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**Children's Law Center
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"In pursuit of a consistent, efficient, and effective Juvenile Justice System"

Delinquency

6/3/04

In **J.H. v. State**, 809 N.E.2d 456 (Ind. Ct. App. 2004), the Court dismissed the appeal and remanded the case to the trial court for the purpose of permitting the juvenile to file the required motion for relief from judgment pursuant to Indiana Trial Rule 60. In a delinquency petition, the juvenile was charged with driving a vehicle without a license, a class C misdemeanor if committed by an adult. The juvenile admitted to the allegations of the petition. The trial court found that the juvenile was on parole when he committed the offense, and, in view of the juvenile's "lengthy history with this Court, with several violations," recommitted the juvenile to the Department of Correction with a recommendation that he serve twelve months. The juvenile appealed, arguing that the adjudication must be set aside because he did not freely and voluntarily waive his right to counsel at the initial hearing.

A defendant may not directly appeal a delinquency adjudication following his admission to the facts of the offense. Post-conviction remedies are not available to juveniles; the appropriate remedy for relief that a juvenile defendant must seek is through the filing of a Trial Rule 60 motion. *Id.* at 458. The Court opined that, inasmuch as the juvenile was attacking the validity of his admission to the offense and he had failed to file a motion pursuant to Trial Rule 60, the Court was compelled to dismiss the appeal. Thus, the Court remanded the cause to the trial court for the purpose of permitting the juvenile to file a motion for relief from judgment. *Id.*

Judge Bailey concurred with the majority's holding, but wrote separately to express his concern that the Marion Superior court's jurisdiction and subsequent adjudication of the juvenile, as a juvenile delinquent, rather than an adult offender, might be in contravention of Article I, Section 23 of the Indiana Constitution which provides in pertinent part that the legislature "shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens." *Id.* Judge Bailey's concern arose from statutes that confer juvenile jurisdiction for what would otherwise be misdemeanor traffic offenses, only in Marion and Lake Counties. *Id.* at 459. Judge Bailey discussed the legal analysis underlying his concerns, but declined to express an opinion on the constitutionality of the statutes at issue, because the issue "is not squarely before us today, and because this Court does not issue advisory opinions on constitutional issues." *Id.* at 459-60.