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Appellate Division, Fourth Department, People v. Bonilla

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SUPREME COURT OF NEW YORK
APPELLATE DIVISION, FOURTH DEPARTMENT

People v Bonilla[1]
(decided April 30, 2004)

Benjamin Bonilla was indicted with rape, sodomy and two counts of sexual abuse in the first degree.[2] He pleaded guilty to Rape in the First Degree and was sentenced to a five-year determinate term.[3] Although he was informed that the maximum sentence which could be imposed by the court was twenty five years, neither the court nor his attorney expressly notified Bonilla that "there would be a period of post release supervision automatically added to his sentence."[4] On a motion made pursuant to Criminal Procedure Law Section 440.10(1)(h),[5] Bonilla asserted that, since he was not advised of the mandatory period of post release supervision, his plea was not "knowingly and intelligently entered and he was denied effective assistance of counsel under both the Federal[6] and State[7] Constitutions."[8] The Appellate

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[1] 775 N.Y.S.2d 619 (N.Y. App. Div. 2004).

[2] People v. Bonilla, No. 2000-007, 2003 WL 1093042, at *1 (N.Y. County. Ct. Jan. 29, 2003).

[3] *Id.*

[4] *Id.*

[5] N.Y. CRIM. PROC. LAW § 440.10 (McKinney 1995) provides in pertinent part: "At 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."

[6] U.S. CONST. amend. VI states in pertinent part: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence."

[7] N.Y. CONST. art. I, § 6 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 as in civil actions . . . ."

[8] *Bonilla,* 775 N.Y.S.2d at 619. In its holding, the court focused on the correct standard for measuring the effective assistance of counsel, rather than on the effectiveness of the waiver.

Division reversed the county court's decision denying Bonilla's motion, holding that the "harmless error" analysis applicable in both the federal[9] and New York[10] courts was not the correct standard for determining Bonilla's claim.[11] The court acknowledged that there are two different standards for determining whether a defendant received effective assistance of counsel; one standard complies with the United States Constitution and one with New York State Constitution.[12] The court determined that the proper standard under the United States Constitution is "whether there is a reasonable probability that, but for counsel's errors, [defendant] would not have pleaded guilty and would have insisted on going to trial,"[13] while, under the New York Constitution, the standard is "whether defendant received meaningful representation."[14] Therefore, the court remanded the case and instructed the trial court to apply the proper standards to determine whether to grant a hearing on the motion.[15]

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[9] FED. R. CRIM. P. 11(c) mandates that the defendant must understand the nature of the charge, the minimum sentenced provided by the law, and the maximum sentence provided by the law. This includes any supervised parole or special release term. FED. R. CIV. P. 11(h) provides in pertinent part: "(a) any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded."

[10] *See* People v. Melio, 760 N.Y.S.2d 216, 219 (N.Y. App. Div. 2003) (stating that, under the harmless error analysis in New York, the court must decide "whether the [court's] failure to inform the defendant of postrelease supervision affected his decision to plead guilty.").

[11] *Bonilla,* 775 N.Y.S.2d at 620.

[12] *Id* at 619.

[13] *Id.* (quoting People v. McDonald, 802 N.E.2d 131, 135 (N.Y. 2003)).

[14] *Id.*

[15] *Id.* at 620.

On July 18, 1999, Bonilla was arrested and charged with rape in the first degree, sodomy in the first degree and two counts of sexual abuse in the first degree.[16] The District Attorney made an offer to Bonilla to plead guilty to sexual abuse in the first degree.[17] Bonilla rejected the District Attorney's offer and opted for trial.[18] On the first day of trial, Bonilla asked if he could accept the District Attorney's previous plea bargain offer, but the court denied this request.[19] Subsequently, he asked to plead guilty to rape in the first degree, which the court allowed.[20] Bonilla pled guilty on September 11, 2000 and was sentenced on October 20, 2000 to "a five-year determinate sentence, the minimum sentence for this offense."[21]

Before Bonilla was sentenced, the court informed him twice that the maximum sentence the court could impose was twenty-five years.[22] Each time the court notified him of this and asked him whether he understood. Bonilla answered that he did.[23] Although he was aware that he could have been sentenced to a maximum of twenty-five years in prison, he was never expressly informed by either the court or his attorney "that there would be a

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[16] *Bonilla*, 2003 WL 1093042, at *1.
[17] *Id.*
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Bonilla*, 2003 WL 1093042, at *1.
[22] *Id.*
[23] *Id.*

period of post release supervision automatically added to his sentence."[24]

Bonilla claimed that his constitutional rights were violated when he was not informed of the mandatory period of post release supervision.[25] Specifically, he contended that his decision to plead guilty to rape was not "knowingly and intelligently" entered into and he was denied effective assistance of counsel; a fundamental right guaranteed under both the Federal and New York State Constitutions.[26]

Therefore, the court determined that Bonilla did not have to show that had he proceeded to trial, he would have been acquitted or received a lesser sentence in order to prove that his constitutional rights had been violated.[27] Rather, the court relied on the holding in *People v. McDonald*[28] in determining that the defendant must establish that "but for counsel's errors, [he] would not have pleaded guilty and would have insisted on going to trial."[29]

In *McDonald,* the court stated that, under the Federal Constitution, the test used to determine " 'the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the

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[24] *Id.*
[25] *Bonilla,* 775 N.Y.S.2d at 619.
[26] *Id.*
[27] *Id.*
[28] 802 N.E.2d at 131.
[29] *Bonilla,* 775 N.Y.S.2d at 619.

defendant.' "[30] The court went on to explain that those criminal defendants who claim that their guilty plea was not voluntary and intelligent in character due to ineffective assistance of counsel must meet certain requirements, which were established in *Strickland v. Washington*.[31]

In *Strickland,* the United States Supreme Court set forth the federal standard for determining whether a defendant had received ineffective assistance of counsel by establishing a two-part inquiry.[32] First, the defendant "must show that counsel's performance was deficient."[33] This prong essentially requires that the defendant demonstrate that counsel's representation did not meet an "objective standard of reasonableness."[34] In enacting this prong, the Court sought to uphold the general policy that all "defendants facing felony charges are entitled to the effective assistance of competent counsel."[35] Second, also referred to as the "prejudice prong," the court must determine "whether counsel's constitutionally ineffective performance affected the outcome of the plea process."[36] To meet this requirement, the defendant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted

[30] *McDonald,* 802 N.E.2d at 134 (quoting Hill v. Lockhart, 474 U.S. 52, 56 (1985)).
[31] 466 U.S. 668 (1984).
[32] *Id.* at 687.
[33] *Id.*
[34] *McDonald,* 802 N.E.2d at 134 (citing *Hill,* 474 U.S. at 58).
[35] *See* McMann v. Richardson, 297 U.S. 759, 771 (1970).
[36] *McDonald,* 802 N.E.2d at 134 (quoting *Hill,* 474 U.S. at 59).

on going to trial."[37] Although *Strickland* dealt with ineffective assistance of counsel in capital-sentencing proceedings, the Supreme Court held in *Hill v. Lockhart* that this two-part standard is applicable to ineffective assistance of counsel claims arising out of the plea process.[38]

"In many guilty plea cases, the 'prejudice' inquiry will closely resemble the inquiry engaged in by courts reviewing ineffective-assistance challenges to convictions obtained through a trial."[39] Under this analysis, the courts determine whether the defendant would have opted for trial rather than plead guilty by determining the likelihood of whether counsel's error would have changed the outcome of the trial.[40] For example, where a defendant claims that counsel's error was a failure to advise of a potential affirmative defense, the decision of whether he was prejudiced will focus on whether this defense would likely have succeeded at trial.[41] These predictions are made objectively, without regard for "the idiosyncrasies of the particular decisionmaker."[42] The federal courts have unanimously held that "supervised release" or "special parole" is a consequence of a plea in which a defendant must be informed.[43]

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[37] *Id.*
[38] *Hill*, 474 U.S. at 57.
[39] *Id.* at 59.
[40] *Id.*
[41] *Id. See also* Evans v. Meyer, 742 F.2d 371, 375 (7th Cir. 1984).
[42] *Strickland,* 466 U.S. at 695.
[43] *See* People v. Melio, 760 N.Y.S.2d 216, 218 (N.Y. App. Div. 2003). *See also* Ferguson v. United States, 513 F.2d 1011 (2d Cir. 1975); United States v. Yazbeck, 524 F.2d 641 (1st Cir. 1975).

Although similar in nature, the New York Court of Appeals has adopted a different approach for measuring counsel's performance.[44] In *People v. Baldi*,[45] the court established the standard for measuring counsel's performance under the New York Constitution, "[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 will have been met."[46]

The phrase "meaningful representation" is not synonymous with "perfect representation."[47] Rather, a defendant has received effective assistance of counsel when "he or she receives an advantageous plea and nothing in the record casts doubt on the apparent effectiveness of counsel."[48]

It is critical for the defendant to show that counsel did not demonstrate any strategic or necessary reasoning for their deficiency.[49] The courts evaluate counsel's representation objectively, and will hold counsel's performance to be constitutionally legitimate if he could demonstrate some reasoning for his legal strategy.[50] The courts focus on the quality of

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[44] People v. Benevento, 697 N.E.2d 584, 587 (N.Y. 1998).
[45] 429 N.E.2d 400 (N.Y. 1981).
[46] *Id.* at 405.
[47] People v. Ford, 657 N.E.2d 265, 268 (N.Y. 1995).
[48] *Id.*
[49] *Benevento*, 697 N.E.2d at 587.
[50] *See* People v. Lane, 457 N.E.2d 769, 770 (N.Y. 1983).

representation "as a whole rather than its particular impact on the outcome of the case."[51]

The Court of Appeals has refused to apply the "harmless error" analysis in cases involving "substantiated claims of ineffective assistance [of counsel]."[52] The harmless error analysis "involves a determination as to whether the Supreme Court's failure to inform the defendant of postrelease supervision affected his decision to plead guilty."[53] Under this analysis, the defendant must show that "he would not have entered his guilty plea if he had been properly advised [of the consequences of his plea]."[54] The courts cannot be held liable for failing to advise a defendant on all of the consequences of his plea. Therefore, the courts have distinguished between those in which a defendant must be advised, or "direct consequences," and those in which the courts need not inform a defendant, or "collateral consequences."[55]

In New York, mandatory post release supervision is considered to be a direct consequence of a plea.[56] The courts understand the importance for a defendant to be informed of "each essential component of the sentence agreed upon for a guilty plea to be deemed to have been knowing and voluntary."[57] In addition, the requirement of post release supervision is automatically

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[51] *Benevento*, 697 N.E.2d at 588.
[52] *Id.*
[53] *Melio*, 760 N.Y.S.2d at 219.
[54] *See* People v. Mason, 768 N.Y.S.2d 591, 592 (N.Y. App. Div. 2003).
[55] *Ford*, 657 N.E.2d at 267.
[56] *See* People v. Goss, 733 N.Y.S.2d 310, 313 (N.Y. App. Div. 2001). The Court of Appeals has not yet addressed this issue.
[57] *Id.*

included in every determinative sentence in accordance with Penal Law Section 70.45.[58] A violation of this supervision, at any time, will "subject the defendant to a further period of imprisonment of at least six months and up to the balance of the remaining period of post-release supervision."[59] Given the serious nature and consequences which a period of mandatory post release supervision entails, New York considers this a direct consequence that has a "definite, immediate and largely automatic effect" on a defendant's sentence.[60]

In contrast, collateral consequences will not result in vacating a plea because "they are peculiar to the individual and generally result from the actions taken by agencies the court does not control."[61] For example, failure to warn of loss of the right to travel abroad, civil service employment, or to possess firearms are all considered collateral consequences.[62]

The Court of Appeals has not adopted the two-prong analysis that resulted from *Strickland*.[63] The court contends that this test is not determinative of ineffective assistance of counsel under the New York Constitution.[64] A defendant's constitutional right to effective assistance to counsel is not measured by whether

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[58] *Id.* at 314. N.Y. PENAL LAW § 70.45(1) (McKinney 2004) states in pertinent part: "Each determinative sentence also includes, as a part thereof, an additional period of postrelease supervision."

[59] *Goss*, 733 N.Y.S.2d at 313.

[60] *Id.* (quoting *Ford*, 657 N.E.2d at 267).

[61] *Ford*, 657 N.E.2d at 268.

[62] *See* Meaton v. United States, 328 F.2d 379 (5th Cir. 1964); United States v. Crowley, 529 F.2d 1066 (3d Cir. 1976); Moore v. Hinton, 513 F.2d 781(5th Cir. 1976).

[63] People v. Leslie, 586 N.Y.S.2d 197, 200 (N.Y. Misc. 1992).

he would proceed with a trial rather than enter into a guilty plea if he was told the consequences of his actions. Rather, the New York Court of Appeals takes a broader approach and looks to whether the attorney's representation to his client was "meaningful."[65]

The main difference between the federal and state standards for determining whether counsel's representation was effective is that the New York Court of Appeals has adopted a more "flexible" standard.[66] The New York standard focuses on counsel's reputation as a whole, and seeks to ensure that the defendant was treated fairly rather than perfectly.[67] In contrast, the federal standard may seem more precise. Rather than a broad interpretation of "meaningful representation," the United States Supreme Court adopted a specific two-part inquiry.[68] Under this standard, a defendant must prove more than that he received less than adequate representation; he must also show that "the outcome of the proceedings would have been different."[69] However, both courts recognize the constitutional importance of guaranteeing adequate right to counsel.[70] They both premise their standards behind the notion of preserving the "unique adversarial system of criminal justice, the underlying presupposition of which is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go

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[64] *Id.*
[65] *Id.*
[66] *Benevento,* 697 N.E.2d at 587.
[67] People v. Henry, 744 N.E.2d 112, 114 (N.Y. 2000).
[68] *Id.*
[69] *Id.* (quoting *Strickland,* 466 U.S. at 694).

free" and "the necessity to insure the defendant that he is receiving fair treatment "in the adversary criminal process."[71]

In conclusion, the United States Supreme Court and New York Court of Appeals have adopted two different standards for determining a defendant's right to effective assistance of counsel.[72] The federal standard requires the defendant to show that he would not have pleaded guilty and, instead, would have proceeded to trial.[73] The New York standard does not require such a showing. New York courts reject the "harmless error analysis" adopted in *Strickland*.[74] Alternatively, the court requires that counsel provide their client with "meaningful representation."[75] Although the standards are different, both the Federal and State Courts seek to adhere to the general principle that "all defendants facing felony charges are entitled to the effective assistance of competent counsel."[76]

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[70] People v. Claudio, 629 N.E.2d 384, 386 (N.Y. 1983).
[71] *Id.*
[72] *Henry*, 744 N.E.2d at 114.
[73] *McDonald*, 802 N.E.2d at 134 (quoting *Hill*, 474 U.S. at 59).
[74] *Lane*, 457 N.E.2d at 771.
[75] *Baldi*, 429 N.E.2d at 400.
[76] *McMann*, 397 U.S. at 771.

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