

Research Memorandum #70: Equal Protection and Right of Indigent to Offset Economic Imbalance

State v. Grift, 204 Maj. 2d 617 (20XX-18): “We have decided that an indigent defendant cannot be denied a free transcript for an appeal. For surely there can be no equal justice when the kind of trial or appeal a man gets depends upon the amount of money he has.”

Concurring opinion: “Of course a State need not equalize economic conditions. A man of means may be able to retain an expensive, able attorney a poor man could not afford. Those are contingencies of life which are hardly within the power, let alone duty, of the State to correct or cushion.”

Lester v. Mack, 212 Maj. 2d 592 (20XX-17): “Petitioner seeks a free verbatim transcript of his trial so his appointed attorney can review it for possible ground for a habeas corpus petition. In our decision, we are guided by certain principles and procedures. First, the principles. The principle established by *State v. Grift*, 204 Maj. 2d 617 (20XX-18), does not guarantee indigents the same treatment afforded wealthy defendants: Rather, it is only necessary that they be given equivalent and fundamentally fair treatment. Equal Protection does then require that indigents have an adequate opportunity to present their claims fairly within the adversarial system. An affluent society ought not be miserly in support of justice, for economy is not an objective of the system. Accordingly, “[d]estitute defendants must be given as adequate review of their claims as defendants who have money enough to pay for transcripts.” *State v. Grift*, supra, 204 Maj. 2d at 624. Now, the procedures. Once the defendant (as here) has made a showing of ‘colorable need’ for the *full* transcript, the State then has the burden of showing that other alternatives would provide adequate appellate review.”

Lester v. Black, 101 Maj. App. 3d 287 (20XX-14): “To interpose any financial consideration between an indigent prisoner of the state and his exercise of a state right to sue for his liberty, is to deny that prisoner the equality of protection of the law. Here, however, petitioner seeks a full transcript at state expense by merely whispering ‘habeas corpus’ as if that had some talismanic quality. There is simply no showing of

any need, colorable or otherwise. Petitioner cannot expect the expenditure of state funds to assuage his curiosity or provide him with some light reading.”

State v. Duggan, 111 Maj. App. 3d 977 (20XX-13): “Indigent appellant seeks an appointed attorney on appeal. The right to an attorney at trial is established (cits. omitted). Here, *State v. Grift*, 204 Maj. 2d 617 (20XX-18), controls. The appointment of appellate counsel is ordered.”

State v. Main, 169 Maj. App. 3d 713 (20XX-10): “Believing that *State v. Grift*, 204 Maj. 2d 617 (20XX-18), applies only to felony cases, the court below has denied preparation of a free transcript in this misdemeanor appeal. While the lower court’s interpretation of *Grift* is wrong and we herein so rule, that is not the end of the inquiry. Other alternatives to a full transcript may be available (e.g., an agreed statement of facts, a full narrative from the trial judge’s minutes, selected relevant portions of the full transcript). Of course, a full transcript is required when it is necessary for as ‘effective’ an appeal as would be available to a wealthy defendant.”

State v. Britt, 202 Maj. App. 3d 367 (20XX-9): “We view the *Grift* principles as requiring that the State, as a matter of equal protection, provide indigent defendants with the basic tools of an adequate defense or appeal, when those tools are available for a price to other defendants. In fairness we must say that the outer limits of this principle are not clear, yet they clearly encompass the request in this case for a free transcript of defendant’s first trial where a second trial must be prepared after there was a mistrial in the first.”

State v. Andrews, 280 Maj. App. 2d 117 (20XX-17): “Indigent defendant asks for money for experts and investigators under Major Penal Code section 40(1) – the “Costs for Experts” statute. Defendant has a constitutional right to an attorney (cits. omitted). The right includes the right to use any experts that will assist counsel in preparing a defense (cits. omitted). Contrary to the contentions of the government, the fact that friends and family have retained counsel for adult defendant does not bar defendant from access to these indigent funds. The contribution of family and friends is only one factor in assessing defendant’s ‘ability to pay.’ “