




DEFENDANTS charged with magistrate court crimes would qualify for Shelton's protections, provided that their sentences may "end up in the actual deprivation of a person's liberty". Alternative sentences of thirty days or a fine would qualify. Sentences to "time served" would also qualify. Magistrate court defendants held in pretrial detention are entitled by statute for jail credit when sentenced. §24-13-40, South Carolina Code of Laws. These defendants face sentences, which may end up in and often do end up in the actual deprivation of their liberty thus triggering the right to counsel under the Shelton decision. Sentences of a fine without an alternative jail term would not qualify for free counsel under Shelton.

THE ROTHGERY decision clarified the point during the criminal process at which the right to counsel attaches and needs to be addressed. The Supreme Court in Rothgery determined that the adversary process begins, and the right to counsel attaches, when a defendant learns of the charges against him and his liberty is subject to restriction. In the magistrate court process, a defendant is told of the charges against him upon his first appearance before the magistrate and his bond is also set at that time. If the defendant cannot immediately post bond or is not released on a personal recognizance bond, he is placed in detention. The right to counsel attaches at this point in the magistrate court criminal procedure.

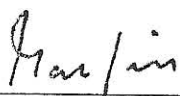
AS APPLIED to the magistrate court system in Greenville County, it is the order of the Court, that upon a defendant's appearance before the committing magistrate, each defendant who cannot immediately post bond or is not released on a personal recognizance bond shall be informed of his right to counsel, as is currently the procedure. In addition, however, at the time the defendant is to be detained in jail, the magistrate shall ask the defendant if he would like the assistance of counsel. If the defendant responds in the affirmative the committing magistrate shall immediately fill out Defense of Indigents Act Form IV and fax it to the Greenville Office of Indigent Defense. Upon receipt of the Form IV, the Office of Indigent Defense shall interview the inmate in jail within forty-eight (48) hours and determine the defendant's eligibility for a court appointed attorney. If the defendant is determined to qualify for a free attorney, the Office of Indigent Defense shall immediately assign the defendant to the Circuit Defender Office for representation.

IT IS SO ORDERED.



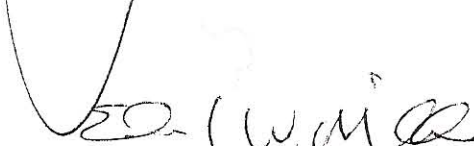
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The Honorable John C. Few  
Circuit Court Judge  
Thirteenth Judicial Circuit



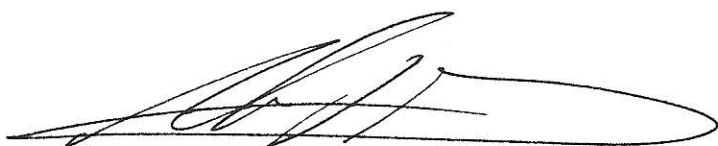
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The Honorable D. Garrison Hill  
Circuit Court Judge  
Thirteenth Judicial Circuit




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The Honorable Edward W. Miller  
Circuit Court Judge  
Thirteenth Judicial Circuit



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The Honorable Robin B. Stilwell  
Circuit Court Judge  
Thirteenth Judicial Circuit



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The Honorable G. Edward Welmaker  
Chief Administrative Judge  
Thirteenth Judicial Circuit

Dated: December 1, 2009  
Greenville, South Carolina