



1994

## Ineffective Assistance of Counsel: People v. Claudio

Follow this and additional works at: <https://digitalcommons.tourolaw.edu/lawreview>



Part of the [Constitutional Law Commons](#), [Criminal Procedure Commons](#), and the [State and Local Government Law Commons](#)

---

### Recommended Citation

(1994) "Ineffective Assistance of Counsel: People v. Claudio," *Touro Law Review*. Vol. 10: No. 3, Article 45.  
Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol10/iss3/45>

This New York State Constitutional Decisions is brought to you for free and open access by Digital Commons @ Touro Law Center. It has been accepted for inclusion in Touro Law Review by an authorized editor of Digital Commons @ Touro Law Center. For more information, please contact [lross@tourolaw.edu](mailto:lross@tourolaw.edu).

et al.: Ineffective Assistance of Counsel  
**INEFFECTIVE ASSISTANCE OF COUNSEL**

*N.Y. CONST. art. I, § 6:*

*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 . . . .*

*U.S. CONST. amend VI:*

*In all criminal prosecutions, the accused shall . . . have the Assistance of Counsel for his defence.*

## **COURT OF APPEALS**

People v. Claudio<sup>1304</sup>  
(decided December 21, 1993)

Defendant claimed that his right to the effective assistance of counsel, pursuant to the State Constitution,<sup>1305</sup> was violated when he made inculpatory statements to the District Attorney's representative upon the advice of his retained attorney.<sup>1306</sup> The New York Court of Appeals held that defendant's constitutional right was not violated because "the State is not charged with the responsibility of guaranteeing effective legal counsel upon the entry of counsel at the preaccusatory, investigatory stage of the criminal matter . . . ." <sup>1307</sup>

In 1980, defendant was indicted for the homicide of a high school student.<sup>1308</sup> Upon the advice of his retained counsel,

---

1304. 83 N.Y.2d 76, 629 N.E.2d 384, 607 N.Y.S.2d 912 (1993).

1305. N.Y. CONST. art. I, § 6. This provision states in 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 . . . ." *Id.*

1306. *Claudio*, 83 N.Y.2d at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913.

1307. *Id.*

1308. *Id.* at 78, 629 N.E.2d at 384, 607 N.Y.S.2d at 912. On the morning of May 15, 1980, a sixteen year old high school student was robbed and fatally shot after she had returned from her prom. *People v. Claudio (Claudio I)*, 59 N.Y.2d 556, 558, 453 N.E.2d 500, 500, 466 N.Y.S.2d 271, 271 (1983). Four days later, the police, in response to an anonymous tip, went to the home of

defendant made incriminating statements to the District Attorney's representative.<sup>1309</sup> The indictment was based primarily on these statements.<sup>1310</sup> In 1983, the New York Court of Appeals "affirmed the denial of defendant's motion to suppress [these] inculpatory statements,"<sup>1311</sup> holding that defendant's Sixth Amendment<sup>1312</sup> right to effective counsel was not violated.<sup>1313</sup>

Subsequently, defendant petitioned the Second Circuit Court of Appeals for a writ of habeas corpus.<sup>1314</sup> After granting the writ, the Second Circuit stated that defendant should be released from the custody of the state unless he was afforded an opportunity to present his state constitutional claim to the New York Court of Appeals.<sup>1315</sup>

The court found that the defendant's right to effective legal counsel was not violated by using his inculpatory statements for the basis of the indictment, reasoning that the statements were made at the preaccusatory stage of the criminal investigation.<sup>1316</sup> Moreover, the court stated that, although defendant's attorney

defendant Angel Claudio. *Id.* Defendant accompanied the police to the police station and told them he had been asleep at home at the time of the murder. *Id.* Thereafter, defendant retained counsel to represent him in connection with the shooting. *Id.* at 558-59, 453 N.E.2d at 501, 466 N.Y.S.2d at 271.

1309. *Claudio*, 83 N.Y.2d at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913. After defendant and his attorney arrived at the District Attorney's office, a prosecutor told the attorney that there was insufficient evidence to charge defendant unless he confessed, and that there would be no plea bargain for defendant. *Claudio I*, 59 N.Y.2d at 559, 453 N.E.2d at 501, 466 N.Y.S.2d 272. With his attorney present, defendant was interviewed by the authorities, and made extensive inculpatory admissions, resulting in his arrest. *Id.*

1310. *Claudio*, 83 N.Y.2d at 78, 79, 629 N.E.2d at 384-85, 607 N.Y.S.2d at 913.

1311. *Id.* at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913.

1312. U.S. CONST. amend. VI. The Sixth Amendment states in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." *Id.*

1313. *Claudio*, 83 N.Y.2d at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913.

1314. *Id.*

1315. *Claudio*, 83 N.Y.2d at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913 (citing *Claudio v. Scully*, 982 F.2d 798, 806 (2d Cir. 1992)).

1316. *Claudio*, 83 N.Y.2d at 78, 629 N.E.2d at 385, 607 N.Y.S.2d at 913.

gave incompetent advice, “the prosecutor and the police scrupulously honored the defendant’s relationship with his retained attorney.”<sup>1317</sup>

In reaching its conclusion, the court relied first on the basic purposes and constitutional interests inherent in a criminal defendant’s right to counsel under both the New York Constitution and the Federal Constitution.<sup>1318</sup> The court stated that, in our adversary system of criminal justice, these purposes and interests of defendant’s right to counsel are “that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free,”<sup>1319</sup> and that an advocate must be sufficiently competent to “insure ‘fairness in the adversary criminal process.’”<sup>1320</sup> Furthermore, the court stated that “[t]he right to the effective

---

1317. *Id.* at 79, 629 N.E.2d at 385, 607 N.Y.S.2d at 913. Defendant argued that once his state right to counsel is in effect, all other constitutional guarantees associated with it simultaneously spring into effect. *Id.* In making this argument, defendant relied on *People v. Skinner*, 52 N.Y.2d 24, 417 N.E.2d 501, 436 N.Y.S.2d 207 (1980). In *Skinner*, the court stated that a defendant, when considering whether to waive his rights at the preaccusatory stage, has the right to have an attorney present, and that defendant cannot make an effective waiver of counsel unless it is made in the presence of that counsel. *Id.* at 28, 417 N.E.2d at 503, 436 N.Y.S.2d at 209. The defendant interpreted this statement to mean that once he had the right to counsel, he automatically had the right to effective assistance of counsel. *Claudio*, 83 N.Y.2d at 79, 629 N.E.2d at 385, 607 N.Y.S.2d at 913. The court, in the case at bar, stated that *Skinner* was inapplicable because the purpose of its holding was to prevent official overreaching and ensure the defendant will be able to communicate through counsel if he so chooses. *Id.* at 81-82, 629 N.E.2d at 387, 607 N.Y.S.2d at 915. Furthermore, *Skinner* cannot extend the right to effective assistance of counsel to the preaccusatory stage because that right has a different purpose which is to preserve our adversarial system of criminal justice. *Id.*

1318. *Claudio*, 83 N.Y.2d at 79-82, 629 N.E.2d at 385-87, 607 N.Y.S.2d at 913-15.

1319. *Id.* at 79, 629 N.E.2d at 386, 607 N.Y.S.2d at 914 (quoting *United States v. Cronin*, 466 U.S. 648, 655 (1984) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975))).

1320. *Id.* at 80, 629 N.E.2d at 386, 607 N.Y.S.2d at 914 (quoting *United States v. Morrison*, 449 U.S. 361, 364 (1981)).

assistance of counsel is recognized not for its own sake, but because of the effect it has on the ability of the accused to receive a fair trial.”<sup>1321</sup> These are the same concerns that are embodied in New York’s standard to insure effective assistance of counsel to the criminal defendant.<sup>1322</sup> The court reasoned that the above intrinsic premises and purposes of the constitutional right to effective counsel imply that it is “not triggered until adversarial judicial criminal proceedings have been instituted against a defendant . . . .”<sup>1323</sup>

Additionally, in reaching its conclusion, the court relied on several federal and state court decisions. For example, in *Kirby v. Illinois*,<sup>1324</sup> the United States Supreme Court held that a person’s Sixth Amendment right to counsel “attaches only at or after the time that adversary judicial proceedings have been initiated against him.”<sup>1325</sup> However, the Supreme Court found

1321. *Id.* (quoting *United States v. Cronin*, 466 U.S. at 648, 658 (1984)). Additionally, in *Strickland v. Washington*, 466 U.S. 668 (1984), the United States Supreme Court set out a two-part test to show that defendant’s assistance of counsel was so defective as to warrant reversal. *Id.* at 685.

[A] fair trial is one in which evidence subject to adversarial testing is presented to an impartial tribunal for resolution of issues defined in advance of the proceeding. The right to counsel plays a crucial role in the adversarial system embodied in the Sixth Amendment, since access to counsel’s skill and knowledge is necessary to accord defendants ‘ample opportunity to meet the case of the prosecution’ to which they are entitled.

*Id.* at 685.

1322. *Claudio*, 83 N.Y.2d at 80, 629 N.E.2d at 386, 607 N.Y.S.2d at 914. In *People v. Baldi*, the court stated New York’s standard to ensure effective assistance of counsel to a criminal defendant. “So long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement will have been met.” *Baldi*, 54 N.Y.2d 137, 147, 429 N.E.2d 400, 405, 444 N.Y.S.2d 893, 898 (1981).

1323. *Claudio*, 83 N.Y.2d at 80, 629 N.E.2d at 386, 607 N.Y.S.2d at 914.

1324. 406 U.S. 682 (1972).

1325. *Id.* at 688. Other decisions support this same proposition. *See, e.g.*, *Coleman v. Alabama*, 399 U.S. 1 (1970) (holding that a defendant’s Sixth Amendment right to counsel attaches at the time of a preliminary hearing); *United States v. Wade*, 388 U.S. (1967) (holding that a post-indictment pretrial lineup at which the accused is exhibited to identifying witnesses is a critical

that, although the defendants had no lawyer present when the victim initially identified them, their Sixth Amendment right to counsel was not violated because it took place *before* the commencement of any prosecution.<sup>1326</sup>

Similarly, the state constitutional right to “effective assistance of counsel does not arise until the commencement of adversarial judicial proceedings . . . .”<sup>1327</sup> In *People v. Claudio (Claudio I)*,<sup>1328</sup> the New York Court of Appeals held that this defendant’s right to effective counsel under the Sixth Amendment had not been violated by taking his confession at the preaccusatory stage because no criminal proceedings had begun.<sup>1329</sup> Additionally, the court in *Claudio I* reasoned that because defendant had no right to a lawyer when he confessed, he likewise cannot be “rewarded by a suppression order merely because he chose to bring a lawyer who proved valueless.”<sup>1330</sup> Furthermore, defendant had no right

---

stage of the criminal prosecution and accused has the Sixth Amendment right to have counsel present); *Powell v. Alabama*, 287 U.S. 45 (1932) (holding that defendants’ Sixth Amendment right to counsel attaches at the time of their arraignment because it is a critical period of the criminal proceedings).

1326. *Kirby*, 406 U.S. at 690. The Court stated:

The initiation of judicial criminal proceedings is far from a mere formalism. It is the starting point of our whole system of adversary criminal justice. For it is only then that the government has committed itself to prosecute, and only then that the adverse positions of government and defendant have solidified. It is then that a defendant finds himself faced with the prosecutorial forces of organized society, and immersed in the intricacies of substantive and procedural criminal law. It is at this point, therefore, that marks the commencement of the “criminal prosecutions” to which alone explicit guarantees of the Sixth Amendment are applicable.

*Id.* at 689-90.

1327. *Claudio*, 83 N.Y.2d at 80, 629 N.E.2d at 386, 607 N.Y.S.2d at 914. See *People v. Samuels*, 49 N.Y.2d 218, 221, 400 N.E.2d 1344, 1345-46, 424 N.Y.S.2d 893, 894 (1980). “The defendant is entitled to counsel at all critical stages of the criminal prosecution.” *Id.* “The right to counsel attaches, of course, once the criminal action has been commenced.” *Id.* “But it may also attach at an earlier stage if there has been significant judicial activity.” *Id.*

1328. 59 N.Y.2d 556, 453 N.E.2d 500, 466 N.Y.S.2d 271 (1983).

1329. *Id.* at 563, 453 N.E.2d at 503, 466 N.Y.S.2d at 274.

1330. *Id.* at 561, 453 N.E.2d at 502, 466 N.Y.S.2d at 273.

to effective assistance of counsel under the Sixth Amendment at the preaccusatory stage because at that time, “neither law enforcement officials nor the courts have any reason to be aware of the ineffectiveness of a person’s lawyer, or any obligation to remedy such ineffectiveness.”<sup>1331</sup>

Additional support for the court’s decision comes from *People v. Beam*.<sup>1332</sup> In *Beam*, this court held that defendant was afforded all the protections encompassed by the constitutional right to counsel because when defendant confessed to the police at the preaccusatory stage of the criminal proceeding, the police honored his right to counsel and determined that he was speaking with them on the advice of his lawyer.<sup>1333</sup> The essence of the holding in *Beam*, as stated in *Claudio*, is that “the right to counsel that had indelibly attached by the entry of a retained attorney at the preaccusatory stage was simply the right not to have the attorney-client relationship interfered with or disregarded by law enforcement authorities,” and thus not a guarantee to effective counsel.<sup>1334</sup> Instead, it is a guarantee that law enforcement agents fully honor defendant’s choice to communicate through an attorney.<sup>1335</sup>

Therefore, according to the *Claudio* court in the instant case, defendant’s state constitutional right to effective assistance of counsel was not violated because his attorney’s incompetence occurred at the preaccusatory stage of the criminal proceeding.<sup>1336</sup> Moreover, the law enforcement authorities fully honored his right to counsel when he retained and consulted his attorney.<sup>1337</sup>

---

1331. *Id.* at 562, 453 N.E.2d at 503, 466 N.Y.S.2d at 273.

1332. 57 N.Y.2d 241, 441 N.E.2d 1093, 455 N.Y.S.2d 575 (1982).

1333. *Id.* at 255, 441 N.E.2d at 1100, 455 N.Y.S.2d at 582.

1334. *Claudio*, 83 N.Y.2d at 83, 629 N.E.2d at 388, 607 N.Y.S.2d at 916.

1335. *Id.*; see also *Minnick v. Mississippi*, 498 U.S. 146, 153 (1990) (“[W]e now hold that when counsel is requested, interrogation must cease and officials may not reinitiate interrogation without counsel present, whether or not the accused has consulted with his attorney.”).

1336. *Claudio*, 83 N.Y.2d at 83, 629 N.E.2d at 388, 607 N.Y.S.2d at 916.

1337. *Id.*