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Brown v. Eighth Judicial Dist. Ct, 133 Nev. Adv. Op. 113 (December 28, 2017

Ebeth Rocio Palafox

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CRIMINAL: WRIT OF MANDAMUS

Summary

The Court clarified the definition of an indigent person and the demonstration of need sufficient required for an indigent person's request for defense services. The Court additionally held that *Widdis v. Second Judicial Dist. Court* does not require an indigent defendant to request a sum certain before the consideration or granting of a motion for defense services at public expense.

Background

The petitioner, Willis Brown, faced multiple counts of lewdness with a child. Prior to his preliminary hearing, Brown moved for expert services pursuant to *Widdis v. Second Judicial Dist. Court*,[2] and submitted a financial information application along with his motion. The justice court found Brown indigent and granted the motion, but limited the funds available for services to a stated amount.

Brown again filed a motion for expert services at public expense, updating his financial information to show the district court he gained employment and reduced monthly liabilities since his earlier motion. The motion requested the district court declare him indigent and permit the retention of an investigator and expert at State expense to assist his defense, and disclosed that Brown's extended family paid for his legal fees. At the motion hearing, the district court concluded he no longer qualified as indigent based on his updated information.

After this Court ordered an answer to Brown's petition, the district court held a hearing to expound its reasons for denying Brown's motion. The court referred to two requirements in *Widdis*, indigency and necessity of services, and implied a third requirement from the *Widdis* dissent, a request for a sum certain. The court deduced that Brown had financial resources after exhausting his family resources to retain counsel and the significant increase in Brown's debt-to-income ratio between the submission of the two applications. The district court denied Brown's motion for expert services at public expense. This petition followed.

Discussion

The Court has complete discretion to consider a writ of mandamus; generally, such a writ will not issue if the petitioner has a "plain, speedy, and adequate remedy at law."[3] The Court elected to exercise their discretion and consider Brown's petition in the interest of the judicial efficiency and to "control a manifest abuse or capricious exercise of discretion,"[4] notwithstanding a remedy at law available to Brown by way of an appeal should a conviction occur.[5]

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[1] By Ebeth R. Palafox.
[2] 114 Nev. 1224, 968 P.2d 1165 (1998).
[3] NEV. REV. STAT. §§ 34.170 (1911); Cote H. v. Eighth Judicial Dist. Court, 124 Nev. 36, 39, 175 P.3d 906, 908 (2008).
[4] *See* State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931–33, 267 P.3d 777, 779–80 (2011).
[5] NEV. REV. STAT. §§ 177.045 (1967).

Widdis establishes a duty to the State to "provide reasonable and necessary defense services at public expense to indigent criminal defendants"[6] when criminal defendants demonstrate indigency and a need for services. The *Widdis* court adopted an analytical framework holding that "the Sixth Amendment right to effective assistance of counsel provided authority for the payment requested by the defendant."[7] Accordingly, the right to receive funds for defense services at public expense was entwined with the right to effective assistance of counsel.[8] Other courts agree, even when a defendant does not have appointed counsel.[9]

The standard for determining indigency is whether a person "is unable, without substantial hardship to himself or his dependents, to obtain competent, qualified legal counsel on his or her own."[10] Defendants who do not meet a presumptive threshold of substantial hardship are "subjected to a more rigorous screening process to determine if their particular circumstances, including seriousness of charges being faced, monthly expenses, and local private counsel rates, would result in a substantial hardship."[11] *Widdis* connects the right to defense services at public expense to the right to effective assistance; accordingly, the standard for determining indigency for the appointment of counsel established by In the Matter of the Review of Issues Concerning Representation of Indigent Defendants in Criminal and Juvenile Delinquency Cases[12] should be used when determining indigency under *Widdis*.

The Court rejected the district court's holding because its reasoning worked against the logic the Court used in *Widdis*[13] by discouraging criminal defendants from improving their financial situation and as such, was a misreading of the first prong. The district court concluded that Brown was no longer indigent because his financial situation improved since the justice court found him indigent. The Court has previously held there is no requirement that a person be "entirely destitute and without funds" when determining indigency.[14] Though Brown had shown financial improvement, he presented additional documentation showing he had minimal assets to cover basic necessities and a negatively disproportionate debt-to-income ratio. The district court "capriciously exercised its discretion" by finding Brown was no longer indigent given the circumstances or, in other words, finding Brown could afford an investigator and/or an expert without considerable hardship.

The Court concluded that the district court clearly abused its discretion when it determined that Brown made a cursory showing of need under the second prong of *Widdis*. Both an expert and an investigator were reasonably necessary to Brown's defense, establishing a demonstration of need as required by the second prong, particularly in a trial involving accusations of lewdness with a child.

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[6] Widdis, 114 Nev at 1228-29, 968 P.2d at 1167-68.

[7] *Id*. at 1228, 968 P.2d at 1168.

[8] *Id*.

[9] *E.g*., Dubos v. State, 662 So. 2d 1189, 1192 (Ala. 1995); Jacobson v. Anderson, 57 P.3d 733, 734-35 (Ariz. Ct. App. 2002); Tran v. Superior Court, 112 Cal. Rptr. 2d 506, 509- 10, 512 (Ct. App. 2001); Arnold v. Higa, 600 P.2d 1383, 1385 (Haw. 1979); English v. Missildine, 311 N.W.2d 292, 293-94 (Iowa 1981); State v. Jones, 707 So. 2d 975, 977-78 (La. 1998); State v. Huchting, 927 S.W.2d 411, 419 (Mo. Ct. App. 1996); State v. Boyd, 418 S.E.2d 471, 475-76 (N.C. 1992); State v. Wool, 648 A.2d 655, 660 (Vt. 1994); State ex rel. Rojas v. Wilkes, 455 S.E.2d 575, 578 (W. Va. 1995).

[10] ADKT No. 411 (Order, January 4, 2008).

[11] *Id*.

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[13] Widdis, 114 Nev. at 1229, 968 P.2d at 1168.

[14] Rodriguez v. Eighth Judicial Dist. Court, 120 Nev. 798, 805-06, 102 P.3d 41, 46 (2004); *see also* Lander Cty. v. Bd. of Trs. of Elko Gen. Hosp., 81 Nev. 354, 360-61, 403 P.2d 659, 662 (1965).

The Court disagreed with the district court's finding that a petitioner's failure to request a sum certain is fatal to a motion for expert services. The district court suggested the dissent in *Widdis* created a third prong requiring the request of a sum certain before a court may grant a motion for expert service. Accordingly, the district court's reliance on Brown's failure to request a sum certain was an unsuitable reason to deny the motion. If it was truly concerned with the cost of services, the district court could have taken judicious measures to reasonably limit expenditures.

Conclusion

The Court granted Brown's petition in part based on the district court's capricious exercise and clear abuse of discretion when it denied Brown's motion for expert services at public expense. Accordingly, the Court directed the clerk of court to issue a writ of mandamus instructing the district court to vacate its order denying Brown's motion and to reconsider the motion consistent with this opinion.