

## amicus report

The big case for the Amicus Committee since the last report was, of course, *State v. Gwynne*, the Delaware County case where a judge gave a woman who'd stolen from residents of nursing homes and assisted living facilities sixty-five years in prison. The court of appeals cut that to fifteen, the State appealed, and there we are.

The main issue in *Gwynne* is the standard by which a court of appeals reviews a felony sentence. It's huge, because there are decisions all over the lot on this, with some courts holding that as long as the sentence is within the bounds set by the legislature, a judge can sentence anywhere within that range, and others holding that a court of appeals can essentially decide what a fair sentence is. (That's actually the same court; the 8th District has held both ways.)

There's another issue, too. As part of her plea agreement, Gwynne agreed to waive any appeal rights. The 5th District had ignored that issue, finding that it wasn't binding since there was no specified sentence.

In any event, I did an amicus brief on the case, and also poached my way into giving most of the oral argument. I have not a clue as to what will happen, and I can't find anybody who watched the oral argument who has, either. We'll eventually find out if my trip to Columbus was an excellent adventure or a bogus journey.

Other than an amicus MISJ by Chris Pagan, that was the only thing the Amicus Committee has done in the past six months. I'm a little upset about that; I think we need to be more involved. (On the other hand, I probably had at least 40 hours in *Gwynne*, between writing a 20-page brief, sitting through a moot with the county PD up here and another one with OPD the day, before, and prepping for and giving the oral argument.) Still, I've come to realize that I've approached this position somewhat haphazardly, so I've spent some time thinking about what we should do.

The biggest problem is that I often find out about cases we should have participated in when I read about the upcoming oral argument. Part of that's a change in the OPD. They used to have a woman, Kathy Szudy, who did a daily email about what was happening in the Supreme Court: cases that were accepted, cases that were declined, MISJ's, MOJ's, the decisions. She left about a year ago for a job on the Supreme Court, and nobody has replaced her.

So I've taken some steps to remedy that:

1. The Supreme Court has numerous case announcements during the week. Oftentimes it's nothing but procedural rulings, but that's where they announce which cases they're going to take. That is now on my daily reading list.

2. I'm going to work out an arrangement with the county PD's office that they will inform me of all cases they're working on, either representing the client or doing an amicus. In the future, I'd hope to have an arrangement where we will file joint amicus briefs, with me writing half of them (and thus getting top billing for the organization) and them writing the other half (ditto). That would double the number of cases we'd be arguing. I hope to work out a similar arrangement with the OPD, but that's a little dicier.

3. I'll be better about posting notes on the listserv reminding people to call us if they've got something.

We also need a better focus. I do not believe it wise, or possible, to participate in every criminal case before the Supreme Court. Here's how I'd winnow it down:

1. We have to have at least a reasonable shot at winning. Repeatedly getting beaten like a red-headed stepchild is not good for my ego, nor the credibility of the organization.

2. The issue must be a significant one. We have finite resources, and I'm not big on spending them on things like calculating jail-time credit.

3. We will not file any Memorandums Opposing Jurisdiction. It makes no sense to essentially tell the court that this issue is important enough for us to tell you that it's not important enough for you to decide.

4. We will do MISJ's, but only if the issue is of unusual significance. Had the defendant been the appellant in *Gwynne*, that would have earned an amicus MISJ.

So far this year, the Supreme Court hasn't taken in any new cases. I'll let you know when they do.

RB