavanagh and Hathaway dissented.

As has been well-publicized, the ACLU initiated a putative class action against the State for failing to adequately fund the public defense of indigent criminal defendants. The Ingham County Circuit Court granted class certification and denied defendants' motion for summary disposition.

On appeal, the Court of Appeals [majority](#) affirmed the trial court's decision. Our earlier post summarizing the Court of Appeals' decision is [here](#). In dissent, Judge Whitbeck concluded that the relevant Supreme Court precedent required a showing that defense counsel's errors were so serious as to deprive the defendant of a fair trial. He argued that there is no Sixth Amendment violation when the trial was fair, that is, when the defendant was not prejudiced. Because prejudice (and actual or constructive denial of counsel) can only be shown based on the circumstances of an actual trial, the defendants lack standing because they could not allege prejudice before actually being convicted. In his view, the majority's reasoning rested on a number of speculative assumptions, including that the defendants would be convicted at trial and that the inaction of the State and the Governor would be the cause of any ineffective assistance received by the indigent defendants.

The Michigan Supreme Court granted leave to appeal and held oral argument. On May 1, 2010, the Court remanded the issue of class certification to the trial court for reconsideration in light of *Henry v. Dow Chemical Company*, but affirmed the denial of summary judgment.

The defendants moved for reconsideration arguing that the remand order did not give the lower court any guidance for resolving the issue of justiciability. Justice Weaver joined Justices Corrigan, Markman, and Young in reversing their earlier decision. Justice Markman wrote a concurring opinion joined by Justices Corrigan and Young. The concurring justices explained that the threshold issue of justiciability could be determined from the face of the complaint, and then summarized the reasons for granting summary disposition as identified in Judge Whitbeck's dissent:

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- In *Gideon v. Wainwright* and *Strickland v. Washington*, the Supreme Court was concerned with results-effective assistance of counsel-and not process-how states provide indigent criminal defendants with effective assistance of counsel.
- The Plaintiffs' claims would have the judiciary override the Michigan system of local control and funding of legal services for indigent criminal defendants in the absence of any constitutional violation.
- Plaintiffs lack standing and their claims are not ripe. Thus, their claims are not justiciable.

Chief Justice Kelly dissented, noting that nothing had changed since the Court's May 1, 2010 order, and consequently there could be no palpable error justifying reconsideration.