

Commonwealth Of Kentucky

Court of Appeals

NO. 2004-CA-000732-OA

LUIS VELASQUEZ

PETITIONER

v. AN ORIGINAL ACTION
REGARDING JEFFERSON CIRCUIT COURT
ACTION NO. 03-CR-003421

F. KENNETH CONLIFFE, JUDGE
JEFFERSON CIRCUIT COURT

RESPONDENT

AND

COMMONWEALTH OF KENTUCKY

REAL PARTY IN INTEREST

OPINION AND ORDER

** ** * * *

BEFORE: JOHNSON, KNOPF, AND SCHRODER, JUDGES.

KNOPF, JUDGE: Luis Velasquez (petitioner) has filed a petition for relief, considered by this Court as a petition for writ of mandamus, asking this Court to issue a writ of mandamus ordering Jefferson Circuit Court Judge F. Kenneth Conliffe (respondent) to authorize petitioner to hire a Spanish language interpreter for out-of-court defense preparation. Petitioner further contends that the respondent should authorize payment for this

interpreter from the fund created by KRS¹ 31.185(3). The Commonwealth has no objection to the petition for relief.

Petitioner is charged in Jefferson Circuit Court with two counts of first-degree assault and one count of operating under the influence of intoxicants. Petitioner, an indigent, can only speak and understand the Spanish language, thus necessitating the assistance of an interpreter during previous in-court proceedings. After petitioner's arraignment in circuit court on January 5, 2004, petitioner's counsel requested authorization from the respondent to retain the services of a Spanish language interpreter for out-of-court defense preparation. Respondent eventually denied petitioner's request.

On February 6, 2004, petitioner's counsel filed a motion for authorization to retain the services of an interpreter for out-of-court defense preparation. In this motion, petitioner requested respondent to authorize the retention of the interpreter, with payment for the interpreter's services, in the amount of thirty dollars (\$30.00) per hour not to exceed two thousand dollars (\$2,000.00), to be made out of the fund established by KRS 31.185(4). In an order dated February 12, 2004, respondent denied petitioner's motion after determining that "private [interpreter] services in the amount requested by the Defense Counsel are not necessary, and if they

¹ Kentucky Revised Statutes.

are, the amount requested is excessive." Respondent also held that petitioner's request for a Spanish language interpreter does not fall under the purview of KRS 31.185(4). Petitioner's motion to reconsider was denied by the circuit court. This original action followed.

In his petition, petitioner asserts that the respondent erred by denying his request to authorize the retention of a Spanish language interpreter for out-of-court defense preparation, with payment for the services of this interpreter coming from the fund established by KRS 31.185(4). We believe that petitioner's assertion is correct.

KRS 31.185(3) and (4) provide as follows:

(3) Any direct expense, including the cost of a transcript or bystander's bill of exceptions or other substitute for a transcript that is necessarily incurred in representing a needy person under this chapter, is a charge against the county, urban-county, charter county, or consolidated local government on behalf of which the service is performed and shall be paid from the special account established in subsection (4) of this section and in accordance with procedures provided in subsection (5) of this section. However, such a charge shall not exceed the established rate charged by the Commonwealth and its agencies.

(4) The consolidated local government, fiscal court of each county, or legislative body of an urban-county government shall annually appropriate twelve and a half cents (\$0.125) per capita of the population of the county, as determined by the Council of

Local Governments' most recent population statistics, to a special account to be administered by the Finance and Administration Cabinet to pay court orders entered against counties pursuant to subsection (1) or (3) of this section. The funds in this account shall not lapse and shall remain in the special account.

In McCracken County Fiscal Court v. Graves,² our Supreme Court explicitly defined the circuit court's responsibility in determining what expenses are reasonable and necessary so as to give effect to the overall purpose of KRS Chapter 31. The Supreme Court first examined KRS Chapter 31 to determine exactly who is an indigent defendant, to what an indigent defendant is entitled and who must pay for the expenses incurred by an indigent defendant. In analyzing the purpose and application of KRS Chapter 31, the Supreme Court stated as follows:

Within the scheme set up by our General Assembly, a "needy" or an "indigent" defendant is "a person who at the time his need is determined is unable to provide for the payment of an attorney and all other necessary expenses of representation." KRS 31.100(3). An indigent defendant having been formally charged of a serious crime is entitled: "(a) [t]o be represented by an attorney to the same extent as a person having his own counsel is so entitled; and (b) [t]o be provided with the necessary services and facilities of representation including investigation and other preparation." KRS 31.110(1). Now, who must pay? For the answer, we look back to the

² Ky., 885 S.W.2d 307, 309 (1994).

statutes.

The language of KRS 31.185, supra, is directly on point and cannot be ignored. "When the words of the statute are clear and unambiguous and express the legislative intent, there is no room for construction or interpretation and the statute must be given its effect as written." Lincoln County Fiscal Court v. Department of Public Advocacy, Ky., 794 S.W.2d 162, 163 (1990), citing with approval Griffin v. City of Bowling Green, Ky., 458 S.W.2d 456 (1970).³

KRS 31.100(2) provides further support for our determination that petitioner is entitled to the services of a Spanish language interpreter to be paid out of the fund established by KRS 31.185(4). KRS 31.100(2) defines expenses covered for indigent criminal defendants as including "the expenses of investigation, other preparation, and trial, together with the expenses of any appeal." Accordingly, it is clear to us that petitioner, as an indigent defendant charged with a crime, is entitled to the services of a Spanish language interpreter to be paid from the funds established by KRS 31.185(4). Our decision herein is consistent with the determination of our Supreme Court that "[u]nless the law expressly directs otherwise, it is the county government, not the state Department of Public Advocacy, which bears liability

³ Id.

for court-authorized expenses incurred in the representation of an indigent defendant.”⁴

Furthermore, Respondent also concluded that the amount requested by petitioner for translator services was excessive and “[f]or the purpose described in the matter the Defense Counsel should be able to contract for this service for no more than \$15 with a minimum charge of \$30.” Petitioner presented evidence that the translators who provide in-court translation for the Administrative Office of the Courts charge \$30.00 per hour. Likewise, the Office of Probation and Parole pays the same rate for interpreter services. There was no evidence that a qualified interpreter would be available to assist Petitioner and his counsel in trial preparation at a rate of less than \$30.00 per hour. Accordingly, Respondent’s conclusion to the contrary was unsupported by any evidence and was therefore arbitrary.

Thus, having considered petitioner’s petition for relief, considered by this Court as a petition for writ of mandamus, and being otherwise advised, this Court ORDERS that this petition be, and it is hereby, GRANTED. Pursuant to the Kentucky Supreme Court’s directive of McCracken County Fiscal Court v. Graves, respondent is ORDERED to enter an order authorizing payment from the fund described in KRS 31.185 for

⁴ Id., at 309.

the limited purpose of retaining a Spanish language interpreter to assist petitioner with out-of-court defense preparation. Respondent shall enter the order as described herein on or before twenty (20) days from the date of entry of this order.

ENTERED: June 11, 2004

/s/ Wm. L. Knopf
JUDGE, COURT OF APPEALS

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