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**SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FIRST DEPARTMENT**

People v. Ramirez¹
(decided October 18, 2005)

People v. Ramirez came before the Appellate Division upon the trial court's denial of defendant's motion to vacate his conviction pursuant to Criminal Procedure Law section 440.10.² Ramirez was convicted of robbery and burglary in the first degree and sentenced to "concurrent terms of 15 years."³ Ramirez appealed, arguing "that he did not receive effective assistance of counsel as required by both the State and Federal Constitution."⁴ This argument was based on the fact that trial counsel had in his possession, prior to trial, Ramirez's arrest record, but failed to examine it before questioning defendant's wife.⁵ In failing to review the arrest record, trial counsel allowed his wife to be cross-examined as to his prior arrest for domestic

¹ 803 N.Y.S.2d 42 (App. Div. 1st Dep't 2005).

² *Ramirez*, 803 N.Y.S.2d at 42 (citing N.Y. CRIM. PROC. LAW § 440.10 (1)(h) (McKinney 2005) which provides that, "[a]t any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment upon the ground that . . . The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.").

³ *Id.*

⁴ *Id.* U.S. CONST. amend. VI., stating in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to . . . have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence." N.Y. CONST. art. I, § 6, which states in pertinent part, "[i]n any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him or her."

⁵ *Ramirez*, 803 N.Y.S.2d at 42.

violence.⁶ This failure to review the arrest record opened the door to his prior arrest. Ramirez claimed that this amounted to ineffective assistance by counsel.⁷ However, the Appellate Division found that this claim lacked merit.⁸

On November 25, 2000, two intruders entered the apartment of Jocelyn Monegro and stole a safe and other valuables from the apartment.⁹ The intruders encountered Ms. Monegro and both of her children while committing the burglary.¹⁰ Ms. Monegro and her teenage daughter both identified one of the intruders as defendant Ramirez to the police and in a line-up.¹¹ They knew Ramirez from before the break-in because Ramirez helped them move into the apartment a month earlier.¹² Ramirez was subsequently arrested and put on trial for robbery and burglary in the first degree.¹³

At trial, Ramirez's wife was called "as an alibi and character witness."¹⁴ Mrs. Ramirez testified in court that on the night of the burglary in question, her husband was with her at home.¹⁵ Mrs. Ramirez also testified that he had never been arrested previously and that "her husband had never 'shown violence to her or anyone else.'"¹⁶ Upon cross-examination by the prosecution, Mrs. Ramirez was questioned about her husband's arrest for a domestic violence

⁶ *Id.*

⁷ *Id.* at 42-43.

⁸ *Id.* at 43.

⁹ *Id.*

¹⁰ *Ramirez*, 803 N.Y.S.2d at 43.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.* at 43, 42.

¹⁴ *Id.* at 43.

¹⁵ *Ramirez*, 803 N.Y.S.2d at 43

disturbance.¹⁷ Mrs. Ramirez explained that the incident was just an exaggeration of a dispute with her husband and the day after he was arrested, she dropped the charges and picked him up from holding.¹⁸ Mrs. Ramirez also testified that she lived with her husband, “since that time, without incident.”¹⁹ The defendant also testified at trial. His testimony regarding his prior arrest, as well as his alibi for the night in question, supported his wife’s testimony.²⁰

In order to be removed from a case, either defense counsel would have to request to be removed or the defendant would have to request that his or her counsel be removed for a specific reason. In this case, defense counsel requested that he be removed from the case for “ineffective assistance” upon hearing Mrs. Ramirez’s testimony as elicited by the prosecution.²¹ The reasoning that he gave to the judge for his request, made during a sidebar, was that he had failed to review defendant’s arrest record prior to trial.²² The trial judge denied defense counsel’s motion to be relieved as counsel for ineffective assistance.²³ According to the trial judge, defense counsel had showed himself to be “a competent, prepared lawyer” and perhaps the fact that his client was arrested for domestic violence was simply something that his client was not honest with him about.²⁴ Nevertheless, the trial judge gave the jury a limiting instruction as to

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Ramirez*, 803 N.Y.S.2d at 44.

²¹ *Id.* at 43.

²² *Id.* at 43-44.

²³ *Id.* at 44.

the testimony regarding the defendant's prior arrest, and that it was not to be considered by the jury as showing a propensity of the defendant to commit criminal acts, but instead, was only to be considered to evaluate the credibility of the witness, Mrs. Ramirez.²⁵

Upon review of the record of the trial court, the Appellate Division held that defendant had received effective counsel at trial, even though defendant was still found guilty.²⁶

Defense counsel vigorously represented defendant's interests by making pre-trial motions. He succeeded in having the 911 tape suppressed, and diligently cross-examined all of the People's witnesses. . . . attempted to implicate defendant's cousin . . . [who] had a proclivity towards violence, a motive to commit this crime [victim was defendant's cousin's ex girlfriend] . . . Counsel sought to convince the jury that [the cousin], not defendant, was the perpetrator of the crime, or that it was committed at [the cousin's] behest by another.²⁷

The Appellate Division went as far as to say that defense counsel's failure to review defendant's arrest record prior to trial, and the admission into testimony of defendant's prior arrest during trial, did not undermine defendant's defense.²⁸ The evidence presented by the People during the course of the trial pointed to defendant's guilt. The evidence included two eyewitnesses to the crime who identified defendant as the perpetrator, and that the defendant possibly had keys to the apartment since he helped them move in earlier that month, and

²⁴ *Id.*

²⁵ *Ramirez*, 803 N.Y.S.2d at 44.

²⁶ *Id.* at 45.

²⁷ *Id.* at 44.

²⁸ *Id.* at 45.

that he knew there were valuables in the house. While defense counsel tried to implicate defendant's cousin in the commission of the crime, there was nothing connecting him to the crime.²⁹ The only evidence available implicated defendant. Therefore, there was no showing in the record that counsel's assistance was to blame for a guilty judgment given all of the evidence.

The federal standard to determine whether or not a defendant has received effective counsel was set forth and explained by the Supreme Court of the United States in *Strickland v. Washington*.³⁰ The defendant in *Strickland* pleaded guilty, against counsel's advice, to all charges filed against him, including three capital murder charges and kidnapping.³¹ At sentencing, defense counsel, who was appointed by the trial court and was an experienced criminal attorney, did not present any character witnesses or request a psychiatric exam of his client. Instead, defense counsel relied on the plea colloquy which explained that, due to defendant's economic situation during the time the crimes were committed, defendant was under extreme emotional distress.³² In doing this, defense counsel prohibited the State from questioning the defendant as to his claims of extreme emotional distress.³³ In order to obtain a more lenient sentence for defendant, namely to avoid the death penalty, defense counsel presented the judge with a number of mitigating circumstances, including the defendant's willingness to confess to testify against co-

²⁹ *Id.*

³⁰ 466 U.S. 668 (1984).

³¹ *Strickland*, 466 U.S. at 672.

³² *Id.* at 673.

³³ *Id.*

defendants, and the fact that defendant was under extreme emotional distress at the time the crimes occurred.³⁴ Yet, the State presented evidence as to the details of the crimes and the cruelty of those crimes.³⁵

The judge sentenced the defendant to death on all three counts of murder.³⁶ The judge determined that the aggravating circumstances of the crimes overwhelmingly outweighed the mitigating circumstances presented by the defense.³⁷ Defendant “sought collateral relief” on a number of grounds, including that his defense counsel provided ineffective assistance to him during his sentencing hearing.³⁸ The trial court found that “respondent had not shown that counsel’s assistance reflected any substantial and serious deficiency measurably below that of competent counsel that was likely to have affected the outcome of the sentencing proceeding,” which was the Florida standard for ineffectiveness claims.³⁹ On a petition for a writ of habeas corpus in the United States District Court for the Southern District of Florida, the District Court held that defense counsel’s errors in judgment did not lead to any prejudice in defendant’s sentencing.⁴⁰ On appeal, the decision of the District Court was reversed and remanded because the Eleventh Circuit came up with a new standard to determine an ineffective assistance claim. “[T]he defendant must show that counsel’s errors ‘resulted in actual

³⁴ *Id.* at 673-74.

³⁵ *Id.* at 674.

³⁶ *Strickland*, 466 U.S. at 675.

³⁷ *Id.*

³⁸ *Id.*

³⁹ *Id.* at 677-78.

and substantial disadvantage to the course of his defense,’ ” thus rejecting the Florida standard which required “a showing that specified deficient conduct of counsel was likely to have affected the outcome of the proceeding.”⁴¹

In *Strickland*, the Supreme Court was asked to consider what “the proper standards for judging a criminal defendant’s contention that the Constitution requires a conviction or a death sentence to be set aside because counsel’s assistance at the trial or sentencing was ineffective.”⁴² The *Strickland* Court developed the federal standard to determine whether ineffective assistance by counsel was provided. This standard has two components:⁴³

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires a showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.⁴⁴

To succeed in an ineffective assistance claim, a defendant must satisfy both components, otherwise, the conviction or sentence that a defendant is trying to get overturned cannot be said to be a result of a “breakdown of the adversary process that renders the result unreliable.”⁴⁵

⁴⁰ *Id.* at 678-79.

⁴¹ *Strickland*, 466 U.S. at 682, 684.

⁴² *Id.* at 671.

⁴³ *Id.* at 687.

⁴⁴ *Id.*

⁴⁵ *Id.*

An attorney's performance or conduct during the course of a trial must be assistance that is "reasonably effective" in his client's best interests. This is an objective standard of reasonableness that a defendant must overcome to succeed.⁴⁶ As for prejudice, the Court explained that if "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different."⁴⁷ The Supreme Court held that the conduct of counsel and his decisions were reasonable and, even if counsel's conduct was to be considered unreasonable, it did not meet the prejudice requirement that would allow defendant's death sentence to be overturned.⁴⁸

In New York, in order for defendant to prove that his counsel at trial was ineffective, defendant must show that "he was denied a fair trial by less than 'meaningful representation.'"⁴⁹ Defendant must further show, in order to be successful in such a claim, that the error(s) of counsel must amount to such that it was "sufficiently egregious and prejudicial as to compromise a defendant's right to a fair trial."⁵⁰ In *People v. Caban*, the Court of Appeals of New York made it clear that in New York, there is no requirement that the claimed ineffective assistance must meet the prejudice standard set forth in *Strickland*.⁵¹ While the New York State courts do consider

⁴⁶ *Strickland*, 466 U.S. at 687-88.

⁴⁷ *Id.* at 694.

⁴⁸ *Id.* at 698-99.

⁴⁹ *Ramirez*, 803 N.Y.S.2d at 44 (quoting *People v. Caban*, 833 N.E.2d 213, 222 (N.Y. 2005)).

⁵⁰ *Caban*, 833 N.E.2d 213, 220 (citing *People v. Hobot*, 646 N.E.2d 1102, 1103 (N.Y. 1995)).

⁵¹ *Id.* at 222 (quoting *People v. Stultz*, 810 N.E.2d 883, 887 (N.Y. 2004)).

prejudice in a defendant's claim for ineffective assistance, it is not a necessary element in determining meaningful representation.⁵² "[U]nder our State Constitution, even in the absence of a reasonable probability of a different outcome, inadequacy of counsel will still warrant reversal whenever a defendant is deprived of a fair trial . . . thus offer[ing] greater protection than the federal test."⁵³

The court in *Ramirez* distinguished the New York "meaningful representation" standard from the standard in federal courts. While both the state and federal standards require a showing of prejudice, the state standard "focuses on the 'fairness of the process as a whole rather than [any] particular impact upon the outcome of the case.'" ⁵⁴ The wording of both constitutions are somewhat similar, but not identical. Both constitutions provide the same basic right, the right to representation by counsel.

The United States Constitution provides that, "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defence."⁵⁵ According to the Supreme Court, the "Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel's playing a role that is critical to the

⁵² *Id.* (citing *Stultz*, 810 N.E.2d at 887).

⁵³ *Id.*

⁵⁴ *Ramirez*, 803 U.S. at 44 (citing *Strickland*, 466 U.S. 668; *People v. Benevento*, 697 N.E.2d 584, 588 (N.Y. 1998)).

⁵⁵ U.S. CONST. amend. VI.

ability of the adversarial system to produce just results.”⁵⁶ Therefore, a right to effective counsel is acknowledged in the Sixth Amendment.⁵⁷ The Court has accepted that not only can the government deprive a defendant of this constitutional right to effective counsel, but defense counsel themselves may do so by providing inadequate assistance.⁵⁸ “The benchmark for judging any claim of ineffectiveness must be whether counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result.”⁵⁹

The New York State Constitution states in pertinent part that, “[i]n any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions and shall be informed of the nature and cause of the accusation and be confronted with the witnesses against him or her.”⁶⁰ The courts have recognized that the New York State Constitution also provides for effective assistance of counsel.⁶¹ However,

[w]hat constitutes effective assistance is not and cannot be fixed with yardstick precision, but varies according to the unique circumstances of each representation. . . . So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation,

⁵⁶ *Strickland*, 466 U.S. at 685.

⁵⁷ *Id.* at 686 (quoting *McCann v. Richardson*, 397 U.S. 759 (1970)).

⁵⁸ *Id.* (citing *Cuyler v. Sullivan*, 446 U.S. 335, 344 (1980)).

⁵⁹ *Id.*

⁶⁰ N.Y. CONST. art. I, § 6.

⁶¹ *People v. Baldi*, 429 N.E.2d 400, 404 (N.Y. 1981).

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the constitutional requirement will have been met.⁶²

The concern of the courts must be that the clearness of hindsight does not influence its review of claims of ineffective counsel.⁶³

Essentially, both the federal standard and the New York standard seek to ensure that the defendant receives a fair trial. In order for the courts, federal or state, to find that a defendant received a fair trial, the defendant's right to effective assistance of counsel must be considered and found to have been enforced.

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⁶² *Id.* at 404, 405.

⁶³ *Id.* at 405.

