

NO: 19-7668

IN THE
SUPREME COURT OF THE UNITED STATES

DARLENE KAY HERRAN- PETITIONER

v.

STATE OF INDIANA- RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI
TO THE INDIANA COURT OF APPEALS

REPLY BRIEF TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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“Chilling” 6th Amendment Rights

The State of Indiana, on page 6 of its Brief in Opposition claims there was no injury to Darlene Herran or her *pro-bono* attorney when the trial court put Appellate counsel “on notice that the Court may assess such costs against Appellate Counsel.” See Appendix p. 20.

In addressing this court on page 6 of the brief, State’s counsel was somewhat misleading when it stated “[T]he trial court merely indicated...that it might perhaps consider assessing costs against Herran’s counsel...” Further, it was misleading to say “Herran’s counsel claims...the court reporter sent him an invoice....”

No “claim” to it – an invoice was sent on January 8th, 2019. See Appendix p.21.

The State has tried to make it seem as if no injury has occurred. The injury, however, is the “chilling” of Ms. Herran’s 6th Amendment right to counsel by the threat of requiring *pro-bono* counsel to pay costs for an indigent defendant. The argument on this issue is aptly stated on pages 4-5 of the Petition for Writ of Certiorari.

On page 7, the State tries to insinuate that appellate counsel has failed to follow some procedure for securing public funding and could be “sanctioned” for it. That argument is pure baloney. Even though the trial judge alluded to not receiving any pleading requesting a finding of indigency, none is needed. The trial court had already found Herran indigent on 2-27-2018 (see CCS appendix p.14). There was never any finding from the trial court thereafter that Ms. Herran was not indigent. The Notice of Appeal served on the trial judge (App. p. 19) indicated counsel was *pro-bono*.

Further, the Indiana Court of Appeals in its opinion in this particular case stated at

footnote 2 the following: “We note that a party who was permitted to proceed in the trial court *in forma pauperis* may proceed in like manner on appeal without prior authorization from the trial court or the appellate court. Ind. Appellate Rule 40 (A)(1).” *Herran v. State* Ind. App. Unpub. Lexis 815 (2019)

It is offensive that the State attempts to insinuate wrongdoing or vexatious or oppressive conduct to a *pro-bono* attorney trying to defend the Constitutional Rights of an indigent person as it did on page 7 of its brief.

This court should find that Herran’s 6th Amendment Rights were chilled and order that the trial court may not order *pro-bono* counsel to pay for the costs of the transcript in this matter.

Respectfully submitted,

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