

with funds.²⁰³⁷ The right to counsel on appeal necessarily means the right to *effective* assistance of counsel.²⁰³⁸

But, deciding a point left unresolved in *Douglas*, the Court held that neither the Due Process nor the Equal Protection Clause requires a state to furnish counsel to a convicted defendant seeking, after he had exhausted his appeals of right, to obtain discretionary review of his case in the state's higher courts or in the United States Supreme Court. Due process does not require that, after an appeal has been provided, the state must always provide counsel to indigents at every stage. "Unfairness results only if indigents are singled out by the State and denied meaningful access to that system because of their poverty." That essentially equal protection issue was decided against the defendant in the context of an appellate system in which one appeal could be taken as of right to an intermediate court, with counsel provided if necessary, and in which further appeals might be granted not primarily upon any conclusion about the result below but upon considerations of significant importance.²⁰³⁹ Not even death row inmates have a constitutional right to an attorney to prepare a petition for collateral relief in state court.²⁰⁴⁰

This right to legal assistance, especially in the context of the constitutional right to the writ of habeas corpus, means that in the absence of other adequate assistance, as through a functioning pub-

²⁰³⁷ *Douglas v. California*, 372 U.S. 353 (1963); *Swenson v. Bosler*, 386 U.S. 258 (1967); *Anders v. California*, 386 U.S. 738 (1967); *Entsminger v. Iowa*, 386 U.S. 748 (1967). A rule requiring a court-appointed appellate counsel to file a brief explaining reasons why he concludes that a client's appeal is frivolous does not violate the client's right to assistance of counsel on appeal. *McCoy v. Court of Appeals*, 486 U.S. 429 (1988). The right is violated if the court allows counsel to withdraw by merely certifying that the appeal is "meritless" without also filing an *Anders* brief supporting the certification. *Penson v. Ohio*, 488 U.S. 75 (1988). *But see* *Smith v. Robbins*, 528 U.S. 259 (2000) (upholding California law providing that appellate counsel may limit his or her role to filing a brief summarizing the case and record and requesting the court to examine record for non-frivolous issues). On the other hand, since there is no constitutional right to counsel for indigent prisoners seeking postconviction collateral relief, there is no requirement that withdrawal be justified in an *Anders* brief if a state has provided counsel for postconviction proceedings. *Pennsylvania v. Finley*, 481 U.S. 551 (1987) (counsel advised the court that there were no arguable bases for collateral relief).

²⁰³⁸ *Evitts v. Lucey*, 469 U.S. 387 (1985).

²⁰³⁹ *Ross v. Moffitt*, 417 U.S. 600 (1974). *See also* *Fuller v. Oregon*, 417 U.S. 40 (1974) (statute providing, under circumscribed conditions, that indigent defendant, who receives state-compensated counsel and other assistance for his defense, who is convicted, and who subsequently becomes able to repay costs, must reimburse state for costs of his defense in no way operates to deny him assistance of counsel or the equal protection of the laws).

²⁰⁴⁰ *Murray v. Giarratano*, 492 U.S. 1 (1989) (upholding Virginia's system under which "unit attorneys" assigned to prisons are available for some advice prior to the filing of a claim, and a personal attorney is assigned if an inmate succeeds in filing a petition with at least one non-frivolous claim).