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RECENT DEVELOPMENT

DUVALL V. STATE: DISTRICT OFFICES OF THE PUBLIC DEFENDER ARE TREATED AS INDIVIDUAL LAW FIRMS FOR THE PURPOSES OF CONFLICT OF INTEREST ANALYSIS.

By: Stephen Mutschall

In an issue of first impression, the Court of Appeals of Maryland held that each district office of the Public Defender should be treated as an individual law firm when determining whether a conflict of interest exists regarding the representation of separate defendants. *Duvall v. State*, 399 Md. 210, 923 A.2d 81 (2007). In cases such as this, where counsel timely indicates to the court the potential conflict of interest, the Court will presume prejudice to the client and will not require an actual showing of prejudice or an adverse effect upon representation. *Id.* at 210, 923 A.2d at 81.

On August 25, 2003, Juwaughn Alexander Duvall (“Duvall”) was arrested and charged with multiple crimes arising out of an attempted robbery of a drug dealer’s safe containing marijuana. While represented by the Montgomery County Office of the Public Defender, Duvall’s theory was that a different individual, Adam Muse (“Muse”), stole the drugs. At that time, Muse was represented by another attorney from the Montgomery County Office of the Public Defender in a separate matter.

On January 15, 2004, Duvall’s attorney filed a timely motion for a continuance with the Circuit Court for Montgomery County for the purpose of securing a panel attorney to represent Duvall. Defense counsel explained at the motions hearing that a conflict of interest existed because the Office of the Public Defender represented the individual who Duvall maintained had committed the crime. The circuit court denied the motion, and after a jury trial, Duvall was convicted and sentenced to a ten-year concurrent prison term for each of his four convictions. Duvall filed a timely appeal to the Court of Special Appeals of Maryland, and that court affirmed the judgment of the circuit court in an unreported opinion. Duvall filed a petition for

writ of certiorari in the Court of Appeals of Maryland, which was granted.

The Court of Appeals of Maryland held that a conflict of interest existed although Duvall and Muse were not co-defendants and that the motion for continuance should have been granted. *Id.* at 236-37, 923 A.2d at 97. The Court sided with Duvall and reversed the judgment of the Court of Special Appeals of Maryland, remanding the case to the Circuit Court for Montgomery County for a new trial. *Id.* at 241, 923 A.2d at 100.

In an issue of first impression, the Court determined that a district office of the Public Defender should be considered a private law firm for purposes of conflict of interest analysis. *Id.* at 232, 923 A.2d at 95. In reaching this decision and adopting a *per se* rule, the Court followed the lead of several other jurisdictions, the Restatement (Third) of the Law Governing Lawyers, and *Graves v. State*, 94 Md. App. 649, 619 A.2d 123 (1993), which indicated that a district office of the Public Defender was analogous to a private law firm. *Duvall*, 399 Md. at 230-32, 923 A.2d at 93-95. This created a presumption of prejudice, forcing an administrative judge to grant a continuance so the Public Defender would have time to panel the case to another lawyer. *Id.* at 236, 923 A.2d at 97.

The Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee to any criminal defendant the right to have the assistance of counsel. *Duvall*, 399 Md. at 220-21, 923 A.2d at 88 (citing *Letley v. State*, 358 Md. 26, 33, 746 A.2d 392, 396 (2000)). The Court of Appeals of Maryland has interpreted the right to counsel to include the right to have counsel's representation free from conflicts of interest. *Duvall*, 399 Md. at 221, 923 A.2d at 88 (citing *Austin v. State*, 327 Md. 375, 381, 609 A.2d 728, 730-31 (1992)).

In discussing whether Duvall was entitled to have his conviction overturned, the Court identified the seminal conflict of interest cases. *Duvall*, 399 Md. at 223-27, 923 A.2d at 89-92. First, the United States Supreme Court decided in *Glasser v. United States* that courts need not determine the amount of prejudice to the defendant. *Duvall*, 399 Md. at 223, 923 A.2d at 89 (citing *Glasser*, 315 U.S. 60, 75-76 (1942)). In *Holloway v. Arkansas*, although counsel alerted the court to a potential conflict of interest, prejudice was presumed and the trial court erred by not providing separate counsel or inquiring as to whether the risk was too remote to warrant separate counsel. *Duvall*, 399 Md. at 223-24, 923 A.2d at 89-90 (citing *Holloway*, 435 U.S. 475

(1978)). Secondly, the *Cuyler* standard applies when a defendant fails to advise the trial court of the possibility of a conflict of interest. *Duvall*, 399 Md. at 225, 923 A.2d at 90 (citing *Cuyler v. Sullivan*, 446 U.S. 335 (1980)). Therefore, a defendant who fails to raise the pertinent issue must demonstrate that an actual conflict of interest adversely affected his lawyer's performance. *Duvall*, 399 Md. at 226, 923 A.2d at 91.

The Court of Appeals of Maryland applied the *Glasser/Holloway* line of reasoning given that *Duvall's* attorney notified the administrative judge sufficiently in advance of trial that she faced a conflict of interest. *Id.* at 232-33, 923 A.2d at 95. *Duvall's* attorney explained, orally and in writing, that she had conflicting duties to *Duvall* and *Muse* which prevented her from interviewing *Muse* or speaking to his attorney about the case prior to *Duvall's* trial. *Id.* at 233, 923 A.2d at 95. Relying on precedent established in *Lettley*, the Court noted that counsel's representations about specific conflicts of interest should be given credit and assumed truthful. *Duvall*, 399 Md. at 234, 923 A.2d at 95 (citing *Lettley*, 358 Md. at 48, 746 A.2d at 404). If counsel's credibility was in doubt, and the record *sub judice* indicated that it was not, the administrative judge could have conducted an evidentiary hearing to determine if a conflict existed. *Duvall*, 399 Md. at 234, 923 A.2d at 95-96.

Applying the *Glasser/Holloway* reasoning to the case at bar, the Court held that the administrative judge erred, as a matter of law, in not granting counsel's request for a continuance. *Duvall*, 399 Md. at 233, 923 A.2d at 95. The Court then followed the Court of Appeals of Maryland's holding in *Lettley*, which indicated that when the trial court is notified of a potential conflict of interest and fails to take adequate steps to investigate the potential for conflict, reversal is automatic without a showing of prejudice or adverse effect upon representation. *Duvall*, 399 Md. at 234, 923 A.2d at 96.

The Court rejected the State's contention that no conflict existed because *Duvall* and *Muse* were not co-defendants. *Id.* at 236-37, 923 A.2d at 97. The Court explained that it has never held that conflicts exist only in cases involving co-defendants. *Id.* at 237, 923 A.2d at 97 (citing *Lettley*, 358 Md. at 29, 746 A.2d at 394). The Court also rejected the State's argument that a conflict of interest did not exist because other evidence at trial indicated that *Muse* was nowhere near the crime scene. *Duvall*, 399 Md. at 237, 923 A.2d at 98. The Court held that the conflict existed prior to the start of trial and prevented

Duvall's attorney from investigating whether Muse had a role in the crimes. *Id.* at 237, 923 A.2d at 98.

By treating district offices of the Public Defender as individual law firms for conflict of interest purposes, the Court of Appeals of Maryland has clarified an unresolved issue and strengthened a criminal defendant's right to effective counsel as guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights. The right to effective assistance of counsel is so fundamental and absolute that to allow courts to try to calculate how much actual prejudice occurred would be inconsistent and unfair to defendants. The decision in *Duvall* will encourage courts to accept an attorney's claim of a conflict of interest and will lead to fewer instances of convictions being overturned due to such conflicts. Since many criminal defendants in Maryland are represented by the attorneys at the Office of the Public Defender, this ruling will guarantee that their rights are safeguarded against possible conflicts of interest, and that defendants will not have to sacrifice some of their Constitutional rights because they could not afford a private attorney.