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## **Court of Appeals of New York, People v. Taylor**

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Court of Appeals of New York, People v. Taylor

Cover Page Footnote

20 (1)

## COURT OF APPEALS OF NEW YORK

People v. Taylor<sup>1</sup>  
(decided December 23, 2003)

Davon Taylor was convicted in the Supreme Court of New York for the intentional second-degree murder of an enemy drug dealer.<sup>2</sup> Taylor appealed his conviction, claiming denial of effective assistance of counsel based on his attorney's failure to object to various questions asked of his sole alibi witness.<sup>3</sup> Additionally, Taylor claimed that parts of the prosecutor's summation affected the outcome of the case.<sup>4</sup> The Appellate Division, First Department, affirmed his conviction,<sup>5</sup> finding that effective assistance of counsel was provided in accordance with the Sixth Amendment of the Federal Constitution<sup>6</sup> and Article I, section 6 of the New York State Constitution.<sup>7</sup>

The New York Court of Appeals affirmed, holding that Taylor did not meet the burden necessary to prevail on a claim of

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<sup>1</sup> 2003 N.Y. LEXIS 4214 (N.Y. Dec. 23, 2003).

<sup>2</sup> *Id.* at \*1.

<sup>3</sup> *Id.* at \*2.

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

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

<sup>6</sup> U.S. CONST. amend. VI provides in pertinent part: "In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence."

<sup>7</sup> N.Y. CONST. art. I, § 6 provides 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. . . ."

ineffective assistance of counsel.<sup>8</sup> The court reiterated that a defendant claiming ineffective assistance of counsel must show the absence of strategies or trial tactics which would explain the failures of counsel.<sup>9</sup> The defendant must also show that there was no defense strategy or other “legitimate explanation” for counsel’s actions and within the circumstances of the particular case the defendant was without meaningful representation.<sup>10</sup>

Taylor’s claim of ineffectiveness of counsel was based on two distinct claims. First, defense counsel failed to object to questioning of the alibi witness, the mother of Taylor’s child, and failed to adequately discredit the prosecution’s witness’s statements against him which affected the outcome of the case.<sup>11</sup> Second, Taylor claimed that the attorney’s failure to object to a statement in the prosecutor’s summation, that the sole alibi witness was “bought and paid for,” impliedly indicated to the jury that the witness was testifying because she was receiving financial support from the defendant.<sup>12</sup> Taylor contended that this statement discredited his sole witness.<sup>13</sup> Upon examination of the record, the court found that defense counsel may have ceased her numerous objections on the legitimate belief that too many objections would result in alienation of the jury and annoyance of the court.<sup>14</sup> With

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<sup>8</sup> *Taylor*, 2003 N.Y. LEXIS 4214, at \*6.

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

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

<sup>11</sup> *Id.* at \*2, \*4.

<sup>12</sup> *Id.* at \*3 n.1.

<sup>13</sup> *Taylor*, 2003 N.Y. LEXIS 4214, at \*3.

<sup>14</sup> *Id.* at \*5.

respect to the second claim, the court found that the record did not indicate that the statement made about the witness affected defense counsel's performance, and that it was an "unfortunate" choice of words.<sup>15</sup> The court found sufficient evidence of defense counsel's active participation in all aspects of the trial, and her actions presented a "coherent, cogent defense."<sup>16</sup> Further, the court reasoned that "[a]n attorney who presents a well-grounded but unsuccessful defense will not later be held to have provided ineffective assistance of counsel, and thus a defendant will not be entitled to a vacatur of his conviction on such basis."<sup>17</sup>

The court based its holding on the requirement that to prove an ineffectiveness claim, the conduct of counsel must be proven unreasonable in light of all circumstances of the trial and objectively unrelated to a legitimate strategy to succeed.<sup>18</sup> The court found that Taylor's defense counsel may have had a reasonable strategy in mind when ceasing her objections, and her professional judgment allows her to reasonably rely on the strategy that the prosecution would alienate the jury by making objectionable remarks in his summation.<sup>19</sup> For these reasons, Taylor was unable to meet his burden, and the court held that he was not denied effective assistance of counsel.

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<sup>15</sup> *Id.* at \*3 n.1.

<sup>16</sup> *Id.* at \*4.

<sup>17</sup> *Id.* at \*4-\*5 (citing *People v. Baldi*, 429 N.E.2d 400, 401 (N.Y. 1981)).

<sup>18</sup> *Taylor*, 2003 N.Y. LEXIS 4214, at \*5.

<sup>19</sup> *Id.* at \*5-\*6.

In *Strickland v. Washington*,<sup>20</sup> the United States Supreme Court held that a defendant will be deemed to have received effective counsel under the Sixth Amendment when defense counsel's conduct is within a professionally reasonable range of judgment.<sup>21</sup> The Court held that a presumption of adequate performance is applicable because it has become too easy to review defense counsel's conduct in hindsight and find it unreasonable.<sup>22</sup> The factors relevant to the Court's decision included whether the conduct of counsel was deficient so that the defendant was actually denied "counsel" and that the deficiency prejudiced the defense.<sup>23</sup>

The defendant in *Strickland* claimed that he was denied effective assistance of counsel.<sup>24</sup> He based his argument on six claims: his attorney's failure to move for a continuance before sentencing, to seek a pre-sentence investigation report, to present meaningful arguments at the sentencing hearing, to investigate the medical evidence thoroughly; to request a psychiatric report, and to develop character evidence through the use of witnesses.<sup>25</sup> The Court found no basis for the first four claims, but addressed the claims of failure to request a psychiatric report and failure to develop character evidence in light of the Sixth Amendment.<sup>26</sup>

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<sup>20</sup> 466 U.S. 668 (1984).

<sup>21</sup> *Id.* at 699.

<sup>22</sup> *Id.* at 689.

<sup>23</sup> *Id.* at 687.

<sup>24</sup> *Id.* at 671.

<sup>25</sup> *Strickland*, 466 U.S. at 675.

<sup>26</sup> *Id.* at 676.

The Court held that a successful Sixth Amendment claimant must show two elements – deficient performance by defense counsel and sufficient prejudice caused by that defense which clearly renders the verdict unreliable.<sup>27</sup> Under the federal standard, deficient performance requires that defense counsel's errors are so material that the professional knowledge and skill required to obtain just results under the Constitution are lacking.<sup>28</sup> The standard of attorney performance is “reasonably effective assistance,” where the defendant must show that counsel was incompetent in his or her decisions and the conduct was below an objective standard of reasonableness, based on the totality of the circumstances and measured under prevailing professional norms.<sup>29</sup> The purpose of the Sixth Amendment, ensuring a defendant a fair trial, is the benchmark for judging all ineffectiveness claims.<sup>30</sup> Under the second required element, sufficient prejudice, the defendant must show that the purpose of the Sixth Amendment, to ensure a fair trial and reliable result, is defeated by the deficient performance.<sup>31</sup> The appropriate test for prejudice is whether there “is a reasonable probability that, but for counsel’s unprofessional errors,” the verdict would have been different.<sup>32</sup>

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<sup>27</sup> *Id.* at 687.

<sup>28</sup> *Id.* at 685 (“Sixth Amendment recognizes the right to the assistance of counsel because it envisions counsel’s playing a role that is critical to the ability of the adversarial system to produce just results.”).

<sup>29</sup> *Id.* at 687-88.

<sup>30</sup> *Strickland*, 466 U.S. at 686.

<sup>31</sup> *Id.* at 687.

<sup>32</sup> *Id.* at 694.

In *Strickland*, the Court found that there was a strategic choice involved in counsel's failure to argue mental instability and that his choices were within reasonable professional judgment.<sup>33</sup> Therefore, there was no reasonable probability that counsel's errors unfairly affected the outcome.<sup>34</sup>

The federal standard is less restrictive than the New York standard because it allows measuring adequate legal assistance against the "wide latitude counsel must have in making tactical decisions."<sup>35</sup> The New York courts have incorporated a "meaningful representation standard"<sup>36</sup> where the defendant has the burden of proving that counsel's actions constituted "egregious and prejudicial conduct" which resulted in an unfair trial.<sup>37</sup>

In *People v. Baldi*,<sup>38</sup> the Court of Appeals of New York applied the traditional standard requiring that the attorney's conduct render "the trial a farce and a mockery of justice."<sup>39</sup> The court evaluated the conduct of the attorney and found that his strategy was one accepted by law and, therefore, did not offend traditional notions of fairness.<sup>40</sup> The defendant, Joseph Baldi, charged with murder and burglary, claimed that his sanity had not been proven beyond a reasonable doubt and that his counsel's assistance was ineffective because he argued an insanity defense

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<sup>33</sup> *Id.* at 699.

<sup>34</sup> *Id.* at 700.

<sup>35</sup> *Strickland*, 466 U.S. at 689.

<sup>36</sup> *People v. Benevento*, 697 N.E.2d 584, 587 (N.Y. 1998).

<sup>37</sup> *Id.* at 588.

<sup>38</sup> 429 N.E.2d 408 (N.Y. 1981).

<sup>39</sup> *Id.* at 405.

<sup>40</sup> *Id.* at 407.



instead of innocence. The court found that the defense was reasonable because Baldi had been found incompetent to stand trial.<sup>41</sup> Since the defense was found to be well-grounded, even though it was ultimately unsuccessful, the court rejected the contention that a reversal of Baldi's conviction was warranted by an ineffective assistance of counsel claim because the conduct of his attorney was both reasonable and competent.<sup>42</sup>

In *People v. Benevento*,<sup>43</sup> the Court of Appeals of New York applied the *Baldi* test and held that absent "egregious and prejudicial" error inducing an unreliable and unjust result, meaningful representation was provided to the defendant.<sup>44</sup> Benevento was convicted of second degree robbery and sentenced to prison.<sup>45</sup> The Appellate Division, First Department reversed, finding that Benevento was deprived of effective assistance of counsel in a criminal proceeding.<sup>46</sup> Benevento's claim was based on his dissatisfaction with counsel's method of pleading lack of intent as his defense.<sup>47</sup> During the trial, defense counsel argued that although the defendant admitted to the assault, he was too intoxicated to form the requisite intent.<sup>48</sup> He also argued, in support of his strategy, that in light of the circumstances that Benevento had two hundred dollars on him at the time of the

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<sup>41</sup> *Id.* at 405.

<sup>42</sup> *Id.* at 408.

<sup>43</sup> 697 N.E.2d at 584.

<sup>44</sup> *Id.* at 588.

<sup>45</sup> *Id.* at 586.

<sup>46</sup> *Id.* at 585.

<sup>47</sup> *Id.* at 586.

<sup>48</sup> *Benevento*, 697 N.E.2d at 586.

alleged robbery, he had no rational motive to steal fifteen dollars from the victim.<sup>49</sup> On appeal, the Court of Appeals reversed, finding that counsel presented a well-established and viable defense in response to the evidence at trial.<sup>50</sup>

The court reasoned that “[t]o prevail on a claim of ineffective assistance, defendants must demonstrate that they were deprived of a fair trial by less than meaningful representation; a simple disagreement with strategies, tactics, or the scope of possible cross-examination, weighed long after the trial, does not suffice. . . .”<sup>51</sup> Applying the reasonableness standard set forth in *Baldi*, the court reiterated that “meaningful representation” does not mean “perfect representation.”<sup>52</sup> The stringent nature of this standard requires a defendant to prove that he or she was provided less than reasonable assistance of counsel.

The New York standard is higher and the burden is substantially heavier than the federal standard because in New York the defendant must prove both that defense counsel’s efforts had no rational connection to a “reasonable and legitimate strategy”<sup>53</sup> and that he or she was objectively incompetent to serve

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<sup>49</sup> *Id.* at 586.

<sup>50</sup> *Id.* at 585.

<sup>51</sup> *Id.* at 587.

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

<sup>53</sup> *See, e.g.,* *People v. Tonge*, 710 N.E.2d 653 (N.Y. 1999) (holding that defense counsel’s failure to object to improper remarks made by the prosecutor during summation reflected a reasonable and legitimate strategy under the circumstances and evidence presented); *People v. Ryan*, 682 N.E.2d 977 (N.Y. 1997) (holding that the defendant failed to establish an ineffectiveness claim because the actions of the defense counsel could be attributed to tactical trial decisions); *People v. Rivera*, 525 N.E.2d 698 (N.Y. 1988) (holding that counsel’s failure to seek a pretrial hearing does not, by itself, establish

the client's best interests. Both standards focus on the right to a fair trial and a reliable verdict, but fairness is measured against different standards – the federal standard is a reasonableness standard where the defendant must prove that the conduct was not within his reasonable expectations, and, in New York, a reasonableness standard where almost any conduct will be considered legitimate unless clearly “egregious and prejudicial.”<sup>54</sup> Furthermore, in New York the court must examine whether counsel's errors “were so prejudicial” that they deprived the defendant of a fair trial,<sup>55</sup> whereas the federal standard examines prejudicial effect in terms of the professionalism of counsel's actions where there must be “a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.”<sup>56</sup>

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ineffective assistance of counsel because it can be attributed to many other things).

<sup>54</sup> *Benevento*, 697 N.E.2d at 588.

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

<sup>56</sup> *Id.* at 587-88 (citing *Strickland*, 466 U.S. at 694).