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## **Appellate Division, First Department - People v. Boyd**

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

People v. Boyd<sup>1</sup>

(decided April 17, 2008)

Paul Boyd was charged with four counts of robbery in the first and second degrees.<sup>2</sup> In exchange for his guilty plea, the Supreme Court of New York County sentenced him to twelve year concurrent sentences on each count, but failed to impose a determinate period of postrelease supervision that would follow his incarceration.<sup>3</sup> Instead, the court merely informed the defendant that such postrelease supervision was mandatory.<sup>4</sup> Boyd appealed to the Appellate Division, First Department, arguing that the trial court violated his rights pursuant to the Due Process Clause under the U.S Constitution<sup>5</sup> and the New York Constitution,<sup>6</sup> “by failing to apprise him of the range of the mandatory period of postrelease supervision and the duration of supervision to which he [was] subject.”<sup>7</sup> Accordingly, the appellate division addressed whether a defendant can knowingly and intelligently enter into a plea agreement when the trial judge failed to inform the defendant of “the *duration* of postrelease supervision to

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<sup>1</sup> 856 N.Y.S.2d 71 (App. Div. 1st Dep’t 2008), *aff’d as modified*, 2009 WL 1227872 (N.Y. May 7, 2009).

<sup>2</sup> *Id.* at 72.

<sup>3</sup> *Id.* at 72-73.

<sup>4</sup> *Id.*

<sup>5</sup> U.S. CONST. amend. XIV, states, in pertinent part: “[N]or shall any State deprive any person of life, liberty, or property, without due process of law . . . .”

<sup>6</sup> N.Y. CONST. art. I, § 6 states, in pertinent part: “No person shall be deprived of life, liberty or property without due process of law.”

<sup>7</sup> *Boyd*, 856 N.Y.S.2d at 73.

which he is subject upon his release from incarceration or even the limits imposed by statute on that period of supervision.”<sup>8</sup> Ultimately, the appellate division vacated the defendant’s plea, concluding that he was deprived of due process when he entered into a plea agreement without being apprised of the duration of postrelease supervision that might be imposed.<sup>9</sup>

Boyd decided not to defend the charges against him at trial, and instead satisfied the entire indictment when he pled guilty to the counts of first-degree robbery.<sup>10</sup> At his plea allocution, it was determined that Boyd “was not a predicate felony offender.”<sup>11</sup> When a criminal defendant is charged with a Class B or Class C violent felony, New York Penal Law provides that a defendant “who is not a predicate felony offender is subject to mandatory postrelease supervision ranging from 2 1/2 to 5 years, at the court’s discretion.”<sup>12</sup> Boyd was not advised of a determinate period of postrelease supervision that would follow his incarceration; rather the court merely informed him that postrelease supervision was mandatory.<sup>13</sup>

Boyd appealed, requesting that the appellate division “reverse his conviction and vacate [his] plea[.]” pursuant to section 440.10<sup>14</sup> of

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

<sup>9</sup> *Id.* at 76.

<sup>10</sup> *Id.* at 72.

<sup>11</sup> *Id.*

<sup>12</sup> *Boyd*, 856 N.Y.S.2d at 73. N.Y. PENAL LAW § 70.45(2)(f) (McKinney 2008) provides that: “The period of post-release supervision for a determinate sentence . . . shall be five years except that . . . such period shall not be less than two and one-half years nor more than five years whenever a determinate sentence of imprisonment is imposed . . . upon conviction of a class B or class C violent felony offense.”

<sup>13</sup> *Boyd*, 856 N.Y.S.2d at 72-73.

<sup>14</sup> N.Y. CRIM. PROC. LAW § 440.10(1)(h) (McKinney 2005) states that: “At any time after the entry of judgment, the court in which it was entered may, upon motion of the defendant,

the New York Criminal Procedure Law (“CPL”).<sup>15</sup> Boyd contended that the trial court violated his due process rights afforded under both the federal and state constitutions.<sup>16</sup>

In opposition to defendant’s appeal, the prosecution maintained that the defendant’s due process rights were not violated because the trial judge informed him that postrelease supervision was mandatory.<sup>17</sup> Additionally, the government argued that even if the trial court erred, the defendant failed to make a timely objection “render[ing] any error unpreserved.”<sup>18</sup> Furthermore, the People posited that notwithstanding the trial judge’s failure to specify the duration of postrelease supervision, the applicable period of supervision in light of the charges against defendant and given his criminal history, is clearly stated in New York’s penal law.<sup>19</sup> Therefore, the defendant had constructive notice of the possible range of postrelease supervision.<sup>20</sup>

The appellate division rejected the People’s first argument that the trial court fulfilled its obligation by informing the defendant

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vacate such judgment upon the ground that . . . [t]he judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.”

<sup>15</sup> *Boyd*, 856 N.Y.S.2d at 73.

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

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

<sup>18</sup> *Id.* The People argued that the defendant failed to conform with the procedural requirements of N.Y. CRIM. PROC. LAW § 220.60(3) (McKinney 2001) which provides that: “At any time before the imposition of sentence, the court in its discretion may permit a defendant who has entered a plea of guilty to the entire indictment or to part of the indictment, . . . [may] withdraw such plea, and in such event the entire indictment, as it existed at the time of such plea, is restored.” The People contended that the defendant had ample opportunity to cure the deficiencies in the plea agreement prior to sentencing, and therefore the defendant’s failure to make a timely objection left him without a remedy pursuant to CPL 220.60(3) or CPL 440.10. *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Boyd*, 856 N.Y.S.2d at 73.

that postrelease supervision was mandatory, thereby placing great emphasis on the trial court's failure to mention the length of postrelease supervision that the defendant faced following incarceration.<sup>21</sup> Additionally, the appellate division noted that "the People implicitly concede[d] the illegality of the sentence" when they requested that the case be remitted back to the trial court for imposition of a determinate period of postrelease supervision.<sup>22</sup>

The People's second argument, that the defendant was on constructive notice of the possible duration of postrelease supervision, was rejected because the defendant's potential length of supervision following incarceration was completely within the discretion of the trial judge.<sup>23</sup> The specific time period of postrelease supervision was unknown to the defendant.<sup>24</sup> Moreover, the appellate division noted that when determining the constitutionality of a plea agreement the trial court's transcript must clearly reflect the defendant's understanding of the plea.<sup>25</sup> In order for the trial court to meet this obligation it must provide the defendant with enough pertinent information so that he may make a knowledgeable and intelligent choice among the different courses of action available.<sup>26</sup>

In addition, the appellate division found no merit in the People's argument that the defendant failed to make a timely objection

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

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 73-74.

<sup>24</sup> *Id.*

<sup>25</sup> *Boyd*, 856 N.Y.S.2d at 74.

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

pursuant to CPL 220.60(3).<sup>27</sup> Generally, challenging a plea agreement requires the defendant to make a timely objection to either withdraw the plea pursuant to CPL 220.60(3) or move to vacate the plea pursuant to CPL 440.10(1)(h).<sup>28</sup> However, the court stated that such procedural requirements are not necessary “ ‘where [the] trial judge does not fulfill the obligation to advise a defendant of postrelease supervision during the plea allocution.’ ”<sup>29</sup> Implicit in the trial court’s duty to inform the defendant of the totality of the consequences and ramifications of his plea agreement is ensuring that the defendant enters into such plea knowingly, intelligently, and voluntarily.<sup>30</sup>

By rejecting the People’s argument that defendant should be precluded from challenging his plea since he failed to make a timely objection pursuant to CPL 220.30(3), the court recognized the possible ramifications of a different disposition. Justice Tom, writing for the majority, stated that:

A contrary holding would pose an insurmountable dilemma, for if a defendant was misinformed concerning postrelease supervision, he could hardly be expected to withdraw his plea until he received accurate information; and if definitive information was not imparted until sentence was pronounced, the defendant would be precluded from withdrawing his plea because a motion under CPL 220.60 (3) is only available before sentencing.<sup>31</sup>

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

<sup>28</sup> *Id.*

<sup>29</sup> *Id.* (quoting *People v. Louree*, 869 N.E.2d 18 (N.Y. 2007)).

<sup>30</sup> *Boyd*, 856 N.Y.S.2d at 74.

<sup>31</sup> *Id.* at 75.

The fact that there was no objection or motion by the parties to the trial judge's statement that postrelease supervision was mandatory, creates the inference that the parties believed that the postrelease supervision component of sentencing required no express action by the court.<sup>32</sup> Notwithstanding this crucial misunderstanding, the court noted that "whether [or not] the period of postrelease supervision was mandatory or discretionary, the court was obligated to inform [the] defendant of the specific period of supervision."<sup>33</sup> Since the trial court neglected to fulfill its duty in safeguarding the defendant's due process rights by failing to inform the defendant of the duration of postrelease supervision that would follow incarceration, the appellate division reversed, vacated the plea, and remitted the matter back to the trial court.<sup>34</sup>

In reaching this determination, the court reasoned that postrelease supervision is a significant aspect of sentencing, and that when a criminal defendant enters into a plea agreement "the duration of supervision and its relationship to the range provided by statute are . . . material to a defendant's ability to intelligently choose among alternative courses of action."<sup>35</sup> Additionally, the appellate division determined that the trial court's error during the plea allocution denied the defendant an opportunity "to negotiate between the time to be spent under supervision [following incarceration] and the time to be

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

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

<sup>34</sup> *Id.* at 76.

<sup>35</sup> *Boyd*, 856 N.Y.S.2d at 73.

served in confinement.”<sup>36</sup>

Justice McGuire respectfully dissented to the majority’s opinion on two grounds. First, he argued that the defendant’s claim on appeal was not preserved for review because the defendant failed to comply with the procedural requirements of CPL 220.60(3).<sup>37</sup> Second, Justice McGuire would have deferred a written decision in this particular matter until the New York Court of Appeals rendered a disposition on a series of cases involving the threshold issue presented by defendant to the court.<sup>38</sup>

The dissent argued that in order for a criminal defendant to successfully preserve a challenge to the constitutionality of a plea allocution, the defendant must meet the procedural requirements of CPL 220.60(3) or CPL 440.10.<sup>39</sup> It has been recognized by New York case law that there are two exceptions to the general rule that a criminal defendant must preserve a challenge to a plea allocution.<sup>40</sup> The exceptions apply “where the allocution ‘clearly casts significant doubt upon the defendant’s guilt or otherwise calls into question the

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

<sup>37</sup> *Id.* (McGuire, J., dissenting).

<sup>38</sup> *Id.* At the time of the court’s disposition in *Boyd*, there were several cases involving similar issues as those presented by the defendant that were pending before the New York Court of Appeals. Therefore, Justice McGuire was reluctant to join the majority’s opinion. However, all of the cases except for one were consolidated and a written disposition was published on April 29, 2008. See *People v. Sparber*, 889 N.E.2d 459 (N.Y. 2008) (holding that a trial judge has a duty to inform criminal defendant’s of the period of postrelease supervision at sentencing and that such failure requires the appellate court to vacate the plea and remit the matter to the trial court for resentencing); *In re Garner v. New York State Dep’t of Correctional Servs.*, 889 N.E.2d 467 (N.Y. 2008) (holding that post-release supervision must be pronounced at sentencing and cannot thereafter be imposed by a government administrative agency).

<sup>39</sup> *Boyd*, 856 N.Y.S.2d at 76 (McGuire, J., dissenting).

<sup>40</sup> *Id.*



voluntariness of the plea.’<sup>41</sup> It is clear in *Boyd* that the first exception is not implicated by defendant’s appeal. However, the second exception, regarding the voluntariness of the plea, is a crucial issue.

The defendant posited that the second exception to the general rule of preservation applied because he was not informed of the particular duration of postrelease supervision, but merely of the fact that such supervision was mandatory as a result of the charged offense.<sup>42</sup> However, it is the dissent’s contention that a trial court does not commit reversible error when it fails to notify a criminal defendant of the specific *duration* of postrelease supervision following incarceration, but that reversible error is applicable only when the sentencing court does not inform the defendant that *a period* of supervision is required.<sup>43</sup> Relying on *People v. Hill*,<sup>44</sup> the dissent would hold that a criminal defendant’s due process rights have not been violated unless “ ‘at the time of his plea, [the] defendant was not informed that *a period* of postrelease supervision would follow his term of incarceration.’ ”<sup>45</sup> Therefore, it is the dissent’s position that a failure by the sentencing judge to inform the criminal defendant of the particular duration of postrelease supervision does not violate his due process rights when the defendant is informed that such supervision is mandatory.<sup>46</sup>

It is well established that a plea agreement entered into by a

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<sup>41</sup> *Id.* (quoting *People v. Lopez*, 525 N.E.2d 5, 6 (N.Y. 1988)).

<sup>42</sup> *Id.*

<sup>43</sup> *Id.* at 76-77.

<sup>44</sup> 879 N.E.2d 152 (N.Y. 2007).

<sup>45</sup> *Boyd*, 856 N.Y.S.2d at 76 (McGuire, J., dissenting) (emphasis added) (quoting *Hill*, 879 N.E.2d at 155).

<sup>46</sup> *Id.* at 76-77.

criminal defendant must comport with the constitutional requirements of due process.<sup>47</sup> The United States Supreme Court has stated that a plea complies with due process when it “represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.”<sup>48</sup> Before a court can accept a criminal defendant’s plea, the court must determine whether the defendant is aware of and understands the consequences of entering into a plea.<sup>49</sup> Additionally, it has been determined that a criminal defendant need not expressly admit to the crime with which he is charged in order for the plea to be considered voluntary.<sup>50</sup> In *North Carolina v. Alford*, the defendant was charged with first-degree murder.<sup>51</sup> The defendant was urged by counsel to plead guilty in light of the prejudicial evidence against him and the strength of the prosecution’s case.<sup>52</sup> Alford decided to plead guilty to second-degree murder, but he continued to maintain his innocence.<sup>53</sup> The Supreme Court upheld Alford’s plea agreement after determining that he voluntarily entered into it.<sup>54</sup> The Court noted that:

[W]hile most pleas of guilty consist of both a waiver of trial and an express admission of guilt, the latter

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<sup>47</sup> *North Carolina v. Alford*, 400 U.S. 25, 31 (1970).

<sup>48</sup> *Id.*

<sup>49</sup> See FED. R. CRIM. PROC. 11(b)(1) (2007) which provides that: “Before the court accepts a plea of guilty . . . the court must inform the defendant of, and determine that the defendant understands . . . any maximum possible penalty, including imprisonment, fine, and term of supervised release.”

<sup>50</sup> *Alford*, 400 U.S. at 37.

<sup>51</sup> *Id.* at 26.

<sup>52</sup> *Id.* at 27.

<sup>53</sup> *Id.* at 28. Before the plea was accepted, “Alford took the stand and testified that he had not committed the murder but that he was pleading guilty because he faced the threat of the death penalty if he did not do so.” *Id.*

<sup>54</sup> *Id.* at 38.

element is not a constitutional requisite to the imposition of criminal penalty. An individual accused of a crime may voluntarily, knowingly, and understandingly consent to the imposition of a prison sentence even if he is unwilling or unable to admit his participation in the acts constituting the crime.<sup>55</sup>

*Alford* provided that a defendant's guilty plea will be considered voluntary and constitutional as long as he is apprised of the ramifications of pleading guilty.<sup>56</sup> However, it has been noted that it is not necessary for a trial court to inform the defendant of every possible consequence that may result from a plea agreement and subsequent conviction.<sup>57</sup> For purposes of ensuring that a defendant voluntarily and intelligently enters into a plea agreement, courts have interpreted Rule 11<sup>58</sup> of the Federal Criminal Procedure Law to require the sentencing judge to disclose only direct consequences of sentencing, and not collateral ones.<sup>59</sup> In *United States v. Brady*, the Supreme Court noted that a plea is voluntary where it is "entered [into] by one fully aware of the *direct consequences*, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, [and that such plea] must stand unless induced by threats . . . , misrepresentation . . . , or perhaps by promises that are by their nature improper as having no proper relationship to

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<sup>55</sup> *Alford*, 400 U.S. at 37.

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

<sup>57</sup> *United States v. Brady*, 397 U.S. 742, 755 (1970).

<sup>58</sup> See FED. R. CRIM. PROC. 11(b)(1) which provides that: "Before the court accepts a plea of guilty . . . the court must inform the defendant of, and determine that the defendant understands . . . any maximum possible penalty, including imprisonment, fine, and term of supervised release."

<sup>59</sup> *Brady*, 397 U.S. at 755.

the prosecutor's business (e.g. bribes).' ”<sup>60</sup>

The determination of what constitutes a direct or collateral consequence of a plea “turns on whether the result represents a definite, immediate and largely automatic effect on the range of the defendant's punishment.”<sup>61</sup> Moreover, collateral consequences include those that are “ ‘ancillary or consequential results which are peculiar to the individual and which may flow from a conviction of a plea of guilty.’ ”<sup>62</sup> The circuit courts have concluded that consequences like commitment to a mental facility,<sup>63</sup> loss of good time credit,<sup>64</sup> loss of the rights to vote and travel abroad,<sup>65</sup> and discharge from the armed forces<sup>66</sup> are collateral and need not be disclosed to a criminal defendant. On the other hand, courts have consistently held that the maximum allowable sentence for the crime charged<sup>67</sup> and the loss of state probation or parole<sup>68</sup> are direct consequences that the sentencing judge must communicate to the criminal defendant at his plea allocution.

The imposition of postrelease supervision or a special parole term has been determined by the federal judiciary to be a direct con-

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<sup>60</sup> *Id.* (emphasis added) (quoting *Shelton v. United States*, 242 F.2d 101, 115 (5th Cir. 1957) (Tuttle, J., dissenting)).

<sup>61</sup> *Cuthrell v. Patuxent Institution*, 475 F.2d 1364, 1366 (4th Cir. 1973).

<sup>62</sup> *Id.* at 1366-67 (quoting *United States v. Sambro*, 454 F.2d 918, 920 (D.C. Cir. 1971)). The court in *Sambro* noted that if the trial judge is aware of a possible consequence related to sentencing, it is within the judge's discretion to determine whether or not to advise the defendant. *Sambro*, 454 F.2d at 920.

<sup>63</sup> *Cuthrell*, 475 F.2d at 1366.

<sup>64</sup> *Hutchison v. United States*, 450 F.2d 930, 931 (10th Cir. 1971).

<sup>65</sup> *Meaton v. United States*, 328 F.2d 379, 380, 381 (5th Cir. 1964).

<sup>66</sup> *Redwine v. Zuckert*, 317 F.2d 336, 337-38 (D.C. Cir. 1963).

<sup>67</sup> *Combs v. United States*, 391 F.2d 1017 (9th Cir. 1968).

<sup>68</sup> *United States v. Myers*, 451 F.2d 402, 405 (9th Cir. 1972).

sequence of sentencing.<sup>69</sup> In *Michel v. United States*, the Second Circuit Court of Appeals grappled with the distinction between direct and collateral consequences.<sup>70</sup> In *Michel*, the defendant pled guilty to “knowingly and intentionally . . . distributing cocaine.”<sup>71</sup> The district court judge sentenced Michel to a term of imprisonment of five years followed by a five year term of special parole.<sup>72</sup> The defendant appealed the sentence, seeking to withdraw his guilty plea.<sup>73</sup> On appeal, Michel contended that the plea was not voluntary within Rule 11 because he did not understand the imposition of the special parole term, and because he was not advised that he may be deported as a result of the conviction.<sup>74</sup> The court determined that a term of special parole is a direct consequence of sentencing because of its similarity to the concept of parole, noting that “[s]ince special parole adds time to a regular sentence,” and because parole affects the length of a criminal defendant’s sentence, such consequences are direct results of sentencing.<sup>75</sup> Although the court determined that special parole is a direct consequence requiring disclosure to the criminal defendant, the court nonetheless held that Michel was adequately advised of the pe-

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<sup>69</sup> See, e.g., *Del Vecchio v. United States*, 556 F.2d 106 (2d Cir. 1977); *Michel v. United States*, 507 F.2d 461 (2d Cir. 1974); *United States v. Friedman*, 436 F. Supp. 1033 (S.D.N.Y. 1977); *Aviles v. United States*, 405 F. Supp 1374 (S.D.N.Y. 1975).

<sup>70</sup> *Michel*, 507 F.2d at 463.

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

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

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

<sup>75</sup> *Michel*, 507 F.2d at 463. See also, *Bye v. United States*, 435 F.2d 177, 180 (2d Cir. 1970), where the Second Circuit stated that, “the unavailability of parole directly affects the length of time an accused will have to serve in prison” and “that such a major effect on the length of possible incarceration would have great importance to an accused in considering whether to plead guilty.”

riod of special parole and affirmatively stated that he understood.<sup>76</sup>

The court rejected Michel's second contention regarding the trial court's requirement to inform him of the possibility of deportation, because at the time the plea agreement was entered, Michel was a resident alien.<sup>77</sup> The Second Circuit deferred to precedent and recognized "that deportation [is] not a direct but rather a collateral consequence of [a defendant's] plea."<sup>78</sup> The court reasoned that since a separate governmental agency must commence deportation proceedings against the defendant, deportation is not a direct consequence of a guilty plea, but is collateral and therefore does not impose a duty on the trial judge to inform the defendant of such ramifications.<sup>79</sup>

The New York Court of Appeals has recognized a distinction between direct and collateral consequences of sentencing when determining the constitutionality of a plea allocution. In *People v. Ford*,<sup>80</sup> the defendant accidentally shot and killed his girlfriend while he was showing her his gun.<sup>81</sup> The defendant, a legal alien from Jamaica, pled guilty to second-degree manslaughter.<sup>82</sup> Following his conviction, the Immigration and Naturalization Service commenced deportation proceedings.<sup>83</sup> In an attempt to avoid deportation, the defendant appealed his conviction, claiming that he was not informed

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<sup>76</sup> *Michel*, 507 F.2d at 464.

<sup>77</sup> *Id.* at 462.

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

<sup>79</sup> *Id.* at 465.

<sup>80</sup> 657 N.E.2d 265 (N.Y. 1995).

<sup>81</sup> *Id.* at 267.

<sup>82</sup> *Id.*

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

that he risked deportation as a result of his conviction.<sup>84</sup> Although his attempt to appeal his conviction was successful in the state supreme court, the appellate division and Court of Appeals both upheld the conviction.<sup>85</sup>

The Court of Appeals recognized that a court has a constitutional duty to ensure that a criminal defendant understands the ramifications of pleading guilty.<sup>86</sup> However, this duty only requires a trial court to inform the criminal defendant of the direct consequences and not the collateral consequences of sentencing.<sup>87</sup> In distinguishing between direct and collateral, the court noted that collateral consequences are the effects of sentencing that “are peculiar to the individual and generally result from the actions taken by agencies the court does not control.”<sup>88</sup> Relying on both federal and state precedent, the court rejected the defendant’s contention that deportation is a direct consequence of sentencing.<sup>89</sup> Since the Immigration and Naturalization Service is the agency that exercises discretion in determining whether to pursue such proceedings, such consequences are “not within the control of the court system.”<sup>90</sup>

Subsequently, the New York Court of Appeals in *People v. Van Deusen*,<sup>91</sup> exemplified the importance of informing a defendant of the period of postrelease supervision that follows a determinate pe-

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<sup>84</sup> *Id.*

<sup>85</sup> *Ford*, 657 N.E.2d at 267, 269.

<sup>86</sup> *Id.* at 267.

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

<sup>88</sup> *Id.* at 268.

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

<sup>90</sup> *Ford*, 657 N.E.2d at 268.

<sup>91</sup> 853 N.E.2d 223 (N.Y. 2006).

riod of incarceration. In *Van Deusen*, the defendant pled guilty to first-degree robbery in exchange for a period of incarceration between five and fifteen years.<sup>92</sup> At no time during the plea allocution was the defendant informed that the determinate sentence would be followed by a mandatory period of postrelease supervision.<sup>93</sup> The trial court sentenced the defendant to eight years' incarceration followed by a five year period of postrelease supervision.<sup>94</sup> The defendant appealed, arguing that she was denied due process when she was not informed of the mandatory period of postrelease supervision that would follow her incarceration.<sup>95</sup> In opposition to the appeal, the prosecution argued that the court should uphold the conviction because the period of incarceration coupled with the time of postrelease supervision did not exceed the total amount of time that the defendant agreed to serve pursuant to the plea agreement.<sup>96</sup> Nevertheless, the Court of Appeals vacated the defendant's plea, stating that:

While [the] defendant's sentence . . . , including postrelease supervision, was actually less than the maximum potential period of incarceration that she agreed to serve, . . . [a]t the time defendant pleaded guilty, she did not possess all the information necessary for an informed choice among different possible courses of action because she was not told that she would be subject to mandatory postrelease supervision as a consequence of her guilty plea.<sup>97</sup>

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<sup>92</sup> *Id.*

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

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

<sup>96</sup> *Van Deusen*, 853 N.E.2d at 224.

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



Likewise, in *People v. Catu*,<sup>98</sup> the New York Court of Appeals held that postrelease supervision was a significant aspect of sentencing because of the various conditions that are imposed on a criminal defendant upon incarceration.<sup>99</sup> In *Catu*, the defendant entered a plea of guilty to “attempted robbery in the second degree and operating a motor vehicle while under the influence of alcohol.”<sup>100</sup> As a result of the plea, the court sentenced the defendant to three years’ incarceration.<sup>101</sup> Additionally, since the defendant was a predicate felony offender, the court imposed a mandatory five year period of postrelease supervision, but failed to inform the defendant of such penalty.<sup>102</sup>

On appeal, the defendant’s sole contention was that the court violated his due process rights by failing to inform him of the direct consequences of his guilty plea.<sup>103</sup> The court recognized that postrelease supervision is a consequence directly related to sentencing.<sup>104</sup> The court acknowledged that upon being released after serving his sentence, the defendant must comply with certain regulations set by the court.<sup>105</sup> Such conduct and regulations include “reporting to a parole officer, . . . a curfew, restrictions on travel, and substance abuse testing and treatment.”<sup>106</sup> Furthermore, the court noted the seriousness of postrelease supervision, stating that any violation of postre-

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<sup>98</sup> 825 N.E.2d 1081 (N.Y. 2005).

<sup>99</sup> *Id.* at 1082.

<sup>100</sup> *Id.* at 1081.

<sup>101</sup> *Id.*

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

<sup>103</sup> *Catu*, 825 N.E.2d at 1082-83.

<sup>104</sup> *Id.* at 1082.

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

<sup>106</sup> *Id.*

lease supervision by a criminal defendant “can result in reincarceration for at least six months and up to the balance of the remaining supervision period.”<sup>107</sup>

Similarly, in *People v. Goss*,<sup>108</sup> the Appellate Division, Third Department once again reinforced the notion that a period of postrelease supervision that follows a determinate period of incarceration is a direct consequence of sentencing that a criminal defendant must be apprised of in order to intelligently, knowingly, and voluntarily enter into a plea agreement.<sup>109</sup> In *Goss*, the defendant entered a plea of guilty to burglary in the second degree, and was sentenced to twelve years incarceration followed by a mandatory five years of postrelease supervision, which he was not informed of at the plea allocution.<sup>110</sup> On appeal, the appellate division vacated the defendant’s plea.<sup>111</sup> The court recognized that any violation by a criminal defendant while on postrelease supervision would result in “a significant period of reincarceration.”<sup>112</sup> Therefore, the court concluded that postrelease supervision is a direct consequence of a criminal defendant’s sentencing.<sup>113</sup>

Both the U.S. Constitution and the New York Constitution afford protections to the criminal defendant through their respective Due Process Clauses. Although a sentencing judge does not need to inform a criminal defendant of every possible consequence of sen-

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

<sup>108</sup> 733 N.Y.S.2d 310 (App. Div. 3d Dep’t 2001).

<sup>109</sup> *Id.* at 314.

<sup>110</sup> *Id.* at 312.

<sup>111</sup> *Id.* at 315.

<sup>112</sup> *Id.* at 314.

<sup>113</sup> *Goss*, 733 N.Y.S.2d at 314.

tencing when entering into a guilty plea, courts have recognized that such pleas must comport with the Due Process Clause of federal and state constitutions. A plea comports with the constitutional requirements of due process when the defendant fully understands the ramifications of entering a guilty plea.

Through years of case law, federal and state courts have determined that a plea agreement is voluntary and consistent with due process when the sentencing judge informs the criminal defendant of all the direct consequences of an imposed conviction. Direct consequences are those that have a significant and immediate result of sentencing. Notwithstanding this requirement, sentencing judges are not required to advise defendants of the collateral consequence of entering a guilty plea. Such consequences are not an immediate result of sentencing, but are often the result of action taken by a governmental agency outside the control of the court.

Although the distinction between direct and collateral consequences of sentencing seems to be clear, it is anything but. Courts often struggle with determining whether a particular result is a direct or collateral consequence. Furthermore, there is no definitive list of what constitutes a direct or collateral consequence. It is important to note that both federal and state courts place more emphasis on the immediacy of the result as opposed to the seriousness of a consequence in making the determination between direct and collateral. For example, postrelease supervision is a direct and immediate consequence of sentencing because it is imposed on the defendant prior to incarceration. On the other hand, deportation is considered by

many a very serious consequence, but is only collateral as it is imposed by a governmental agency following sentencing and is outside the control of the court.

Additionally, in making the determination between direct and collateral, federal and state courts consider the particular result in question. The more unique a consequence is to a particular defendant's situation, the more likely the court is going to deem the consequence collateral. On the other hand, the more widespread the effect of a consequence on a criminal defendant the more likely the court is going to be under a duty to advise the defendant of the possibility of such consequence.

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