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# SUPREME COURT OF ALABAMA

OCTOBER TERM, 2010-2011

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Ex parte State of Alabama

PETITION FOR WRIT OF CERTIORARI  
TO THE COURT OF CRIMINAL APPEALS

(In re: Thomas Robert Lane

v.

State of Alabama)

(Mobile Circuit Court, CC-05-1499;  
Court of Criminal Appeals, CR-05-1443)

STUART, Justice.

This Court granted the State's petition for a writ of certiorari to address whether an indigent defendant, who has

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no right to choose initially a particular court-appointed attorney, has a right to continued representation by a particular court-appointed counsel.<sup>1</sup> The Court of Criminal Appeals held that an indigent defendant has such a right. We reverse and remand.

In June 2003, Theresa Lane retained an attorney to initiate divorce proceedings from Thomas Robert Lane ("Lane"). On October 6, 2003, Lane retained Buzz Jordan to represent him in the divorce proceedings and paid him \$500. On October 13, 2003, the day after Theresa was murdered, Lane, at Jordan's request, delivered his computer tower to Jordan's office and paid Jordan an additional \$1,000. Lane was arrested for Theresa's murder on October 13, 2004, and on October 14, 2004, Lane was arraigned on a charge of noncapital murder; on

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<sup>1</sup>This Court also granted the writ to address whether the decision of the Court of Criminal Appeals in Lane v. State, [Ms. CR-05-1443, February 5, 2010] \_\_\_ So. 3d \_\_\_ (Ala. 2010) conflicts with United States v. Gonzalez-Lopez, 548 U.S. 140, 152 (2006) (recognizing that "the right to counsel of choice does not extend to defendants who require counsel to be appointed for them"), and Ex parte Moody, 684 So. 2d 114, 121-22 (Ala. 1996) (holding that "an indigent defendant is not entitled to legal counsel of his choice, when counsel is to be paid by public funds, but rather is entitled to competent legal representation"). Our resolution of the question of first impression resolves this case; therefore, we pretermitt discussion of the ground of conflict.

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October 7, 2005, Lane was arraigned on three counts of capital murder. See §§ 13A-5-40(a)(2), 13A-5-40(a)(4), and 13A-5-40(a)(7), Ala. Code 1975. At some point after Lane's arrest, the trial court determined that Lane was indigent and appointed Jordan as lead counsel to represent him in the criminal proceeding. It further appears from the record that the trial court also appointed James J. Dailey to represent Lane. Approximately 19 months after Lane had initially retained Jordan, the State moved to disqualify Jordan from representing Lane in the criminal proceeding on the ground that he was a necessary witness in the criminal proceeding.<sup>2</sup> On September 25, 2005, after conducting a hearing on the State's motion to disqualify, the trial court granted the State's motion and ordered Jordan removed as Lane's trial counsel.<sup>3</sup> On September 30, 2005, the trial court appointed

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<sup>2</sup>In the motion, the State argued that Jordan was a necessary witness who would establish the following: (1) the chain of custody of Lane's computer; (2) the fact that Lane had paid Jordan \$1,000 in cash the day after Theresa's murder; and (3) the fact that documents relating to Lane's divorce proceedings found in Lane's house had not been filed by Jordan in his capacity as Lane's divorce attorney and, thus, had been falsified.

<sup>3</sup>The record indicates that although Jordan was removed as counsel, Dailey's representation of Lane was continuous

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Deborah McGowin to replace Jordan as lead counsel at Lane's trial. Jury selection for Lane's trial commenced on January 30, 2006. Lane was convicted of two counts of capital murder and the lesser-included offense of murder.<sup>4</sup> The trial court sentenced Lane to death.

Lane appealed to the Court of Criminal Appeals, arguing, among other issues, that the trial court erred in removing Jordan as his trial counsel. The Court of Criminal Appeals agreed and, finding the error to be structural, reversed Lane's convictions and sentence. Lane v. State, [Ms. CR-05-1443, February 5, 2010] \_\_\_ So. 3d \_\_\_ (Ala. Crim. App. 2010). Specifically, the Court of Criminal Appeals held that an indigent defendant who has developed an attorney-client relationship with appointed counsel has a right to continued representation by that counsel and that a trial court's erroneous removal of appointed counsel denied an indigent defendant his Sixth Amendment right to counsel. The court further held that such an error was structural, precluding a

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throughout the criminal proceeding.

<sup>4</sup>At the sentencing hearing, the trial court vacated the murder conviction.

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harmless-error analysis and requiring reversal of Lane's convictions without a showing of prejudice.

The State petitioned this Court for a writ of certiorari, alleging, among other grounds, a material question of first impression: Does the Sixth Amendment to the United States Constitution provide an indigent defendant who has developed an attorney-client relationship with appointed counsel a constitutional right to continued representation by the same appointed counsel?

Initially, we note that Lane contends that the State does not present this Court with a question of first impression and in support cites Ex parte Tegner, 682 So. 2d 396 (Ala. 1996). In Ex parte Tegner, a defendant charged with murder petitioned this Court for a writ of mandamus directing the Morgan Circuit Court to revoke its order granting the State's motion to remove his appointed counsel and prevent counsel from representing him at trial. This Court granted the petition and issued the writ because the trial court, when it considered the State's motion, did not evaluate the evidence regarding the question of disqualification and did not weigh the constitutional rights at issue. This Court did not

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address the constitutional issue whether an indigent defendant has a Sixth Amendment right to continued representation by the same appointed counsel. Indeed, this Court specifically noted that the trial court had not considered any constitutional issues before removing Tegner's counsel. Therefore, we reject Lane's argument that this Court has previously addressed the question presented in this case.

The State's question -- Does an indigent defendant, who does not have a right to counsel of choice but who has developed an attorney-client relationship with court-appointed counsel, have a Sixth Amendment right to continued representation by the same court-appointed counsel? -- is indeed a question of first impression.

It is well established that an indigent defendant, who requires that counsel be appointed for him or her, does not have a Sixth Amendment right to counsel of the defendant's own choice. In Wheat v. United States, 486 U.S. 153, 159 (1988), the United States Supreme Court discussed a defendant's right to counsel of his or her own choice, stating:

"The Sixth Amendment to the Constitution guarantees that '[i]n all criminal prosecutions, the accused shall enjoy the right ... to have the Assistance of Counsel for his defence.' In United

States v. Morrison, 449 U.S. 361, 364 (1981), we observed that this right was designed to assure fairness in the adversary criminal process. Realizing that an unaided layman may have little skill in arguing the law or in coping with an intricate procedural system, Powell v. Alabama, 287 U.S. 45, 69 (1932); United States v. Ash, 413 U.S. 300, 307 (1973), we have held that the Sixth Amendment secures the right to the assistance of counsel, by appointment if necessary, in a trial for any serious crime. Gideon v. Wainwright, 372 U.S. 335 (1963). We have further recognized that the purpose of providing assistance of counsel 'is simply to ensure that criminal defendants receive a fair trial,' Strickland v. Washington, 466 U.S. 668, 689 (1984), and that in evaluating Sixth Amendment claims, 'the appropriate inquiry focuses on the adversarial process, not on the accused's relationship with his lawyer as such.' United States v. Cronin, 466 U.S. 648, 657, n. 21 (1984). Thus, while the right to select and be represented by one's preferred attorney is comprehended by the Sixth Amendment, the essential aim of the Amendment is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer whom he prefers. See Morris v. Slappy, 461 U.S. 1, 13-14 (1983); Jones v. Barnes, 463 U.S. 745 (1983).

"The Sixth Amendment right to choose one's own counsel is circumscribed in several important respects. Regardless of his persuasive powers, an advocate who is not a member of the bar may not represent clients (other than himself) in court. Similarly, a defendant may not insist on representation by an attorney he cannot afford or who for other reasons declines to represent the defendant. Nor may a defendant insist on the counsel of an attorney who has a previous or ongoing relationship with an opposing party, even when the opposing party is the Government."

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486 U.S. at 158-59 (footnote omitted). See also Caplin & Drysdale, Chartered v. United States, 491 U.S. 617, 624 (1989) ("The [Sixth] Amendment [right to counsel] guarantees [impecunious] defendants in criminal cases the right to adequate representation, but those who do not have the means to hire their own lawyers have no cognizable complaint so long as they are adequately represented by attorneys appointed by the courts.").

Likewise, in Alabama, "an indigent defendant is not entitled to legal counsel of his choice, when counsel is to be paid by public funds, but rather is entitled to competent legal representation." Ex parte Moody, 684 So. 2d 114, 121-22 (Ala. 1996). See also Steeley v. State, 622 So. 2d 421, 425 (Ala. Crim. App. 1992) (stating that the right to counsel of one's choice is not absolute, as is the right to assistance of counsel); and Briggs v. State, 549 So. 2d 155 (Ala. Crim. App. 1989) (stating that an indigent defendant has no absolute right to be represented by any particular counsel or by counsel of his choice).

The United States Supreme Court has held that a defendant who retains counsel has a Sixth Amendment right to counsel of



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his or her choice, and, when a trial court unjustly violates that right, the error is structural -- not subject to a harmless-error analysis. In United States v. Gonzalez-Lopez, 548 U.S. 140, 152 (2006), the United State Supreme Court addressed a criminal defendant's Sixth Amendment right to retained counsel of his choice. Specifically, the Court considered whether a trial court's erroneous removal of retained counsel, which resulted in the defendant's right to counsel of his choice being violated, required that the defendant's conviction be reversed. In that case, Gonzalez-Lopez had retained out-of-state counsel; the trial court, however, refused to grant counsel's application for admission pro hac vice, causing Gonzalez-Lopez to be represented by different counsel at trial. On appeal Gonzalez-Lopez argued that the trial court, by refusing to admit his chosen counsel pro hac vice, had denied him his right to paid counsel of his choosing. The Government conceded that the trial court erred when it denied Gonzalez-Lopez his counsel of choice. The United States Supreme Court, recognizing that a defendant who retains counsel has a right to counsel of the defendant's own choosing and accepting the Government's concession of error,

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held that the trial court had erroneously denied Gonzalez-Lopez his right to counsel of choice, that the error was structural, and that reversal of Gonzalez-Lopez's conviction was required. The United States Supreme Court, however, specifically stated:

"Nothing we have said today casts any doubt or places any qualification upon our previous holdings that limit the right to counsel of choice .... [T]he right to counsel of choice does not extend to defendants who require counsel to be appointed for them. See Wheat [v. United States], 486 U.S. [153], at 159 [(1988)]; Caplin & Drysdale[, Chartered v. United States], 491 U.S. [617], at 624, 626 [(1989)]. Nor may a defendant insist on representation by a person who is not a member of the bar, or demand that a court honor his waiver of conflict-free representation. See Wheat, 486 U.S., at 159-160. ... We have recognized a trial court's wide latitude in balancing the right to counsel of choice against the needs of fairness, *id.*, at 163-164, and against the demands of its calendar, Morris v. Slappy, 461 U.S. 1, 11-12 (1983). The court has, moreover, an 'independent interest in ensuring that criminal trials are conducted within the ethical standards of the profession and that legal proceedings appear fair to all who observe them.' Wheat, supra, at 160."

548 U.S. at 151-52.

The question before us, however, is distinguishable from the question before the Court in Gonzalez-Lopez. Gonzalez-Lopez had a right to retain counsel of his choosing, and the Government conceded that Gonzalez-Lopez's right to counsel of

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choice had been violated; therefore, as the United States Supreme Court concluded, the "erroneous deprivation of the right to counsel of choice, 'with consequences that are necessarily unquantifiable and indeterminate, unquestionably qualifies as "structural error.'" [Sullivan v. Louisiana, 508 U.S. 275,] 282 [(1993)]." 548 U.S. at 150. Because Gonzalez-Lopez addressed the erroneous removal of retained counsel from a defendant who had a right to counsel of choice and the question presented to us addresses the erroneous removal of counsel appointed by the court to represent an indigent defendant who has no right to counsel of choice, the decision in Gonzalez-Lopez provides little guidance.

Two federal courts of appeals have addressed whether an indigent defendant, who does not have a right to counsel of choice but who has developed an attorney-client relationship with appointed counsel, has a Sixth Amendment right to continued representation by that same appointed counsel. The United States Court of Appeals for the Sixth Circuit in Daniels v. Lafler, 501 F.3d 735, 740 (6th Cir. 2007), in analyzing whether the trial court violated an indigent defendant's Sixth Amendment right to counsel of choice when it

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removed appointed counsel, observed that in Powell v. Alabama, 287 U.S. 45, 53 (1932), and in Gonzalez-Lopez, the United States Supreme Court recognized the Sixth Amendment right to counsel of choice only in relation to criminal defendants who had retained counsel. Specifically, the Daniels court noted that the Court in Powell stated that "a criminal defendant who hires, and pays for, an attorney has the right to select that attorney," and in Gonzalez-Lopez held that "a defendant could obtain a new trial without showing prejudice when the trial court arbitrarily denied him the services of his retained counsel -- in that case, by erroneously refusing to grant the chosen attorney admission pro hac vice." 501 F.3d at 739. The Daniels court concluded that "neither Powell nor Gonzalez-Lopez suggests that the choice-of-counsel right at issue is universal to all defendants," 501 F.3d at 739, and supported its conclusion by noting that "[t]he Gonzalez-Lopez Court explicitly stated that the basis for its decision was 'the right of a defendant who does not require appointed counsel to choose who will represent him,' indicating that the erroneous or arbitrary exclusion of court-appointed counsel might not

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trigger the same constitutional scrutiny." 501 F.3d at 739.

Therefore, the Daniels court held:

"[A] defendant relying on court-appointed counsel has no constitutional right to the counsel of his choice. This does not mean that an indigent defendant never could establish that the arbitrary replacement of court-appointed counsel violated his constitutional rights. The replacement of court-appointed counsel might violate a defendant's Sixth Amendment right to adequate representation or his Fourteenth Amendment right to due process if the replacement prejudices the defendant -- e.g., if a court replaced a defendant's lawyer hours before trial or arbitrarily removed a skilled lawyer and replaced him with an unskilled one. But because Daniels does not even allege prejudice here, we must affirm the denial of his Sixth Amendment claim."

501 F.3d at 740.

In United States v. Basham, 561 F.3d 302 (4th Cir. 2009), the United States Court of Appeals for the Fourth Circuit addressed whether the trial court exceeded the scope of its discretion when it disqualified Basham's appointed counsel based on a conflict of interest. The Basham court held that "the only right implicated by the district court's disqualification of [the court-appointed attorney] was the right to effective assistance of counsel." 561 F.3d at 324. In reaching this conclusion the Basham court also relied upon its holding in Miller v. Smith, 115 F.3d 1136, 1143 (4th Cir.

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1997), that "'an indigent criminal defendant has no constitutional right to have a particular lawyer represent him.'" 561 F.3d at 324. See also United States v. Van Anh, 523 F.3d 43, 48 n.3 (1st Cir. 2008) (holding that indigent defendants have no right to counsel of their own choosing). Recognizing that an indigent defendant does not have the right to counsel of his or her choosing, the Basham court agreed with the Daniels court that the erroneous removal of appointed counsel and replacement by alternate counsel may violate an indigent defendant's right to adequate representation -- i.e., effective assistance of counsel -- and held that the proper inquiry included consideration of whether the defendant suffered prejudice by the removal of appointed counsel. 561 F.3d at 321-25.

Similarly, in State v. Reeves, 11 So. 3d 1031 (La. 2009), the Supreme Court of Louisiana held that a criminal defendant for whom counsel has been appointed has only the right to effective representation. 11 So. 3d at 1056. In Reeves, a retrial had been ordered in an indigent defendant's case. The trial court refused to appoint the same counsel who had represented the indigent defendant at the earlier trial to

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represent him on retrial. The indigent defendant was represented by different counsel at the retrial and was convicted. On appeal, the indigent defendant argued that the trial court's refusal to allow continued representation by appointed counsel who had represented him at his earlier trial denied his right to counsel of his choice and that that denial constituted a structural error. Recognizing that the indigent defendant was represented by appointed counsel and, consequently, that the defendant did not have a right to counsel of choice, the Louisiana Supreme Court held that the trial court's actions, in refusing to appoint counsel who had represented the defendant at his earlier trial and in appointing alternate counsel to represent the defendant in his retrial, did not result in structural error.

The Louisiana Supreme Court also considered whether the defendant had a right to counsel of his own choice, which would have been violated because the trial court refused to permit his existing close relationship with his initial counsel to continue. The Louisiana Supreme Court held that no constitutional violation had occurred, stating:

"The Supreme Court has rejected any claim that the Sixth Amendment guarantees a 'meaningful

attorney-client relationship' between an accused and his counsel. See Morris v. Slappy, 461 U.S. 1, 14, 103 S.Ct. 1610, 1617, 75 L.Ed.2d 610 (1983). The fact situation in Morris concerned an indigent defendant who was appointed an attorney from the public defender's office. Appointed counsel represented the defendant at preliminary hearings and supervised an extensive investigation into the case. However, shortly prior to trial, appointed counsel was hospitalized for emergency surgery and the public defender assigned a senior trial attorney in that office to take over the defendant's representation. The defendant objected at trial to his newly-appointed counsel, arguing that substitute counsel could not be as prepared as his original counsel, and refusing to aid substitute counsel in his defense. The defendant was convicted and subsequently sought federal habeas relief. Although the pro se federal habeas petition couched the alleged errors in other terms, the federal appellate court granted habeas relief, finding the Sixth Amendment guarantees a right to counsel with whom the accused has a 'meaningful attorney-client relationship.' Further, the federal appellate court found that the trial court abused its discretion and violated this right by denying a motion for continuance based on the substitution of appointed counsel shortly before trial. In reversing the federal appeals court ruling, the Supreme Court stated:

"'The Court of Appeals' conclusion that the Sixth Amendment right to counsel 'would be without substance if it did not include the right to a meaningful attorney-client relationship, [citation omitted] (emphasis added), is without basis in the law. No authority was cited for this novel ingredient of the Sixth Amendment guarantee of counsel, and of course none could be.'



"Similarly, we have found nothing in our state constitution, or in our review of state jurisprudence, which shows that a criminal defendant has a right to a particular attorney-client relationship separate from the right to counsel of choice. In [State v.] Scott, [921 So. 2d 904 (La. 2006), overruled in part on other grounds, State v. Dunn, 974 So. 2d 658 (2008)], the defendant argued, as here, that the removal of his appointed counsel approximately one month prior to trial unconstitutionally interfered with the attorney-client relationship and violated his right to counsel of choice. In Scott, a conflict developed between Scott's lead appointed counsel and second-chair appointed counsel. The district court granted lead counsel's motion and appointed new second-chair counsel over the defendant's objection. After reviewing the consistent jurisprudence holding that an indigent defendant does not have the right to choose his appointed counsel, and that lead appointed counsel had provided constitutionally-effective assistance to Scott, this court found 'no interference with the attorney-client relationship and no violation of defendant's right to counsel of choice.' Here, we similarly find that Reeves did not have a right to choose his appointed counsel. Moreover, there is nothing in our state constitution which supports the defense's argument that a criminal defendant has a right to a particular attorney-client relationship.

"Consequently, there is nothing in either the federal or state constitutions which would provide Reeves with the right to maintain a particular attorney-client relationship in the absence of a right to counsel of choice."

11 So. 3d at 1065-66 (footnotes omitted).

We agree with the holdings and analyses in Basham, Daniels, and Reeves. An indigent defendant has a Sixth

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Amendment right to effective assistance of counsel but does not have a Sixth Amendment right to court-appointed counsel of choice. Because an indigent defendant does not have a right to counsel of choice or a right to a "meaningful attorney-client relationship" with particular counsel, we cannot conclude that the erroneous removal of court-appointed counsel constitutes a structural error. An indigent defendant may be able to show that the removal of court-appointed counsel with whom the defendant had developed an attorney-client relationship has caused prejudice, resulting in the reversal of his or her conviction, but the mere removal of the court-appointed attorney, even if erroneous, is not structural error, i.e., it does not "affect[] the framework within which the trial proceeds." Arizona v. Fulminante, 499 U.S. 279, 309 (1991). See Perkins v. State, 808 So. 2d 1041, 1060-1062 (Ala. Crim. App. 1999). Consideration of whether the indigent defendant suffered prejudice by the erroneous removal of court-appointed counsel is the proper inquiry.

In this case, the trial court determined that Lane was indigent and appointed counsel to represent him. Lane had no constitutionally protected right to counsel of his choice or

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to continued representation by a particular court-appointed counsel. Wheat, supra; Ex parte Moody, supra. Therefore, the trial court's erroneous removal of Lane's court-appointed counsel was not structural error, and the Court of Criminal Appeals erred in failing to determine whether the trial court committed plain error when it removed Lane's court-appointed counsel. Accordingly, we reverse the judgment of the Court of Criminal Appeals and remand this case to the Court of Criminal Appeals for that court to determine whether the trial court committed plain error when it removed Jordan as Lane's lead counsel. If the Court of Criminal Appeals determines that the trial court did not commit plain error in this regard, then the court shall complete its review of the case as required by Rule 45A, Ala. R. App. P.

#### Conclusion

The judgment of the Court of Criminal Appeals is reversed, and this case is remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED WITH DIRECTIONS.

Bolin and Parker, JJ., concur.

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Houston, Special Justice,\* concurs in the result.

Cobb, C.J., and Woodall and Murdock, JJ., dissent.

Shaw, Main, and Wise, JJ., recuse themselves.\*\*

\*Retired Associate Justice Gorman Houston was appointed on May 16, 2011, to serve as a Special Justice in regard to this petition.

\*\*Justice Shaw, Justice Main, and Justice Wise were members of the Court of Criminal Appeals when that court considered this case. Note from the reporter of decisions: Section 12-2-14, Ala. Code 1975, provides that "[w]hen by reason of disqualification the number of judges competent to sit in a case is reduced to ... six and there is equal division among them" a member of the bar shall be appointed to sit as a judge in the determination of the case. Rule 16.6(b), Ala. R. App. P., provides that "when, by reason of disqualification the number of justices competent to sit in the determination of a case is reduced ... a majority of the justices sitting shall suffice; but, in no event, may a cause be determined unless at least four justices sitting shall concur therein.

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HOUSTON, Special Justice (concurring in the result).

I do not believe that the trial court erred in granting the State's motion to dismiss Thomas Robert Lane's appointed counsel on the basis of the existence of a conflict of interest. Because I believe no error occurred, I do not reach the issue decided by the Court of Criminal Appeals -- whether the error was structural. I agree, however, with the main opinion that the Court of Criminal Appeals erred in reversing Lane's conviction on the basis that the trial court had committed structural error in removing Lane's appointed counsel. Accordingly, I concur in the result reached by the main opinion to reverse the judgment of the Court of Criminal Appeals.

However, were I to reach the structural-error issue, I would conclude that, although an indigent defendant is not entitled to choose a particular court-appointed attorney at the outset of the case, once counsel has been appointed an attorney-client relationship is established that is no less inviolable than if defendant himself had retained counsel.

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Thus, I also agree with the rationale in Justice Woodall's dissent.

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WOODALL, Justice (dissenting).

The Court of Criminal Appeals concluded that "there is no difference between retained counsel and appointed counsel when it comes to the right to continued representation by counsel of choice." Lane v. State, [Ms. CR-05-1443, February 5, 2010] \_\_\_ So. 3d \_\_\_, \_\_\_ (Ala. Crim. App. 2010) (emphasis added). This Court, on the other hand, has concluded that, although the erroneous removal of retained counsel constitutes structural error, the erroneous removal of court-appointed counsel does not but, instead, requires a showing that the removal of court-appointed counsel prejudiced the defendant. I cannot agree with such disparate treatment based solely on whether the defendant can afford to retain his or her own attorney. "To allow trial courts to remove an indigent defendant's court-appointed counsel with greater ease than a non-indigent defendant's retained counsel [stratifies] attorney-client relationships based on defendants' economic backgrounds." Weaver v. State, 894 So. 2d 178, 189 (Fla. 2004). Therefore, I respectfully dissent.

According to Thomas Robert Lane, "[m]ost jurisdictions that have addressed this issue acknowledge that an indigent

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defendant is not entitled to choose a particular court-appointed attorney at the outset of the case, but reason that once counsel is appointed, an attorney-client relationship is established and "is no less inviolable than if counsel had been retained by the defendant himself." McKinnon v. State, 526 P.2d 18, 24 (Alaska 1974) (quoting Smith v. Super. Ct. of Los Angeles County, 440 P.2d 65, 74 (1968) (en banc))." Lane's brief, at 17. Lane appears to be correct. See, e.g., People v. Shari, 204 P.3d 453, 460 (Colo. 2009) ("While a defendant's Sixth Amendment right to counsel does not guarantee the right to select his appointed counsel, 'once counsel is appointed, the attorney-client relationship is no less inviolable than if the counsel had been retained by the defendant.'"); Weaver, 894 So. 2d at 188-89 ("[T]he attorney-client relationship is independent of the source of the compensation because an attorney's responsibility is to the person he represents rather than the individual or entity paying for his services."); State v. Huskey, 82 S.W.3d 297, 305 (Tenn. 2002) ("We are persuaded ... that any meaningful distinction between indigent and non-indigent defendants' right to representation by counsel ends once a valid



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appointment of counsel has been made."); Clements v. State, 306 Ark. 596, 608, 817 S.W.2d 194, 200 (1991) ("[W]here ... a trial court terminates the representation of an attorney, either private or appointed, over the defendant's objection and under circumstances which do not justify the lawyer's removal and which are not necessary for the efficient administration of justice, a violation of the accused's right to particular counsel occurs."); Stearnes v. Clinton, 780 S.W.2d 216, 222 (Tex. Crim. App. 1989) ("[A] defendant has the right to retain counsel of his choice and establish an attorney-client relationship. It logically follows ... that once an attorney is appointed the same attorney-client relationship is established and it should be protected."); People v. Davis, 114 Ill. App. 3d 537, 543, 449 N.E.2d 237, 241 (1983) ("We ... believe that for purposes of removal by the trial court, a court-appointed attorney may not be treated any differently than privately retained counsel."); English v. State, 8 Md. App. 330, 335, 259 A.2d 822, 826 (1969) ("[O]nce counsel has been chosen, whether by the court or the accused, the accused is entitled to the assistance of that counsel at trial.").

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I would adopt the reasoning of these cases. Unlike the main opinion and the cases upon which it relies, these cases properly focus on the nature of the attorney-client relationship, a relationship that is independent of the manner in which the attorney is selected and paid.

Cobb, C.J., and Murdock, J., concur.