IN THE SUPREME COURT OF MISSISSIPPI

QUITMAN COUNTY, MISSISSIPPI, Plaintiff-Appellant, vs. STATE OF MISSISSIPPI, HALEY BARBOUR, in his official capacity as GOVERNOR, and JIM HOOD, in his official capacity as ATTORNEY GENERAL, Defendants-Appellees,	)	No. 2003-SA-~~02568~~ 2658

On Appeal From the Circuit Court of the Eleventh Judicial District in and for Quitman County, Mississippi

BRIEF OF *AMICI* MISSISSIPPI CENTER FOR JUSTICE AND NATIONAL ASSOCIATION OF CRIMINAL DEFENSE LAWYERS IN SUPPORT OF APPELLANT QUITMAN COUNTY

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Statements of *Amici Curiae*

The Mississippi Center for Justice ("the Center") is a non-profit, public interest law firm committed to advancing racial and economic justice for all Mississippians. The Center was founded in June 2002 by civil rights advocates, attorneys, social service advocates, and others committed to pursuing systemic advocacy strategies that combat discrimination and poverty in Mississippi. Through both impact and individual representation, the Center has represented the interests of indigent defense clients throughout the state. The Center's President and CEO, Martha Bergmark, formerly served as Senior Vice President for Programs of the National Legal Aid and Defender Association, President and Executive Vice President of the federal Legal Services Corporation, and founding Executive Director of the Southeast Mississippi Legal Services Corporation. Its Board of Directors presently includes a former U.S. District Attorney for the Southern District of Mississippi, Presiding Justice of the Mississippi Supreme Court, and many of the state's leading attorneys. Among its essential interests is resurrecting the capacity in Mississippi for statewide, systemic, legal advocacy on behalf of low-income people and communities of color.

The National Association of Criminal Defense Lawyers ("NACDL"), a nonprofit corporation, is the only national bar association working in the interest of public and private criminal defense attorneys and their clients. NACDL was founded in 1958 to ensure justice and due process for persons accused of crimes; to foster the integrity, independence, and expertise of the criminal defense profession; and to promote the proper and fair administration of justice. NACDL has more than 11,300 members nationwide – joined by 79 state and local affiliate organizations with 28,000 members – including private criminal defense lawyers, public defenders, and law professors committed to preserving fairness within America's criminal justice

system. Approximately 200 criminal defense lawyers in Mississippi are members of either NACDL or its Mississippi affiliate, or both. Many NACDL members are appointed to represent, have contracts to represent, or work for public defenders who represent, indigent criminal defendants.

The Center and NACDL are participating in this case as *amici curiae* because they desire to bring matters of fact and law to the Court's attention. The Center and the members of NACDL are familiar with the minimum standards for indigent defense systems set by the Mississippi and national legal communities.

Additionally, both the Center and NACDL have substantial legitimate interests that likely will be affected by the outcome of this case and that are neither adequately represented nor protected by those already parties to the case. Both the low-income clients who the Center and NACDL represent, and NACDL's members who are appointed to represent low-income criminal defendants in Mississippi, will suffer if Quitman County's indigent defense system is declared constitutionally adequate.

Introduction

Three years ago, this Court ruled that if plaintiff, Quitman County, could demonstrate that lack of state funding resulted in a local system of indigent defense representation "fall[ing] beneath the minimum standards of representation required by the Mississippi Constitution," then the county would have established that defendant, the State of Mississippi, "breached its constitutional duty to provide indigent defendants with effective assistance of counsel." *State v. Quitman County*, 807 So.2d 401, 408-09 (¶¶ 24-25) (Miss. 2001). The Court held that the county's allegations were sufficient to establish the constitutional violation, noting that the county had specifically alleged that "there is very little: early representation provided, investigation conducted, attorney/client contact, or use of experts. There is a low trial rate in

felony and misdemeanor cases. . . . Case preparation is often late, and frequently preliminary hearings are waived and defendants are held in jail three to six months without counsel until arraignment in circuit court." *Id.* Significantly, consistent with caselaw holding that a showing of prejudice is required only in the post-conviction context, *see Strickland v. Washington,* 466 U.S. 668 (1984); *Luckey v. Harris*, 860 F.2d 1012 (11th Cir. 1988), this Court did not suggest that Quitman County needed to prove prejudice to any particular client. The question presented was simple: whether the "existing system [failed] to provide indigent defendants in Quitman County with the tools of an adequate defense." *State v. Quitman County*, 807 So.2d at 408-09 (¶¶ 24-25).

Instead of determining whether Quitman County had demonstrated the existence of an inadequate system of representation, the Circuit Court held that in the absence of evidence that individual defendants had been prejudiced, it is not a constitutional violation to provide a system of indigent defense representation failing to meet minimum standards. *Quitman County v. State*, Civ. Action No. 99-0126 (¶¶ 65-66, 72, 77, 81) (Miss. Cir. Ct. Nov. 7, 2003). For example, the court dismissed evidence that defendants entered pleas on the same day they were arraigned and that public defenders did not have the means to investigate the factual basis of their clients' charges. *Id.*

The Circuit Court's ruling violated not only this Court's prior ruling in this case, but also prior holdings of this Court in other cases, and of other courts, that when a system of indigent defense fails to provide an adequate defense, then it is unconstitutional.

Summary of Argument

Amici curiae Mississippi Center for Justice and National Association of Criminal Defense Lawyers show in Section I that this Court was correct to rule that the Mississippi Constitution is violated when the indigent defense system does not meet minimum standards,

even without a showing of prejudice. In Section II, *amici* demonstrate that American Bar Association standards provide a good indication of the minimum standards that the Mississippi Constitution requires. Finally, in Section III *amici* show that Quitman County demonstrated that the existing indigent defense system does not live up to those standards. The result is that individual defendants are harmed and the Mississippi Constitution is violated.

Argument

I. A prejudice requirement is inappropriate in a case seeking prospective relief.

This Court's ruling that a constitutional violation exists if the county-based indigent defense system is unable to live up to minimum standards is firmly rooted in Article 3, section 26 of the Mississippi Constitution, which requires the effective provision of counsel to indigent defendants. *See Quitman County*, 807 So.2d at 407 (¶ 18) (citing *Mease v. State*, 583 So.2d 1283 (Miss. 1991) (Prather, J., concurring)).

The ruling is also supported by the reasoning of the Louisiana Supreme Court and the Eleventh Circuit, which have both held that they are constitutionally required to order prospective relief when a jurisdiction is providing inadequate counsel. *See State v. Peart*, 621 So.2d 780 (La. 1993); *Luckey*, 860 F.2d at 1017. In *State v. Peart*, the Louisiana Supreme Court held that because defense counsel was not provided early enough, lawyers were not conducting factual investigation, and caseloads were "excessive," defendants in New Orleans were not being provided with constitutionally required effective assistance of counsel. 621 So.2d at 789-91. In *Luckey v. Harris*, the Eleventh Circuit concluded that if there were systemic delays in the appointment of counsel, lack of adequate investigative and expert resources, and pressures on attorneys to go to trial or enter guilty pleas, then the state was failing to "furnish counsel in a manner that meets minimum constitutional standards." 860 F.2d at 1016-18.

Instead of adhering to this reasoning, the Circuit Court imported a prejudice requirement from the post-conviction appeals context, and denied Quitman County relief on the basis that the

county did not prove how the outcomes of individual cases were adversely affected by appointed counsel's failure to interview clients in a confidential manner, conduct investigations, and use other tools essential to an adequate defense system. *Quitman County v. State*, Civ. Action No. 99-0126 (¶¶ 65-66, 72, 76-77, 81). This was inappropriate.

This Court, and other courts, have held that once judicial resources have been expended to convict a defendant, the courts will overturn a conviction based on the ineffective assistance of counsel only when the defendant has suffered prejudice as a result. *Coleman v. State*, 483 So.2d 680, 683 (Miss. 1986). The prejudice requirement preserves scarce judicial resources and furthers the state's interest in the finality of convictions. *Id.*; *Strickland*, 466 U.S. at 690; *Luckey*, 860 F.2d at 1017. This case does not involve such concerns, however. Quitman County seeks prospective relief – it does not seek to overturn any individual convictions. Consequently, no demonstration of prejudice is necessary before enjoining the prospective violation of constitutional rights. As the Eleventh Circuit explained when rejecting a proposed prejudice requirement in a suit seeking prospective relief to remedy the ineffective assistance of counsel, "Prospective relief is designed to avoid future harm. *Swift & Co. v. United States*, 276 U.S. 311, 326 (1928). Therefore, it can protect constitutional rights, even if the violation of these rights would not affect the outcome of a trial." *Luckey*, 860 F.2d at 1017.

Here, Quitman County seeks prospective relief regarding the State's failure to fund an indigent defense system providing the effective assistance of counsel. Consequently, the Circuit Court should not have denied Quitman County's claim on the basis that the county did not demonstrate prejudice.

II. The ABA standards provide a good indication of the minimum standards required by the Mississippi Constitution.

There are at least three reasons why the Circuit Court erred in failing to use the American Bar Association Criminal Justice Standards for the Defense Function ("ABA Defense Function

Standards") as a benchmark for determining whether Quitman County's indigent defense system violates the Mississippi Constitution: the standards represent the legal community's consensus as to the minimum required of an indigent defense system, this Court and other courts rely on the standards to determine compliance with the constitutional mandate of effective assistance of counsel, and the standards mirror this Court's holdings regarding the minimum requirements of a constitutional indigent defense system.

A. The standards represent the consensus of the legal community in Mississippi and nationally.

Quitman County's expert witnesses referred to the ABA Criminal Justice Standards for the Defense Function ("Defense Function Standards") as a benchmark for determining whether the performance of appointed counsel in Quitman County lives up to the minimum standards required by the Mississippi Constitution. *See* Transcript of Trial, May 1-2, 2003, p. 616 (testimony of Steven Farese). The ABA's Defense Function Standards are well suited for this purpose because they represent the consensus of the national and state legal communities as to the bare essentials of an adequate criminal defense system. In fact, ABA has characterized the Defense Function Standards – and the other standards adopted at the same time – as "represent[ing] the consensus of an experienced group of prosecutors, defense attorneys, and judges on procedures" for a "fair, balanced, and constitutionally responsive" criminal justice system.[1]

The Defense Function Standards represent the consensus of the Mississippi and national legal communities as a result of the rigorous process through which they were created. They were created and then vetted over the course of four years, beginning with a report written by a committee of state and federal appellate and trial judges, prosecutors and defense attorneys, and

[1] Brief of *Amicus Curiae* ABA, *Kowalski v. Tesmer*, 124 S. Ct. 1144 (2004).

professors, and ending with approval by the ABA's House of Delegates.[2] When the ABA adopted the Standards in 1968, Earl Warren, then Chief Justice of the U.S. Supreme Court, described them as "the single most comprehensive and probably the most monumental undertaking in the field of criminal justice ever attempted by the American legal profession in our national history."[3] Likewise, the comment to Rule 3.8 of the Mississippi Rules of Professional Conduct states that the ABA Standards of Criminal Justice Relating to the Prosecution Function – which were adopted by the same process as the Defense Function Standards – "are the product of prolonged and careful deliberation by lawyers experienced in both criminal prosecution and defense." Mississippi Rules of Professional Conduct, Comment to Rule 3.8 (1987).

The Defense Function Standards have since been updated twice, most recently in 1991. Each time, a committee of judges, prosecutors, defense lawyers and professors reviews the standards, based on input from a various sectors of the legal community – including, recently, the National Association of Attorneys General, the National District Attorneys Association, *amicus* the National Association of Criminal Defense Lawyers, the National Legal Aid and Defender Association, and the U.S. Department of Justice. Then the House of Delegates – which now has 539 members – votes on them.[4] The House of Delegates' broad membership – consisting of representatives from each state, from each state bar association and all local bar associations with more than 2,000 members, from a number of national organizations, and from ABA sections,

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[2] ABA Project on Standards for Criminal Justice, Standards Relating to the Prosecution Function and the Defense Function, Preface, v-vii (March 1970).

[3] *See* ABA, Criminal Justice Standards, available at http://www.abanet.org/crimjust/standards/home.html (accessed June 15, 2004).

[4] The Mississippi legal community is well represented in this process – the four Mississippi delegates to the ABA's House of Delegates include a state representative, two representatives of the Mississippi Bar, and one representative of the National Association of College and University Attorneys. ABA, Leadership Directory (2002-03), at 20.

divisions, and committees – ensures that decisions of the House of Delegates represent the views of the legal community.

This Court has demonstrated its belief that other of the ABA's Standards for Criminal Justice, of which the Defense Function Standards are a part, represent the legal community's consensus and should be followed in Mississippi. *See Walker v. State*, 430 So.2d 418, 421 n.3 (Miss. 1983) (referring to Criminal Justice Standards on joinder and severance as basis for court's ruling); *Sharplin v. State*, 330 So.2d 591, 596 n.2 (Miss. 1976) (pointing to Criminal Justice Standards on jury conduct as a source for model jury instruction). *See also Jordan v. State*, 786 So.2d 987, 1015 (¶ 93) (Miss. 2001) (citing Criminal Justice Standards regarding prosecution function); *Nixon v. State*, 533 So.2d 1078, 1100 n.5 (Miss. 1987) (same).[5]

B. Courts rely on the ABA standards in both the prospective relief and post-conviction contexts to assess compliance with the constitutional mandate that the government provide effective assistance of counsel.

The Defense Function Standards are not aspirational goals but rather a practical compilation of the bare essentials of a competent defense.[6] As a result, courts rely on them

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[5] This Court has looked to the ABA's standards and rules for guidance in other contexts, as well. For example, the Mississippi Rules of Professional Conduct, which this Court approves, are based on the ABA's Model Code of Professional Responsibility, the ABA Standards Relating to Fair Trial and Free Press, the ABA Standards of Criminal Justice Relating to Prosecution Function, and the ABA Model Rules of Professional Conduct. *See* Mississippi Rules of Professional Conduct, Comments to Rules 3.6, 3.8, 7.2, 8.5. For other contexts in which this Court has relied on various ABA standards, see *Esco v. Scott*, 735 So.2d 1002, 1005-06 (¶ 12) (Miss. 1999) (using the ABA Committee on Ethics and Professional Responsibility position on the use of the title "of counsel"); *Alexander v. The Mississippi Bar*, 725 So.2d 828, 834 (¶ 34) (Miss. 1998) (citing ABA standards for imposing lawyer sanctions as criteria for the court); *Stegall v. The Mississippi Bar*, 618 So.2d 1291, 1295 (Miss. 1993) (stating that the ABA Standards for Imposing Lawyer Sanctions "present helpful guidelines"); *Armstrong v. State*, 573 So.2d 1329, 1332 (Miss. 1990) (relying on ABA Model Code of Professional Responsibility and Model Rules of Professional Conduct); *Lee v. Lawson*, 375 So.2d 1019, 1024 (Miss. 1979) (holding that the ABA Project on Minimum Standards Relating to Pretrial Release should serve as a guide, and stating that "the standards are the result of a great deal of research and have been formulated by some of the finest observers of criminal justice in this country. Adherence to these standards will go far toward the goal of equal justice under law.").

[6] *See* ABA Standing Committee on Legal Aid and Indigent Defendants, Report to the House of Delegates (February 2002) (describing the Defense Function Standard and other similar standards as "contain[ing]

routinely when attempting to discern what level of competence is constitutionally required of appointed counsel. *See, e.g.*, *Bradford v. State*, 759 So.2d 434, 440 (¶¶ 22-23) (Miss. App. 2000) (where a defense lawyer complied with the ABA's Defense Function Standards, "no ineffectiveness was shown"); *Pruett v. State*, 574 So. 2d 1342,1348 (Miss. 1990) (Anderson, J., dissenting) (relying on the Defense Function Standards and other ABA standards to demonstrate that extensive pretrial investigation plays a "critical and crucial" role in capital cases).

Reliance on the Defense Function Standards is so well established that the highest courts of both Louisiana and Arizona have held that when a system of indigent defense departs from the ABA Defense Function Standards, there is a rebuttable presumption that it provides ineffective assistance. In *State v. Peart*, the Louisiana Supreme Court found that the representation of indigent defendants in New Orleans "routinely violate[s] the [ABA] standards on workload . . . initial provision of counsel . . . investigation . . . and others," and that this defied the constitutional guarantee of the effective assistance of counsel. 621 So.2d at 789. Similarly, in *State v. Smith*, the Arizona Supreme Court found that the system of indigent defense in Mohave County did not conform with the Defense Function Standards and other guidelines regarding compensation, case load, or competency, and that as a result there was an inference that defendants' constitutional right to counsel had been violated. 681 P.2d 1374, 1380-82 (Ariz. 1984).

The federal courts routinely rely on the ABA Defense Function Standards to assess whether counsel's performance comports with the U.S. Constitution. For example, in *Strickland v. Washington*, the Supreme Court stated that "prevailing norms of practice as reflected in American Bar Association standards and the like, e.g., ABA Standards for Criminal Justice 4-

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the minimum requirements for legal representation at the trial, appeals, juvenile, and death penalty levels").

1.1 to 4-8.6 (2d ed. 1980) ('The Defense Function')" are "guides to determining what is reasonable," and what is, consequently, required by the Constitution. *Strickland*, 466 U.S. at 688. *See also Wiggins v. Smith*, 539 U.S. 510, 123 S. Ct. 2527, 2535-37 (2003) (same); *United States v. Gipson*, 985 F.2d 212, 215-16 (5th Cir. 1993) (determining that a client who was not informed of the time limit for filing an appeal was denied the effective assistance of counsel under the ABA Defense Function Standards).

C. This Court's determination regarding minimum standards is similar to the ABA's determination.

When this Court has had occasion to determine the basic level of defense representation that the Mississippi Constitution and U.S. Constitution require, it has reached conclusions remarkably similar to those reached in the ABA Defense Function Standards. For example, this Court insists, as do the Standards, that appointed counsel must:

1) consult with each client in a timely manner. *See Ferguson v. State*, 507 So.2d 94, 96 (Miss. 1987); ABA Defense Function Standards 4-3.2 (a), 4-3.8(a);

2) be familiar with the law governing each client's case. *See Ward v. State*, 708 So.2d 11, 14-15 (¶ 19) (Miss. 1998); ABA Defense Function Standard 4-5.1(a);

3) consult with each client regarding important decisions and developments. *See Leatherwood v. State*, 473 So.2d 964, 969 (Miss. 1985); ABA Defense Function Standards 4-3.8, 4-5.2;

4) file critical motions. *See Triplett v. State*, 666 So.2d 1356, 1361-62 (Miss. 1995); ABA Defense Function Standards 4-1.3(b), 4-3.6, 4-7.9;

5) zealously defend the client during hearings and trials. *See Moody v. State*, 644 So.2d 451, 456-57 (Miss. 1994); *Stringer v. State*, 627 So.2d 326, 330 (Miss. 1993); *Stewart v. State*, 229 So.2d 53, 53-56 (Miss. 1969); ABA Defense Function Standard 4-1.2(b);

6) conduct an independent factual investigation of assigned cases. *See Triplett*, 666 So.2d at 1361; *State v. Tokman*, 564 So.2d 1339, 1342 (Miss. 1990); *Ferguson*, 507 So.2d at 96 (same); ABA Defense Function Standard 4-4.1;

7) counsel a client to enter a guilty plea only after the attorney has determined, through confidential communications with the client, whether accepting the plea is in the client's best interests, and only after the attorney has, in a confidential manner, advised the client of the maximum sentencing possible under the plea. *See Ward*, 708 So.2d at 14 (¶¶ 15-23); *Alexander v. State*, 605 So.2d 1170, 1172 (Miss. 1992); *Vittitoe v. State*, 556 So.2d 1062, 1063 (Miss. 1990); ABA Defense Function Standards 4-6.1(b), 4-6.2 (b); and

8) advocate for the best possible and most appropriate sentence for a convicted client. *See Brown v. State*, 749 So.2d 82, 91 (¶ 21) (Miss. 1999); ABA Defense Function Standard 4-8.1(b).

Because the ABA standards so closely mirror this Court's holdings, and because they represent the legal community's consensus, the Circuit Court erred in holding that even though Quitman County's indigent defense system fails to provide representation in accordance with the ABA's standards, the Mississippi Constitution is not violated and prospective relief is not warranted.

III. The county-based indigent defense system fails to provide representation in accordance with the minimum standards set by the Mississippi Constitution and with authoritative standards.

At trial, Quitman County proved that the part-time indigent defense system results in the failure to do many of the things that this Court and the ABA's Defense Function Standards agree are essential tools of an adequate defense. For example, the county established that the part-time public defenders are first appointed to represent their clients at arraignment, where they often meet clients in groups, sometimes even in the open courtroom in earshot of the prosecutor and

judge, and consequently fail to engage in the confidential discussions required by the Defense Function Standards. *Quitman County v. State*, Civ. Action No. 99-0126 (¶ 28, 31, 33). *See also* ABA Defense Function Standard 4-3.1(b).

Quitman County also proved that the part-time "public defenders are not provided funding for investigators and have never petitioned the court for funding to employ an investigator in a non-capital case." *Quitman County v. State*, Civ. Action No. 99-0126 (¶ 29). This violates this Court's statements, and the Defense Function Standards, both of which characterize factual investigation as necessary to an effective defense. *See* discussion *supra* § II.C.6.

Immediately after the initial meeting, on the same day as the arraignment where the accused are informed of the charges against them, many clients plead guilty, despite the lack of confidential discussion or any opportunity to conduct fact investigation. *Quitman County v. State*, Civ. Action No. 99-0126 (¶ 31, 33). This violates this Court's instruction, and the Defense Function Standards, requiring fact investigation and confidential communication. It also violates this Court's instruction, and the Defense Function Standards, permitting entry of a plea only after the attorney has determined, through confidential communications with the client, whether accepting the plea is in the client's best interests, and only after the attorney has, in a confidential manner, advised the client of the maximum sentencing possible under the plea. *See* discussion *supra* § II.C.6, II.C.7.

Quitman County also demonstrated that the "public defenders do not submit pre-sentencing reports." *Quitman County v. State*, Civ. Action No. 99-0126 (¶ 35). This violates this Court's statements, and the Defense Function Standards, both of which require defense counsel to advocate for the best possible sentence for the client. *See* discussion *supra* § II.C.8. Thus, in significant ways, the county-based system departs from this Court's instructions and the

Defense Function Standards, and results in ineffective assistance, in violation of the constitutionally required right to counsel.

The impact on clients – as demonstrated in the following two cases – is dramatic.[7] After Warrat Stewart was arrested on rape charges in Quitman County on April 13, 1995, he was unable to speak to his appointed lawyer for four months despite vigorous efforts to do so, in violation of the lawyer's obligation to consult with him in a timely manner. *See* discussion *supra* § II.C.1. In violation of counsel's duty to conduct factual investigation, *see* discussion *supra* § II.C.6, he ignored Mr. Stewart's request for a DNA test, declined to read Mr. Stewart's rendition of the events leading to the arrest, refused to contact character or alibi witnesses, and ignored a document Mr. Stewart showed him, which might have proven that Mr. Stewart was in prison when the State claimed the crime was committed. As a result, counsel was unable to form an educated opinion regarding Mr. Stewart's guilt or innocence, or his chances of success at trial. Nonetheless, counsel urged Mr. Stewart to plead guilty, in violation of counsel's duty to advise Mr. Stewart to enter a guilty plea only after determining whether doing so was in Mr. Stewart's best interests. *See* discussion *supra* § II.C.7. Mr. Stewart took his attorney's advice and received a mandatory 15-year sentence. After the plea was entered, counsel refused to communicate with Mr. Stewart or to send him copies of his own documents. As a result, Mr. Stewart was unable to seek post-conviction relief in a timely manner.

Diana Brown was arrested in Quitman County on October 31, 1997, and released on bond six weeks later. The following February, she learned from a friend that her case was scheduled for presentation to the grand jury. Although she took the initiative and located her assigned counsel, he would not accept and never returned her phone calls, in violation of his duty to communicate with his clients in a timely manner. *See* discussion *supra* § II.C.1. Bail was

[7] Warrat Stewart and Diana Brown participated as an *amici curiae* in this case before this Court in 2001. This rendition of the facts of their cases comes from their brief.

subsequently revoked, and she was jailed. It was only then that she met her assigned counsel – at the courthouse. As she stood in a group of ten other accused persons, counsel read the charges and the proffered plea bargain out loud, in violation of his obligation to consult with his client in a confidential setting. *See* ABA Defense Function Standard 4-3.1(b). In the next breath, counsel informed Ms. Brown that she was facing 60 years in prison, was being offered a plea to a charge that would carry the sentence of ten years, and that she had five minutes to decide what to do. When Ms. Brown asked for more time, counsel informed her that she was guilty and that she should accept the plea. Because the attorney had not consulted with Ms. Brown and had not conducted any factual investigation, his recommendation that she plead guilty violated his duty to counsel her to enter a guilty plea only after determining whether doing so was in her best interests. *See* discussion *supra* § II.C.7. Additionally, his refusal to advocate for more time for her violated his obligation to consult with her regarding important decisions, and to zealously defend her. *See* discussion *supra* §§ II.C.3, II.C.5. Ms. Brown accepted the plea and was sentenced to ten years. As a result of counsel's failure to conduct any factual investigation and to consult with his client in a confidential setting, he failed to learn essential facts, including that Ms. Brown suffers from polio and is an alcoholic. He was not able to provide Ms. Brown with informed advice about the strength or weakness of her case at trial, or about the sentence she was likely to receive if convicted, as a result of which she was unable to make an informed decision about whether to plead guilty.

These stories demonstrate the severe personal toll that inadequate counsel takes on individual defendants. Counsel who fail to interview, investigate, or engage in sentencing advocacy abdicate their responsibility to test the State's evidence. Their representation is akin to a total deprivation of counsel. Their clients cannot obtain advice to enable them to make important decisions about their cases, they cannot present essential evidence to a neutral finder

of fact, they cannot file appeals, and they cannot do other things essential to ensuring that they receive a fair trial. The damage to the justice system is just as great – judges are unable to ensure that guilty pleas, convictions, and sentences are just or fair.

In light of the overwhelming evidence in this case that the system does not provide criminal defendants with the essential tools of an adequate defense, the Circuit Court should have held that the system fails to meet the minimum requirements imposed by the Mississippi Constitution, and should have granted prospective relief.

Conclusion

A constitutional violation exists when a system of indigent defense fails to meet the minimum standards established by this Court and accepted in the legal community. Quitman County has demonstrated that the current system fails to meet these standards, resulting in a constitutional violation. For the reasons stated herein, *amici* curiae support the appeal of Quitman County, and respectfully request the Court to reverse the decision of the Circuit Court in this case.

Respectfully submitted,

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