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Right to Jury Trial, Supreme Court, Dutchess County: People v. McIntosh

New York law parallels federal law in its recognition of the constitutional infirmities present in *United States v. Jackson*.[90] However, New York's plea bargain provisions, unlike the statute in *Jackson*, have been upheld despite constitutional challenges, because they require prosecutor and defendant to agree on a prison sentence instead of permitting defendant to unilaterally choose to avoid the risk of death.[91] This practice of plea bargaining has "been repeatedly approved by Federal and New York courts."[92] Indeed, the New York Court of Appeals, recognized as the policy-making tribunal of the State,[93] has categorically endorsed the plea bargaining process.[94] The system of negotiating sentences not only alleviates the great volume of criminal prosecutions, "it provides a means where, by mutual concessions, the parties may obtain a prompt resolution of criminal proceedings with all the benefits that inure from final disposition."[95]

COUNTY COURT

DUTCHESS COUNTY

People v. McIntosh[96]
(decided August 4, 1997)

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[90] *Id.* at 690-91.

[91] *Id.* at 693.

[92] *McIntosh*, 173 Misc. 2d at 730, 662 N.Y.S.2d at 216.

[93] *Hynes*, 666 N.Y.S.2d at 692.

[94] *See* People v. Seaberg, 74 N.Y.2d 1, 541 N.E.2d 1022, 543 N.Y.S.2d 968 (1989).

[95] *Id.* at 7, 541 N.E.2d at 1024, 543 N.Y.S.2d at 970 (noting the vital role that plea bargaining plays in our criminal justice system, "enabl[ing] the parties to avoid the delay and uncertainties of trial and appeal and permit[ing] swift and certain punishment of law violators with sentences tailored to the circumstances of the case at hand") (citation omitted).

[96] 173 Misc. 2d 727, 662 N.Y.S.2d 214 (Dutchess County Ct. 1997)

Defendant, Dalkeith McIntosh, "move[d] for an order invalidating and striking down Criminal Procedure Law § 220.10(5)[e][97] . . . to the extent [it] provide[s] that a sentence of death for the crime of first degree murder pursuant to Penal Law § 125.27[98] can only be imposed upon a conviction after trial and cannot be imposed as the result of a guilty plea."[99]

Defendant argued that this restriction infringes upon his Sixth Amendment rights[100] by denying defendant the opportunity to seek a jury trial for fear that the penalty imposed after a jury trial may exceed the severity of the penalty imposed if he entered a plea of guilty.[101] In addition, defendant argued that Criminal Procedure Law § 320.10[102] should also be invalidated because it

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[97] N.Y. CRIM. PRO. LAW § 220.10(5)[e] (McKinney Supp. 1998). Section 220.10(5)[e] provides in pertinent part:

> A defendant may not enter a plea of guilty to the crime of murder in the first degree as defined in section 125.27 of the penal law; provided, however, that a defendant may enter such a plea with both the permission of the court and the consent of the people when the agreed upon sentence is either life imprisonment without parole or a term of imprisonment for the class A-1 felony of murder in the first degree other than a sentence of life imprisonment without parole.

Id.

[98] N.Y. PENAL LAW § 125.27 (McKinney 1998).

[99] *McIntosh*, 173 Misc. 2d at 728, 662 N.Y.S.2d at 215.

[100] U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "[I]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed." *Id.* *See* N.Y. CONST. art. I, § 2 which provides in pertinent part: "A jury trial may be waived by the defendant in all criminal cases, except in those in which the crime charged may be punishable by death." *Id.*

[101] *McIntosh*, 173 Misc. 2d at 728, 662 N.Y.S.2d at 215.

[102] N.Y. CRIM. PRO. LAW § 320.10 (McKinney 1997). Section 320.10 provides:

> Except where the indictment charges the crime of murder in the first degree, the defendant, subject to the provisions of subdivision two, may at any time before trial waive a jury trial and consent to a trial without a jury in the superior court in which the indictment is pending.

Id.

"forbids waiver of a jury trial in cases involving charges of first degree murder."[103]

The court first addressed defendant's claim that his right to a jury trial protected by the Sixth Amendment was violated by CPL § 220.10(5)[e].[104] The court held that although defendant's claim that he is coerced to forgo his right to a jury trial is not without merit,[105] "a State statute carries a strong presumption of validity and ordinarily it should not be set aside as unconstitutional unless such a conclusion is established beyond a reasonable doubt."[106] The court stated "it would be overstepping its bounds . . . to strike down [such a] statute."[107] Second, defendant's contention that CPL § 320.10, which forbids waiver of jury trial in first degree murder cases, should be invalidated, was also denied.[108] The court noted that defendant has no recognized "Federal constitutional right to a bench trial in . . . capital case[s]."[109] "[S]ince the New York State Constitution specifically forbids a jury trial waiver . . . [in first degree murder cases], defendant's motion to declare CPL § 320.10 unconstitutional is denied."[110]

Indicted for first degree murder,[111] defendant relied on *U.S. v. Jackson*[112] as precedent for his motion to declare CPL § 220.10(5)[e] unconstitutional.[113] In *Jackson*, the United States Supreme Court held that the Federal Kidnapping Act "needlessly

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[103] *McIntosh*, 173 Misc. 2d at 728, 662 N.Y.S.2d at 215.

[104] *Id.* at 729, 662 N.Y.S.2d at 216.

[105] *Id.* The court also noted that there has been disagreement between two New York Trial Judges on this point. *Id. See also* People v. Hale, 173 Misc. 2d 140, 661 N.Y.S.2d 457 (Sup. Ct. Kings County), *rev'd sub nom.* Hynes v. Tomei, 666 N.Y.S.2d 687 (2d Dep't 1997) ("Under New York law, a defendant may avoid the risk of death only by pleading guilty, waiving both rights: his right to a jury trial, and his privilege against self-incrimination."). *See, e.g.*, People v. Chinn, N.Y. L.J, 11/19/96, p.31, col.3 (Mulroy, J.).

[106] *McIntosh*, 173 Misc. 2d at 734, 662 N.Y.S.2d at 219.

[107] *Id.*

[108] *Id.* at 734-35, 662 N.Y.S.2d at 219.

[109] *Id.* at 735, 662 N.Y.S.2d at 220.

[110] *Id.*

[111] *Id.* at 728, 662 N.Y.S.2d at 215.

[112] 390 U.S. 570 (1968).

[113] *McIntosh,* 173 Misc. 2d at 729, 662 N.Y.S.2d at 215-16.

chilled a defendant's right to assert his innocence and to have a trial.[114] The Act set forth no provision for defendants who plead guilty to receive a death sentence, however, the Act did provide a death sentence for those defendants who chose to exercise their rights under the Fifth and Sixth Amendments.[115] Defendant argued that CPL § 220.10(5)[e] similarly chills his right to a jury trial because he is subject to a harsher penalty if he exercises his rights protected by the Fifth and Sixth Amendments.[116] Defendant further argued that such restriction coerced him to plead guilty in order to avoid the possibility of a death penalty sentence.[117]

The *McIntosh* court distinguished *United States v. Jackson* from the case at bar primarily by recognizing that the Federal Kidnapping Act provided the defendant with the right to unilaterally enter a guilty plea.[118] Here, CPL § 220.10(5)[e] does not provide the defendant with a unilateral right to avoid a possible death sentence.[119] In New York, there is a strong policy set forth by the State to enforce the death penalty in heinous crimes.[120] Hence, a defendant accused of such a crime does not have an automatic right to enter a plea of guilty and receive a less severe penalty.[121]

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[114] *Id.* at 729, 662 N.Y.S.2d at 216. *See Jackson*, 390 U.S. at 581.

[115] *Jackson*, 390 U.S. at 570-71. *See* Federal Kidnapping Act, 18 U.S.C. § 1201 (a) This section provides in pertinent part:

> Whoever knowingly transports in interstate . . . commerce, any person who has been unlawfully . . . kidnapped . . . and held for ransom . . . or otherwise . . . shall be punished (1) by death if the kidnapped person has not been liberated unharmed, and if the verdict of the jury shall so recommend, or (2) by imprisonment for any term of years or for life, if the death penalty is not imposed."

Id.

[116] *McIntosh*, 173 Misc. 2d at 730, 662 N.Y.S.2d at 216.

[117] *Id.* at 728, 662 N.Y.S.2d at 215.

[118] *Id.* at 729, 662 N.Y.S.2d at 215. *See Jackson*, 390 U.S. at 581.

[119] *McIntosh,* 173 Misc. 2d at 730, 662 N.Y.S.2d at 216.

[120] *Id.*

[121] *Id.* at 729, 662 N.Y.S.2d at 216.

Under the New York statute at issue, a defendant is required to receive the consent of the district attorney and the court in order to enter a guilty plea.[122] Herein lies the distinction between the Federal Kidnapping Act and the statute at issue. The defendant cannot unilaterally avoid the possibility of a death sentence under the New York statute; whereas in the Federal Kidnapping Act, the defendant could unilaterally avoid a death penalty sentence by entering a plea of guilty.[123] In the latter situation, there is a greater potential for coercion to forgo constitutional protections in order to avoid the death penalty.[124] The defendant is more likely to voluntarily and unilaterally waive his rights protected by the Fifth and Sixth Amendments to insure that he will not be put to death.[125]

The *McIntosh* court discussed three other justifications for upholding the constitutionality of CPL § 220.10(5)[e].[126] First, the court recognized that reserving the right to require the defendant to stand trial for the accused crime and allowing the defendant to negotiate with the district attorney and the court for a more favorable sentence amounted to ordinary plea-bargaining.[127] The court concluded that plea bargaining is vital to the criminal justice system and without it, our system as we know it, would deteriorate.[128] Plea bargaining permits "conservation of prosecutorial and judicial resources, . . . prompt resolution of criminal proceedings with all the benefits that enure from final disposition, . . . and avoid[s] delay and [the] uncertainties of trial and appeal."[129]

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[122] *Id.* at 729-30, 662 N.Y.S.2d at 216.

[123] *Id.*

[124] *Id.* at 733, 662 N.Y.S.2d at 218.

> In *Jackson*, the defendant was needlessly encouraged to give up his rights to plead guilty and to have a jury trial in order to obtain the benefit of a non-death sentence, since nothing other than the defendant's waivers of his right to maintain his not guilty plea and his right to a jury trial had to occur. *Id.*

[125] *Id.* at 733, 662 N.Y.S.2d at 218.

[126] *See infra* notes 32-42 and accompanying text.

[127] *McIntosh,* 173 Misc. 2d at 730, 662 N.Y.S.2d at 216.

[128] *Id.*

[129] *Id.* at 730, 662 N.Y.S.2d at 216-17.

Second, the court discussed the bifurcated trial provision inherent in capital punishment sentences.[130] A verdict of guilty entered against a defendant does not, in and of itself, render a death sentence.[131] The defendant is allowed to introduce evidence of mitigating circumstances and the jury may determine whether or not a death sentence is warranted.[132] Therefore, a verdict of guilty after trial does not automatically subject the defendant to the death penalty.

Third, New York has taken the position that heinous crimes should receive the harshest penalty.[133] Therefore, just as the *Jackson* Court recognized that "a criminal defendant has no absolute right to have his guilty plea accepted by the court,"[134] New York has simply chosen to participate in the decision of whether or not a defendant's plea will be accepted.[135] Moreover, the *McIntosh* court noted that New York considered the compelling public policy argument against allowing a plea of guilty with a resulting death penalty sentence.[136] New York concluded that allowing a guilty plea with a resulting death sentence would amount to state assisted suicide and the State does not want to assist a defendant in committing suicide.[137]

The decision in *McIntosh*, and CPL § 220.10(5)[e] are in accord with federal law.[138] The Court in *Jackson* recognized that a defendant's rights might be abridged when there is a coercive provision that encourages needless waiver of Fifth and Sixth Amendment rights.[139] However, in *Brady v. United States*,[140]

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[130] *Id.* at 732, 662 N.Y.S.2d at 217.

[131] *Id.* "Further, under the current New York scheme a defendant, even if found guilty after a jury trial, is not automatically subject to a death sentence." *Id.*

[132] *Id.* at 732, 662 N.Y.S.2d at 217-18.

[133] *Id.* at 730, 662 N.Y.S.2d at 216.

[134] United States v. Jackson, 390 U.S. 570, 584 (1968) (citing Lynch v. Overholser, 369 U.S. 705,719 (1962)).

[135] *McIntosh,* 173 Misc. 2d at 731, 662 N.Y.S.2d at 217.

[136] *Id.* at 732, 662 N.Y.S.2d at 218.

[137] *Id.*

[138] *See supra* notes 14-15 and accompanying text.

[139] *Jackson*, 390 U.S. at 583. "Whatever the power of Congress to impose a death penalty for violation of the Federal Kidnapping Act, Congress cannot

decided two years after *Jackson*, the Court affirmed a guilty plea under the Federal Kidnapping Act finding that the plea involved in that case was validly entered, notwithstanding that defendant might have been partially motivated by his fear of the death penalty.[141] The Court based its decision on the absence of coercive tactics.[142]

Moreover, the *Brady* Court recognized the indispensable part plea bargaining plays in our criminal justice system today.[143] The ability of a defendant to negotiate with the State, even if such negotiation leads to the waiver of certain rights is acceptable practice.[144]

> It is this mutuality of advantage that perhaps explains the fact that at present well over three-fourths of the criminal convictions in this country rest on pleas of guilty, a great many of them no doubt motivated at least in part by the hope or assurance of a lesser penalty than might be

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impose such a penalty in a manner that needlessly penalizes the assertion of a constitutional right." *Id.*

[140] Brady v. United States, 397 U.S. 742 (1970).

[141] *Id.* at 755. The Court stated that:

> [t]he standard as to the voluntariness of guilty pleas must be essentially that defined by Judge Tuttle of the Court of Appeals for the Fifth Circuit: 'a plea of guilty entered 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, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g. bribes).' Under this standard, a plea of guilty is not invalid merely because entered to avoid the possibility of a death penalty.

Id. (quoting Shelton v. United States, 246 F.2d 571, 572 n.2 (5th Cir. 1957) (en banc) *rev'd on other grounds* 356 U.S. 26 (1958)).

[142] *Id.*

[143] *Id.* at 749-52, *See McIntosh*, 173 Misc. 2d at 730, 662 N.Y.S.2d at 214.

[144] *Brady*, 379 U.S. at 749-52.

> imposed if there were a guilty verdict after a trial to judge or jury.[145]

Additionally, the court in *McIntosh* noted that "'[t] he pleading process necessarily includes the surrender of many guaranteed rights but when there is no constitutional or statutory mandate and no public policy prohibiting it, an accused may waive any right which he or she enjoys.'"[146]

Ultimately, the *McIntosh* court affirmed the constitutionality of CPL § 220.10(5)[e].[147] In addition, defendant's claim that he was entitled to waive a jury trial in favor of a bench trial was unsupported by the Federal Constitution and specifically forbidden by the New York Constitution.[148]

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[145] *Id.* at 752.

[146] *McIntosh*, 173 Misc. 2d at 730, 662 N.Y.S.2d at 217 (quoting Schick v. United States, 195 U.S. 65, 72 (1904)).

[147] *See supra* note 97 and accompanying text.

[148] *McIntosh*, 173 Misc. 2d at 735, 662 N.Y.S.2d at 220.