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# Not So Fast: I Have Been Deprived of My Right to Counsel

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## NOT SO FAST: I HAVE BEEN DEPRIVED OF MY RIGHT TO COUNSEL

### COURT OF APPEALS OF NEW YORK

People v. Griffin<sup>1</sup>  
(decided April 2, 2013)

#### I. INTRODUCTION

The Sixth Amendment<sup>2</sup> of the United States Constitution provides the accused with the right to assistance of counsel for his or her defense in all criminal trials.<sup>3</sup> In *People v. Griffin*, the New York Court of Appeals dealt with the issue of whether the defendant forfeited his Sixth Amendment right to assistance of counsel when he pled guilty to two counts of robbery.<sup>4</sup> The heart of the matter in this case arose from the trial court's interference with the attorney-client relationship when it dismissed Defendant's counsel, the Legal Aid Society.<sup>5</sup> The New York Supreme Court, Appellate Division, First Department held that interference with an attorney-client relationship had the possibility of upsetting the framework of the trial process.<sup>6</sup> The New York Court of Appeals affirmed the Appellate Division's decision and held that choice of counsel and right to counsel claims were close enough because a deprivation of counsel error can affect a person's choice of counsel.<sup>7</sup> Since the deprivation of counsel error affected the defendant's constitutional right to counsel, the right to counsel claim was not forfeited by the guilty plea.<sup>8</sup>

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<sup>1</sup> 987 N.E.2d 282 (N.Y. 2013).

<sup>2</sup> U.S. CONST. amend. VI.

<sup>3</sup> *Id.*

<sup>4</sup> *Griffin*, 987 N.E.2d at 283.

<sup>5</sup> *Id.* at 284.

<sup>6</sup> *People v. Griffin*, 934 N.Y.S.2d 393, 398 (App. Div. 1st Dep't 2011).

<sup>7</sup> See *Griffin*, 987 N.E.2d at 285-86 (reasoning that the *Gonzalez-Lopez* analysis applies in this case because the deprivation of counsel claim can affect the right to choice of counsel).

<sup>8</sup> *Id.* at 286.

The New York Court of Appeals held that the defendant's deprivation of counsel claim was analogous to the constitutional right to counsel and survived a guilty plea.<sup>9</sup> The court relied on the Supreme Court's decision in *United States v. Gonzalez-Lopez*,<sup>10</sup> where the Court stated, "the choice of attorney will affect whether and on what terms the defendant cooperates with the prosecution, plea bargains, or decides instead to go to trial."<sup>11</sup> A deprivation of counsel error can have a great effect on the outcome of a trial because all lawyers pursue different strategies that can lead to different results.<sup>12</sup> If a defendant is deprived of counsel, he then loses the opportunity to provide himself with a defense of his choosing, and this can lead to a Sixth Amendment right to counsel violation.<sup>13</sup>

## II. FACTUAL BACKGROUND

The defendant, Anthony Griffin, was charged with first-degree robbery and attempted first-degree robbery.<sup>14</sup> In the five-month period following arraignment on the robbery charges, there were multiple adjournments requested by both the district attorneys and the Legal Aid Society.<sup>15</sup> The court granted an adjournment to the People for the assignment of a new Assistant District Attorney; in one instance, the court even granted an adjournment when the ADA admittedly had not yet met with all of the witnesses.<sup>16</sup>

On another occasion, when the case was set for hearing and trial, the ADA stated that the People were not ready and asked for another adjournment.<sup>17</sup> At the same time, Legal Aid counsel informed the trial court that its attorney would be leaving the Legal Aid Society, and requested a control date so a new Legal Aid attorney could be assigned.<sup>18</sup> The trial court declined the request for the control date and requested the assignment of another attorney for the trial

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<sup>9</sup> *Id.* at 285.

<sup>10</sup> 548 U.S. 140 (2006).

<sup>11</sup> *Id.* at 150 (stating the choice of attorney is crucial in the trial process because every attorney has a different strategy that can dramatically affect the outcome of a trial).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

<sup>14</sup> *Griffin*, 987 N.E.2d at 283.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

slated to take place in fifteen days.<sup>19</sup>

The Legal Aid Society argued for an adjournment because it was not going to be ready for trial due to the nature of the case and the fact that the defendant was a persistent felon.<sup>20</sup> Furthermore, Legal Aid added, “if the court believed they should be relieved, then the court should go right ahead and relieve them.”<sup>21</sup> The court rejected the request for an adjournment and relieved Legal Aid as counsel.<sup>22</sup>

After the assignment of 18-B counsel to the defendant, the case was reassigned to another judge.<sup>23</sup> The defendant pled guilty to first-degree robbery and first-degree attempted robbery for a sentence of concurrent terms of twenty years to life.<sup>24</sup> The defendant filed two pro se motions seeking to withdraw his guilty plea and to have new counsel assigned to him.<sup>25</sup> The court denied the motions and proceeded with the sentencing.<sup>26</sup>

The Supreme Court of New York, Appellate Division, First Department, in a 3-2 decision, reversed the conviction and remanded the case, holding the discharge of the defendant’s Legal Aid counsel without consulting the defendant interfered with his Sixth Amendment right to counsel.<sup>27</sup> The appellate court found both parties were treated differently, especially when the People enjoyed the accommodation of numerous adjournments.<sup>28</sup>

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<sup>19</sup> *Griffin*, 987 N.E.2d at 283.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* at 283-84.

<sup>23</sup> *Id.* at 284.

<sup>24</sup> *Griffin*, 987 N.E.2d at 284.

<sup>25</sup> *Id.*

<sup>26</sup> *Id.*

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* The dissent in *People v. Griffin*, 934 N.Y.S.2d 393 (App. Div. 1st Dep’t 2011) argued regardless of the broad discretion exercised in the handling of the calendar, the trial court properly relieved the Legal Aid Society and did not interfere with the attorney-client relationship. *Griffin*, 934 N.Y.S.2d at 399 (Sweeny, J., dissenting). The dissent based its conclusion on the fact that after the Legal Aid was relieved, Defendant entered the plea agreement with the assistance of his assigned 18-B counsel. *Id.* at 400. Thus, according to the dissent, there was no improper removal of the Legal Aid attorney or an interference with the attorney-client relationship; if the deprivation of counsel error violated Defendant’s right to choice of counsel, it was cured by the assignment of 18-B counsel. *Id.* at 399.

### III. ISSUES IN *GRIFFIN* THAT LED THE COURT OF APPEALS TO APPLY THE *GONZALEZ-LOPEZ* RIGHT TO COUNSEL OF CHOICE ANALYSIS

In affirming the Appellate Division, the Court of Appeals examined a set of issues that, together, determined whether interference with the attorney-client relationship was sufficient grounds for a deprivation of counsel claim to survive a guilty plea.<sup>29</sup> The first issue was whether a deprivation of counsel claim was forfeited by a guilty plea.<sup>30</sup> The second most crucial issue was whether judicial interference with an attorney-client relationship was justified.<sup>31</sup> Finally, the court was obliged to draw a distinction between a deprivation of counsel claim and an ineffective assistance of counsel claim.<sup>32</sup>

First, the Court of Appeals looked at the overall issue of whether the defendant's deprivation of counsel claim was forfeited when he pled guilty.<sup>33</sup> In determining that it was not, the court relied on *People v. Taylor*,<sup>34</sup> which clearly pointed out there is no established rule to determine when a claim is waived.<sup>35</sup> Rather, the court must look to whether the claim is related to a factual matter or a fundamental matter that can affect the trial process.<sup>36</sup> *People v. Hansen*<sup>37</sup> explained that "[t]he critical distinction is between defects implicating the integrity of the process, which may survive a guilty plea, and less fundamental flaws, such as evidentiary or technical matters, which do not."<sup>38</sup> Thus, certain claims have the potential to survive a guilty plea, especially claims that are intertwined with the integrity of the criminal justice system and affect the constitutional rights of a defendant.<sup>39</sup> Since the defendant's constitutional rights were affected,

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<sup>29</sup> *Griffin*, 987 N.E.2d 284 (examining three issues that eventually led the court to analyze the scope of the judicial interference with the attorney-client relationship).

<sup>30</sup> *Id.* at 284.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 285.

<sup>33</sup> *Id.* at 284.

<sup>34</sup> 478 N.E.2d 755 (N.Y. 1985).

<sup>35</sup> *Id.* at 757.

<sup>36</sup> *Id.*

<sup>37</sup> 738 N.E.2d 773 (N.Y. 2000).

<sup>38</sup> *Id.* at 776 (pointing out that a defect or error has to be of such magnitude that it affects the integrity of the trial process, in order for it to possibly reverse a guilty plea).

<sup>39</sup> *Griffin*, 987 N.E.2d at 284. The Court of Appeals rejected the People's notion that *Gonzalez-Lopez* only applies to defendants who finance their own counsel or are not assigned counsel. *Id.* at 285. The *Griffin* court reasons, "the right to counsel claim is inextricably intertwined with claims of different treatment in a way that we believe meaningfully

the court then analyzed whether the judicial interference with the attorney-client relationship was justified.<sup>40</sup>

Second, the Court of Appeals examined the most critical issue at trial, which was whether the trial court's interference with the attorney-client relationship was justified.<sup>41</sup> This was an issue because "courts cannot arbitrarily interfere with the attorney-client relationship, and interference with that relationship for purpose of case management is not without limits, and is subject to scrutiny."<sup>42</sup> Furthermore, judicial interference with an attorney-client relationship, by a removal of counsel that disparately impacts defense counsel, goes to the fundamental fairness of the system of justice.<sup>43</sup> Even though the removal of the Legal Aid Society in *Griffin* was due to concerns about the efficient administration of the criminal justice system, courts may still face some scrutiny if there is interference with the attorney-client relationship.<sup>44</sup>

The court's interference with the attorney-client relationship was scrutinized in *People v. Knowles*,<sup>45</sup> when the trial court refused to permit an additional Legal Aid attorney to cross-examine a witness and sit at the defense table.<sup>46</sup> The trial court justified its denial of counsel by claiming that the defendant, a black male, was trying to gain a strategic advantage with the jury by having a black female attorney.<sup>47</sup> Denying the defendant the assistance of the additional attorney opened up the discussion of whether the judicial interference with the attorney-client relationship affected the defendant's right to choice of counsel.<sup>48</sup> The trial court could not support its ruling with any findings of delay or disruptions of proceedings, conflict of inter-

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places it outside the sphere of claims forfeited by a guilty plea, and implicates the entire criminal justice system." *Id.* at 286 n.2. This is how the Court of Appeals is able to apply *Gonzalez-Lopez* when the Defendant was assigned counsel.

<sup>40</sup> *Id.* at 284-85.

<sup>41</sup> *Id.* at 284.

<sup>42</sup> *Griffin*, 987 N.E.2d at 284.

<sup>43</sup> *Id.*

<sup>44</sup> *Id.* (citing *People v. Knowles*, 673 N.E.2d 902 (N.Y. 1996), and explaining that judicial interference with an attorney-client relationship for the purpose of case management is still subject to scrutiny).

<sup>45</sup> 673 N.E.2d 902, 907 (N.Y. 1996) (reasoning that racial discrimination is never a valid basis to support the trial judge's discretion in declining the addition of a second attorney).

<sup>46</sup> *Id.* at 903.

<sup>47</sup> *Id.* at 904.

<sup>48</sup> *Id.* at 904-05.

est, or prejudice to the prosecution or defense.<sup>49</sup> Thus, the Court of Appeals held that the trial court's exclusion of the attorney was arbitrary and was an abuse of discretion because there was no rational basis to support the ruling.<sup>50</sup>

Finally, the Court of Appeals handled the issue of whether deprivation of counsel and ineffective assistance of counsel claims had the same legal equivalence with respect to the defendant's plea.<sup>51</sup> The Court of Appeals distinguished the two claims by comparing the ineffective assistance of counsel claim in *People v. Petgen*<sup>52</sup> to the deprivation of choice of counsel claim in *Griffin*.<sup>53</sup>

In *Petgen*, the defendant, with his new attorney, was forced to file an untimely application for permission to file a motion to suppress evidence because his original attorney did not respond to the prosecution's notice of intention to offer evidence.<sup>54</sup> The trial judge denied the defendant's application.<sup>55</sup> The defendant claimed that this constituted ineffective assistance of counsel claim that should have survived his guilty plea.<sup>56</sup> Because his new attorney was aware of the ineffectiveness of the previous counsel, the right to appellate review was forfeited.<sup>57</sup> The court reasoned that the application for permission to file a motion and a motion to suppress evidence should be treated differently.<sup>58</sup> The application for permission to file a motion was based on whether the defendant had a reasonable opportunity to file the motion on time; it was not based on the denial of merits of constitutional contentions that a motion to suppress evidence would be.<sup>59</sup> Thus, the court concluded that the ineffectiveness of counsel claim did not infect the plea and the claim could not survive the guilty plea.<sup>60</sup>

In contrast, the deprivation of counsel in *Griffin* infected the

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<sup>49</sup> *Id.* at 905.

<sup>50</sup> *Knowles*, 673 N.E.2d at 906.

<sup>51</sup> *Griffin*, 987 N.E.2d at 285.

<sup>52</sup> 435 N.E.2d 669 (N.Y. 1982).

<sup>53</sup> *Griffin*, 987 N.E.2d at 285. The Court of Appeals rejects the People's application of *Petgen* because the deprivation of counsel infected the guilty plea in *Griffin*. *Id.* In contrast, the ineffective assistance of counsel in *Petgen* did not infect the plea. *Id.*

<sup>54</sup> *Petgen*, 435 N.E.2d at 670.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.* at 669.

<sup>57</sup> *Id.* at 671.

<sup>58</sup> *Id.* at 670.

<sup>59</sup> *Petgen*, 435 N.E.2d at 670.

<sup>60</sup> *Id.* at 670-71.

plea and the plea bargaining process, both of which the Legal Aid Society was actively engaged in prior to its removal.<sup>61</sup> This is why the court in *Griffin* drew a distinction between the ineffective assistance of counsel claim in *Petgen* and the deprivation of counsel claim in *Griffin*.<sup>62</sup> Therefore, after analyzing this issue, the court in *Griffin* was able to determine the significance of the choice of counsel in the plea process, and apply the *Gonzalez-Lopez* analysis.<sup>63</sup>

#### IV. THE SIGNIFICANT ROLE OF *GONZALEZ-LOPEZ* IN *GRIFFIN*

In examining whether the removal of Legal Aid without consulting with the defendant in *Griffin* interfered with his Sixth Amendment right to counsel, the Court of Appeals relied on *United States v. Gonzalez-Lopez*, which emphasized that the choice of attorney can have a great effect on the outcome of a trial.<sup>64</sup> In *Gonzalez-Lopez*, the United States Supreme Court held that an erroneous disqualification of counsel error that violates the Sixth Amendment right to counsel does warrant a conviction reversal because the error is a “structural defect.”<sup>65</sup>

The defendant in *Gonzalez-Lopez* was charged with conspiracy to distribute one hundred kilograms of marijuana.<sup>66</sup> The defendant’s family hired an attorney, and after the arraignment, the defendant hired a second attorney to represent him in addition to his original attorney.<sup>67</sup> The trial court provisionally allowed the participation of the second attorney.<sup>68</sup> The second attorney violated a court rule, and the court removed him from the trial.<sup>69</sup> The defendant’s original attorney filed a motion to be relieved as counsel as well as a motion for sanctions against the second attorney.<sup>70</sup> The defendant, left with no attorney, hired a local attorney.<sup>71</sup>

In essence, the Court was concerned with how the trial court’s

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<sup>61</sup> *Griffin*, 987 N.E.2d at 285.

<sup>62</sup> *Id.*

<sup>63</sup> *Id.*

<sup>64</sup> *Gonzalez-Lopez*, 548 U.S. at 150.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.* at 142.

<sup>67</sup> *Id.*

<sup>68</sup> *Id.*

<sup>69</sup> *Gonzalez-Lopez*, 548 U.S. at 142.

<sup>70</sup> *Id.* at 142-43.

<sup>71</sup> *Id.* at 143.



application of the court rules affected the defendant's right to choice of counsel.<sup>72</sup> While the trial court was within its discretion in using the court rules to discipline the second attorney, enforcement of the court rules by the trial court interfered with the defendant's right to choice of counsel.<sup>73</sup> The Court then had to determine whether the interference could potentially affect the framework of the trial process.<sup>74</sup> If it did, the error would constitute a "structural defect," which would not require a showing of prejudice by the defendant.<sup>75</sup> Moreover, the error would not be subject to a "harmless error" analysis.<sup>76</sup>

## V. WHAT IS A "STRUCTURAL DEFECT" ERROR?

Constitutional errors are divided into two categories.<sup>77</sup> The first error is a "trial error," which occurs during the presentation of the case to the jury.<sup>78</sup> These errors can be assessed collectively to determine if they were harmless beyond a reasonable doubt.<sup>79</sup> The second type of error is called a "structural defect," which affects the framework in which the trial proceeds.<sup>80</sup> Erroneous deprivation of counsel that interferes with a defendant's right to choice of counsel is a structural defect because attorneys have differing strategies that can take a trial in many different directions, thus, drastically affecting the outcome of a trial.<sup>81</sup>

When the right to be assisted by counsel of choice is wrongly denied, the court must first determine if it should review the error for harmlessness.<sup>82</sup> In order to determine whether an error is reviewable for harmlessness, the court must determine what category the consti-

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<sup>72</sup> *Id.* at 148. "Deprivation of the right is 'complete' when the defendant is erroneously prevented from being represented by the lawyer he wants, regardless of the quality of the representation he received." *Id.*

<sup>73</sup> *Gonzalez-Lopez*, 548 U.S. at 152.

<sup>74</sup> *Id.* at 150.

<sup>75</sup> *Id.* at 148. "These 'defy analysis by 'harmless-error' standards' because they 'affect] the framework within which the trial proceeds,' and are not 'simply an error in the trial process itself.'" *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Gonzalez-Lopez*, 548 U.S. at 148.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> *Id.* at 150.

<sup>82</sup> *Gonzalez-Lopez*, 548 U.S. at 148.

tutional error falls into.<sup>83</sup> If there is a structural defect, it will circumvent the harmlessness analysis because interference with the right to counsel can greatly affect the framework of the trial process.<sup>84</sup> Hence, a defendant does not have to show prejudice when there is a structural defect error because it would be unsound for courts to review counsel strategies and trial outcomes in the alternative.<sup>85</sup> Therefore, in situations where the deprivation of counsel by a court interferes with an attorney-client relationship or the right to choice of counsel, the defendant will not have the burden of showing prejudice.

If there is a structural defect error that affects the framework of the trial process, the court can provide justification for such an error. To the contrary, the trial court in *United States v. Smith*<sup>86</sup> was unable to justify the structural defect error when the defendant asked to substitute his attorney.<sup>87</sup> The substitute attorney informed the court that he would not be able to make the trial date due to a racket-

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.* at 148-49.

<sup>85</sup> *Id.* at 150.

The Government acknowledges that the deprivation of choice of counsel pervades the entire trial, but points out that counsel's ineffectiveness may also do so and yet we do not allow reversal of a conviction for that reason without a showing of prejudice. But the requirement of showing prejudice in ineffectiveness claims stems from the very definition of the right at issue; it is not a matter of showing that the violation was harmless, but of showing that a violation of the right to effective representation occurred. A choice-of-counsel violation occurs *whenever* the defendant's choice is wrongfully denied. Moreover, if and when counsel's ineffectiveness "pervades" a trial, it does so (to the extent we can detect it) through identifiable mistakes. We can assess how those mistakes affected the outcome. To determine the effect of wrongful denial of choice of counsel, however, we would not be looking for mistakes committed by the actual counsel, but for differences in the defense that would have been made by the rejected counsel—in matters ranging from questions asked on *voir dire* and cross-examination to such intangibles as argument style and relationship with the prosecutors. We would have to speculate upon what matters the rejected counsel would have handled differently—or indeed, would have handled the same but with the benefit of a more jury-pleasing courtroom style or a longstanding relationship of trust with the prosecutors. And then we would have to speculate upon what effect those different choices or different intangibles might have had. The difficulties of conducting the two assessments of prejudice are not remotely comparable.

*Id.* at 150-51.

<sup>86</sup> 618 F.3d 657 (7th Cir. 2010).

<sup>87</sup> *Id.* at 659.

earing trial that would last several months.<sup>88</sup> The trial court denied the motion to substitute counsel and appointed an attorney for the defendant.<sup>89</sup> The defendant was also denied the assistance of his original attorney.<sup>90</sup> Eventually, the defendant pled guilty with the assistance of a court appointed attorney.<sup>91</sup>

It is apparent in *Smith* that in order for a Sixth Amendment claim to survive a guilty plea, the defendant must first show that his substantial rights were affected when he was deprived of counsel.<sup>92</sup> The deprivation of counsel error must have a significant effect on the fairness of the proceedings.<sup>93</sup> The defendant in *Smith* was deprived of the counsel of his choice when the court denied him his substitution of counsel motion.<sup>94</sup> The trial court could not justify that it was balancing the rights to counsel of choice and the needs for fairness against the calendar because there was no trial date on schedule at the time.<sup>95</sup> Moreover, the defendant was not trying to manipulate the schedule because a trial date was not yet set.<sup>96</sup> Therefore, the court concluded that the deprivation of counsel was a structural defect error and that the defendant's guilty plea was withdrawn.<sup>97</sup>

## VI. EXCEPTIONS TO THE "STRUCTURAL DEFECT" ERROR

Courts can interfere with an attorney-client relationship in the name of trial management when there is a possibility of a conflict of interest or when there is a possibility of a delay in proceedings.<sup>98</sup> Similarly, in New York, the courts have recognized these exceptions as stated in *Knowles*:

Accordingly, judicial interference with an established

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<sup>88</sup> *Id.* at 660.

<sup>89</sup> *Id.* at 661.

<sup>90</sup> *Id.*

<sup>91</sup> *Smith*, 618 F.3d at 662.

<sup>92</sup> *Id.* at 664 (concluding that the defendant was denied his Sixth Amendment right to counsel).

<sup>93</sup> *Id.* at 666. It is noted on the record that the trial court said the defendant did not have a right to choice of counsel, he only had a right of counsel. *Id.* Since this is inconsistent with *Gonzalez-Lopez*, the Second Circuit Court of Appeals believes that the trial court did not give sufficient consideration to the right to choice of counsel. *Id.*

<sup>94</sup> *Smith*, 618 F.3d at 661.

<sup>95</sup> *Id.* at 666.

<sup>96</sup> *Id.* at 666-67.

<sup>97</sup> *Id.* at 667.

<sup>98</sup> *Knowles*, 673 N.E.2d at 905.

attorney-client relationship in the name of trial management may be tolerable only where the court first determines that counsel's participation presents a conflict of interest or where defense tactics may compromise the orderly management of the trial or the fair administration of justice.<sup>99</sup>

Additionally, the court can also justify its interference by showing prejudice to the prosecution or the defense.<sup>100</sup> Therefore, on the New York and federal levels, there exist exceptions that can justify judicial interference with the attorney-client relationship.

*United States v. Sanchez Guerrero*<sup>101</sup> examines the conflict of interest exception. In *Sanchez Guerrero*, the defendant was indicted for conspiring with others to distribute cocaine and marijuana and shared the same attorney as his co-conspirators.<sup>102</sup> The defendant was also later indicted for possession of a firearm as a felon and engaging in a RICO conspiracy.<sup>103</sup> The district court disqualified the defendant's defense counsel because of a conflict of interest.<sup>104</sup> The attorney was disqualified because he represented Guerrero, Guerrero's brother, and a witness as co-defendants.<sup>105</sup> The defendant ultimately pled guilty to the RICO charge.<sup>106</sup> In his plea agreement, the defendant did not preserve any of his rights to appeal and he waived his right to appeal any sentencing issues.<sup>107</sup> The defendant then appealed his conviction and claimed his counsel should not have been disqualified.<sup>108</sup>

The Fifth Circuit Court of Appeals applied the *Gonzalez-Lopez* rationale, even though the *Sanchez Guerrero* case involved a guilty plea as opposed to a trial.<sup>109</sup> Because choice of counsel seriously impacted the defendant's decision to plead guilty, disqualifica-

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<sup>99</sup> *Id.* at 904.

<sup>100</sup> *Id.*

<sup>101</sup> 546 F.3d 328 (5th Cir. 2008).

<sup>102</sup> *Id.* at 330.

<sup>103</sup> *Id.*

<sup>104</sup> *Id.* at 331.

<sup>105</sup> *Id.*

<sup>106</sup> *Sanchez Guerrero*, 546 F.3d at 331.

<sup>107</sup> *Id.*

<sup>108</sup> *Id.*

<sup>109</sup> *Id.* at 332. "If a defendant is erroneously denied the counsel of his choice, it is a structural error in the trial that brings into question the voluntary and intelligent character of the guilty plea itself." *Id.*

tion of counsel, in this case, was considered a “structural error.”<sup>110</sup>

Citing a conflict of interest as a reason for disqualifying the defendant’s counsel, the federal district court reasoned a conflict of interest would have still existed even if the disqualified counsel hired an attorney to cross-examine the witness he was representing.<sup>111</sup> Although the trial court interfered with the attorney-client relationship, the Fifth Circuit held that the trial court did not abuse its discretion in disqualifying counsel because there was an actual conflict of interest in the case.<sup>112</sup> Thus, in instances of conflicts of interest, a court’s interference with an attorney-client relationship must strike a balance between the rights of the parties involved and the appearance of fairness in a trial.<sup>113</sup>

The other exception of compromising the orderly management of trial and the fair administration of justice was evident in *United States v. Konstantin*,<sup>114</sup> when the defendant, displeased with his counsel, was denied an adjournment that would have allowed him to seek new counsel.<sup>115</sup> The defendant requested an adjournment to postpone his trial.<sup>116</sup> The defendant wanted to discharge his current counsel and postpone the trial for another week, when his counsel of choice would be available.<sup>117</sup> The trial court denied the defendant’s request for adjournment citing reasons of scheduling.<sup>118</sup>

The United States Second Circuit Court of Appeals affirmed the trial court’s decision and reasoned a trial court has wide latitude in balancing the right of choice of counsel against the demands of its calendar.<sup>119</sup> It is obvious that the defendant had an attorney-client relationship because the defendant’s knowledge of his purported new counsel’s trial availability.<sup>120</sup> The trial court’s interference with the attorney-client relationship, in this case, was justified because there was the possibility the proceedings would be delayed if the adjourn-

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<sup>110</sup> *Id.*

<sup>111</sup> *Sanchez Guerrero*, 546 F.3d at 334.

<sup>112</sup> *Id.* at 334-35.

<sup>113</sup> *Id.* at 333.

<sup>114</sup> 280 F. App’x 54 (2d Cir. 2008).

<sup>115</sup> *Id.* at 55.

<sup>116</sup> *Id.*

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *Konstantin*, 280 F. App’x at 55.

<sup>120</sup> *Id.*

ment were granted to the defendant.<sup>121</sup> Furthermore, it was also reasonable to surmise that granting the trial adjournment would prejudice the prosecution because they would have very little time to adjust their tactics to a new defense attorney's strategies.<sup>122</sup>

## VII. CONCLUSION

The defendant in *Griffin* was prejudiced when the trial court granted adjournments to the People.<sup>123</sup> Even though the trial court had wide latitude of discretion in managing its calendar, the adjournments to the People still deprived the defendant of his right to counsel.<sup>124</sup> In this situation, the interference with the attorney-client relationship for case management purposes was subject to scrutiny.<sup>125</sup> Legal Aid was very active in the plea bargaining process, and this was sufficient to establish an interference with the attorney-client relationship.<sup>126</sup> The judicial interference had such an effect on the fairness of the trial process that the defendant's right to counsel claim survived his guilty plea.<sup>127</sup>

Errors affecting constitutional rights, such as violations of a defendant's right to counsel, may survive a guilty plea because they go to the very heart of the trial process.<sup>128</sup> The New York courts have two categories for these constitutional errors.<sup>129</sup> An error such as deprivation of counsel that interferes with an attorney-client relationship that affects the right to choice of counsel and could compromise the integrity of the trial process is an error that has the capability of reversing a guilty plea.<sup>130</sup> On the other hand, "less fundamental

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<sup>121</sup> *Id.*

<sup>122</sup> *Id.* (stating that these types of cases normally do not require a forensic account). Bringing in a new attorney as well as a forensic expert under such short notice can prejudice the prosecution. *Konstantin* does not discuss the prejudice to the prosecution if the motion to substitute counsel would have been allowed, but it seems to be implied in the case.

<sup>123</sup> *Griffin*, 987 N.E.2d at 283.

<sup>124</sup> *Id.* at 284.

<sup>125</sup> *Id.*

<sup>126</sup> *Id.* at 285.

<sup>127</sup> *Id.*

<sup>128</sup> *Hansen*, 738 N.E.2d at 776.

<sup>129</sup> *Id.* "The critical distinction is between defects implicating the integrity of the process, which may survive a guilty plea, and less fundamental flaws, such as evidentiary or technical matters, which do not." *Id.*

<sup>130</sup> *Id.* at 777 (implying that the defendant's claim did not survive the guilty plea because the trial error did not affect the heart of the trial process).

flaws” like evidentiary or technical matters, do not compromise the integrity of the process and are forfeited by a guilty plea.<sup>131</sup>

The New York and federal courts employ the same process in determining whether a deprivation of counsel claim survives a guilty plea.<sup>132</sup> Interference with the attorney-client relationship is the critical component in the Sixth Amendment right to counsel analysis.<sup>133</sup> New York and federal courts categorically label their constitutional errors that affect trials in the same fashion.<sup>134</sup> Therefore, in employing the same analysis for Sixth Amendment right to counsel violations, both courts are able to properly evaluate whether such claims can survive a guilty plea.

*Elias Arroyo\**

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<sup>131</sup> *Id.*

<sup>132</sup> *Griffin*, 987 N.E.2d at 285.

<sup>133</sup> *Id.* at 284.

<sup>134</sup> *Id.*; *Gonzalez-Lopez*, 548 U.S. at 148.

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