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Court of Appeals of New York, People v. Henriquez

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People v. Henriquez[1]
(decided October 19, 2004)

After providing detailed written and videotaped statements documenting the murder of his girlfriend, defendant Michael Henriquez was charged with "intentional murder in the second degree, illegal weapon possession and endangering the welfare of a child."[2] He was afforded a trial by jury and was subsequently convicted of intentional murder in the second degree along with other related crimes.[3] Prior to the presentation of opening statements at trial, Henriquez demanded that his assigned defense counsel remain silent throughout the proceedings, and that he refrain from participating or mounting any defense on his behalf.[4] Yet, Henriquez also indicated to the court that he did not wish to proceed pro se.[5] The trial judge warned Henriquez of the risks inherent in such conduct and instructed defense counsel to remain available during the trial "in the event defendant changed his mind and decided to consult with him or present a defense."[6]

In upholding the conviction, the Appellate Division "conclud[ed] that [Henriquez], after being consistently warned . . . about the pitfalls of his conduct, knowingly, intelligently and voluntarily waived his rights to present a defense, cross-examine or

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[1] 818 N.E.2d 1125 (N.Y. 2004).
[2] *Id.* at 1126.
[3] *Id.* at 1127.
[4] *Id.* at 1126.
[5] *Id.*
[6] *Henriquez,* 818 N.E.2d at 1126.

call witnesses, or testify on his own behalf."[7] Henriquez then appealed to the Court of Appeals claiming that he was denied his Sixth Amendment right[8] to effective assistance of counsel.[9] He argued that his constitutional right to a fair trial was violated when the trial court and defense counsel respected his wishes and allowed the prosecution to build its case against him, unchallenged by any defense.[10] The argument was "premised on [Henriquez's] claim that he neither waived nor forfeited his *Sixth Amendment* right to the effective assistance of counsel."[11] The Court of Appeals refused to entertain Henriquez's Sixth Amendment claim and held that both federal and state precedent lead to the conclusion that defendants who restrict the participation of counsel can, by such actions, voluntarily waive their right to the effective assistance of counsel.[12] The court reiterated the message set forth by the Appellate Division in *People v. Kelly* that "[t]here comes a point where a defendant must bear the consequences of his conduct, in a courtroom as well as out of it."[13]

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[7] *Id.* at 1127.

[8] U.S. CONST. amend. VI, which states in pertinent part: "[i]n all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defence."

[9] *Henriquez*, 818 N.E.2d at 1127.

[10] *Id.*

[11] *Id.* It was Henriquez's contention that his attorney was "ethically obligated to mount a defense" and that the trial court infringed upon his right to effective assistance by allowing his counsel to remain silent during the proceedings. *Id.* at 1127-28.

[12] *Id.* at 1129 (citing United States *ex rel.* Testamark v. Vincent, 496 F.2d 641, 643-44 (2d Cir. 1974); People v. Kelly, 400 N.Y.S.2d 82, 84-85 (N.Y. App. Div. 1977)).

[13] *Id.* (citing *Kelly*, 400 N.Y.S.2d at 85).

In March 1994, Henriquez informed authorities that he had killed his girlfriend and that the body was left at his residence.[14] He voluntarily approached a police car and told the officer about the crime he had committed.[15] When police officers arrived at his residence they found the victim dead from numerous gunshot wounds to the head.[16] Henriquez was taken to the police station where he "provided detailed written and videotaped statements in which he confessed to shooting his girlfriend multiple times in the presence of their infant daughter."[17] He stated that he had found the victim in a compromising position with another man and, in reaction, he shot her numerous times, resulting in her death.[18]

Henriquez was charged with intentional murder in the second degree, illegal weapon possession and endangering the welfare of a child.[19] He was assigned counsel and, prior to trial, the judge conducted Huntley[20] and Sandoval[21] hearings.[22] His

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[14] *Henriquez,* 818 N.E.2d at 1126. It is unclear from the decision whether the victim was the defendant's wife or whether she was his girlfriend; Judge Graffeo, writing for the majority, referred to her as the defendant's "paramour," while Judge Smith referred to her as the defendant's wife in his dissent.

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.* at 1130 (Smith, J., dissenting).

[19] *Henriquez,* 818 N.E.2d at 1126.

[20] Pursuant to People v. Huntley, 204 N.E.2d 179, 183 (N.Y. 1965), criminal defendants are entitled to pretrial hearings in which the presiding judges are to make express findings as to the voluntariness of alleged confessions prior to admission of the confession to the jury.

[21] Pursuant to People v. Sandoval, 314 N.E.2d 413, 416-17 (N.Y. 1974), trial judges in criminal cases may make advance rulings, upon a motion or by an appropriate evidentiary hearing, concerning the scope of cross-examination as to prior conduct to which the defendant will be subjected if he chooses to take the witness stand.

[22] *Henriquez*, 818 N.E.2d at 1126.

defense counsel participated in both the pretrial hearings and jury selection, both without objection from Henriquez.[23] However, prior to the presentation of opening statements, defense counsel informed the judge that Henriquez had instructed him to remain silent during the trial and to refrain from mounting a defense on his behalf.[24] Specifically, Henriquez directed his attorney "not to cross-examine any witnesses, not to object to any line of questioning, not to . . . approach the bench, not to participate in any bench conferences or side bars, not to have any defense in th[e] case, not to call any witnesses, not to sum up, not to do anything."[25] In response to Henriquez's orders, defense counsel asked to be relieved of his assignment and pleaded with the judge to permit Henriquez to proceed pro se.[26] Henriquez, however, stated to the court that he did not want to proceed pro se; rather, he simply wanted his attorney to remain silent and refrain from doing anything on his behalf during the trial.[27] The trial judge told Henriquez that he did not have to proceed pro se and punctiliously stressed that he was " 'foolishly' waiving many 'very important rights' " by commanding his attorney to refrain from mounting a defense.[28] The Court of Appeals noted:

> Faced with defendant's obstinancy [sic] in rejecting his attorney's participation while refusing to

[23] *Id.* Defense counsel was able to secure the suppression of a statement by the defendant based on the prosecution's failure to provide notice pursuant to Criminal Procedure Law 710.30. *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Henriquez*, 818 N.E.2d at 1126.

[28] *Id.*

> proceed pro se, the court denied defense counsel's application to withdraw and instructed him to remain available during the proceedings in the event defendant changed his mind and decided to consult with him or present a defense.[29]

The trial court repeatedly explained to Henriquez that he was free to change his mind at any time and urged him to allow his attorney to participate in the trial.[30] Henriquez convinced the judge that he understood his options, but remained steadfast in his decision to forgo a defense.[31]

As a result of Henriquez's persistence to avoid any defense on his behalf, the prosecution's case against him went unchallenged. The People introduced four witnesses, all of who testified without being subject to cross-examination.[32] The defense did not make an opening statement, call any witnesses, file any motions or raise any affirmative defenses.[33] The court even advised the defendant of the potential affirmative defense of extreme emotional disturbance, however, he summarily refused to comment on any jury instruction.[34] Lastly, the defense did not present a summation and voiced no objections to the instructions given by the court.[35] Henriquez was subsequently convicted of intentional murder in the second degree and other related crimes.[36]

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[29] *Id.*
[30] *Id.* at 1127.
[31] *Id.*
[32] *Henriquez,* 818 N.E.2d at 1127.
[33] *Id.*
[34] *Id.*
[35] *Id.*
[36] *Id.*

Criminal defendants are protected by their constitutional guarantee to due process of law and "the fundamental right to a fair trial" as evinced by the Due Process Clauses and the Sixth Amendment of the United States Constitution.[37] "In a long line of cases . . . th[e] [Supreme] Court has recognized that the Sixth Amendment right to counsel exists, and is needed, in order to protect the fundamental right to a fair trial."[38] Thus, an accused who wishes to have the assistance of counsel cannot be forced to stand trial unassisted by adequate legal representation.[39] On the other hand, this right is "given directly to the accused" such that the Constitution cannot "force a lawyer upon a defendant."[40] "An accused awaiting trial therefore has only two choices regarding legal representation – proceed with counsel or waive the protection of the *Sixth Amendment* and proceed pro se."[41]

Pursuant to the Supreme Court's decision in *Strickland v. Washington,* a criminal defendant must satisfy two requirements in order to state a cause of action for ineffective assistance of counsel under the Federal Constitution.[42] First, the defendant must show

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[37] Strickland v. Washington, 466 U.S. 668, 684-85 (1984). "The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment . . . ." *Id.*

[38] *Id.* at 684.

[39] Gideon v. Wainwright, 372 U.S. 335, 344 (1963). "[A]ny person haled into court . . . cannot be assured a fair trial unless counsel is provided for him." *Id.*

[40] *Henriquez*, 818 N.E.2d at 1128 (quoting Faretta v. California, 422 U.S. 806, 819-20 (1975); Adams v. United States *ex rel* McCann, 317 U.S. 269, 279 (1942)).

[41] *Id.*

[42] *Strickland*, 466 U.S. at 687.

that there was a deficiency in counsel's performance.[43] "This requires showing that counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment."[44] Second, the defendant is required to "show that the deficient performance prejudiced the defense."[45] In order to satisfy the prejudice requirement, the defendant must show that the errors made by counsel were "so serious as to deprive the defendant of a fair trial."[46] In cases where the defendant has hindered the performance of defense counsel and refused to proceed pro se, federal courts are reluctant to find counsels' performance either deficient or prejudicial.[47] Rather, courts faced with such obstinance tend to treat such action as a waiver of the defendants' rights.[48] In *United States ex. rel. Testamark v. Vincent*, the defendant was tried and convicted for the robbery, *inter alia,* of a liquor store.[49] The defendant "spurned . . . repeated opportunities to represent himself or to be represented by counsel."[50] The court held that the defendant's "refusal to participate in the trial or confer with counsel were of his own choosing" and that his "actions at trial constituted a waiver of his right to counsel."[51]

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[43] *Id.*
[44] *Id.*
[45] *Id.*
[46] *Id.*
[47] *See generally,* United States *ex rel.* Testamark v. Vincent, 496 F.2d 641, 643-44 (2d Cir. 1974).
[48] *Id.* at 643.
[49] *Id.* at 642.
[50] *Id.* at 644.
[51] *Id.* at 643-44.

Although similar, the requirements for stating a cause of action for ineffective assistance of counsel under New York law are less restrictive; New York affords criminal defendants greater protection than the Sixth Amendment.[52] The constitutional requirements for effective assistance of counsel are met in New York as long as the defense attorney provides "meaningful representation."[53] In *People v. Baldi*, the New York Court of Appeals announced that "[s]o 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, the constitutional requirement [for effective assistance of counsel] will have been met."[54] The main difference between the federal and state standards is that New York does not strictly require that the defendant prove prejudice.[55] Pursuant to New York law, a defendant's showing of prejudice is significant, but it is not a dispositive element in assessing meaningful representation.[56]

Regardless of the subtle differences between the standards, New York courts tend to treat defendants who have refused self-representation and restricted the participation of counsel in the

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[52] N.Y. CONST. art. 1, § 6, which states in pertinent part, "In any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel . . . ."

[53] People v. Stultz, 810 N.E.2d 833, 887 (N.Y. 2004) (citing People v. Baldi, 429 N.E.2d 400 (N.Y. 1981)).

[54] *Baldi*, 429 N.E.2d at 405.

[55] *Stultz*, 810 N.E.2d at 887.

[56] *Id.*

same manner as their federal counterparts.[57] In *People v. Kelly*, the New York Court of Appeals upheld an Appellate Division determination that the defendant's Sixth Amendment claims were unfounded and that the defendant "should not be permitted to nullify a trial . . . by the simple expedient of obstructing every effort of the court to assure to the defendant his legal rights and a fair trial."[58] Similar to the case at bar, the defendant in *Kelly* refused to allow his attorney to participate in the proceedings.[59] The court's attempts "to ascertain whether defendant wanted to be represented by counsel or whether to appear *pro se* were met by unresponsive statements that [he] would be judged by Allah and that Allah would advise him."[60] The court, after making every attempt to ensure that the defendant received a fair trial, held that the defendant was not deprived of his right to be represented by counsel and that "[t]here comes a point where a defendant must bear the consequences of his conduct."[61] Similarly, the Court of Appeals in *Henriquez* reaffirmed the sentiment which emanated from the decision in *Kelly*, namely, that a defendant who intelligently, knowingly and purposefully makes a decision, regardless of how unwise it may turn out to be, must accept the decision and the consequences of his actions.[62] Thus, Henriquez's conduct "translates into an intentional failure to avail himself of his

[57] *Henriquez*, 818 N.E.2d at 1129.
[58] 376 N.E.2d 931, 931 (N.Y. 1978); *Kelly*, 400 N.Y.S.2d at 85.
[59] *Kelly*, 400 N.Y.S.2d at 84.
[60] *Id.*
[61] *Id.* at 85.
[62] *Henriquez*, 818 N.E.2d at 1129.

constitutional 'right to a fair opportunity to defend against the State's accusations.' "[63]

In a dissenting opinion, Judge G.B. Smith entertained the arguments made by Henriquez which threatened the integrity and probity of our judicial system. Judge Smith asserted that Henriquez was denied the effective assistance of counsel, and consequently a fair trial, because the trial was devoid of the adversarial element.[64] He argued that the trial judge incorrectly accorded to the defendant the right to make strategic and tactical decisions which resulted in a trial that failed to "ensure that the adversarial testing process worked to produce a fair and just result."[65] It was his contention that, by consenting to be represented by counsel at the outset of the litigation, criminal defendants relinquish the right to make strategic and tactical decisions.[66] Judge Smith relied on the American Bar Association Standards for Criminal Justice, Defense Function Section 4-5.2 entitled "Control and Direction of the Case."[67] Specifically, the defendant in criminal cases should be limited to making decisions regarding what pleas to enter; whether to accept a plea agreement; whether to waive a jury trial; whether to testify in his or her own behalf; and whether to appeal, while defense counsel is entrusted

[63] *Id.* at 1130 (citing Chambers v. Mississippi, 410 U.S. 284, 294 (1973)).
[64] *Id.* (Smith, J., dissenting).
[65] *Id.*
[66] *Id.* at 1136.
[67] ABA STANDARD, DEFENSE FUNCTION § 4-5.2 (3d ed 1993).

to make "strategic and tactical decisions . . . after consultation with the client where feasible and appropriate."[68]

Judge Smith continued by setting forth the requirements for an ineffective assistance of counsel claim under both federal and New York law.[69] He reiterated that although similar, the requirements for making out a claim of ineffective assistance of counsel are not the same.[70] Regardless, according to Judge Smith, the assistance of counsel now under consideration ought to have failed under either test since defense counsel did not render *any* assistance.[71] He asserted that "[a]s defendant exercised control over defense counsel, the trial devolved into a non-adversarial proceeding that, under the Federal and New York Constitutions, was presumptively unfair because defense counsel failed to subject the People's case to meaningful adversarial testing."[72]

Yet, the majority held that the defendant attempted to abuse the process by refusing to allow his counsel to effectively represent him while simultaneously rejecting self-representation.[73] In similar cases, many courts have refused to allow such abuse and degradation of the judicial system and have held that these defendants voluntarily waive the right to effective assistance of counsel.[74]

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[68] *Id.*
[69] *Henriquez*, 818 N.E.2d at 1138 (Smith, J., dissenting).
[70] *Id.*
[71] *Id.* at 1139.
[72] *Id.* at 1140.
[73] *Id.* at 1128.
[74] *Henriquez*, 818 N.E.2d at 1129 (citing United States *ex rel.* Testamark v. Vincent, 496 F.2d 641, 643-44 (2d Cir. 1974)).

In conclusion, it is the opinion of the Court of Appeals that a defendant's Sixth Amendment right to Assistance of Counsel is not violated by allowing a trial to proceed after the defendant has openly instructed his assigned counsel not to participate in his defense and where defendant has declined to represent himself. Defendants must accept the decisions they knowingly, intelligently and voluntarily make and the consequences that result from such actions.[75]

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[75] *Id.*