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Right to Counsel: People v. Richardson

Moreover, the United States Supreme Court, in *Anders v. California*,[1977] noted that the duty of counsel "requires that he support his client[] . . . to the best of his ability."[1978] However, the Supreme Court also stated that "[f]or judges to second guess reasonable professional judgments and impose on appointed counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy that underlies *Anders*."[1979]

In comparing the state and federal standards, it appears that waiver of counsel is easier under a federal standard than the state standard. New York state will first make a determination as to whether the decision to appear *pro se* is frivolous or not before allowing a waiver of the constitutional right to be represented by counsel.

CRIMINAL TERM

KINGS COUNTY

People v. Richardson[1980]
(decided September 20, 1993)

The criminal defendant, an indigent, requested the court to appoint counsel, on a motion to vacate a judgment.[1981] The court

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accused requests help, and to be available to represent the accused in the event that termination of the defendant's self-representation is necessary." *Id.* at 835 n.46 (quoting United States v. Dougherty, 473 F.2d 1113, 1124-26 (D.C. Cir. 1972)).

1976. *See* McKaskle v. Wiggins, 465 U.S. 168, 187 n.17 (1984).

1977. 386 U.S. 738 (1967).

1978. *Id.* at 744.

1979. Jones v. Barnes, 463 U.S. 745, 754 (1983).

1980. 159 Misc. 2d 167, 603 N.Y.S.2d 700 (Sup. Ct. Kings County 1993).

1981. *Id.* at 167, 603 N.Y.S.2d at 701; *see also* N.Y. CRIM. PROC. LAW § 440.10 (McKinney 1993). The statute provides in relevant part:

> 1. 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:
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> (a) The court did not have jurisdiction of the action or of the person of the defendant; or

held that the defendant had neither a Federal[1982] nor a state[1983] constitutional right to court appointed counsel on a post-conviction motion.[1984]

On June 22, 1987, the defendant, Carolyn Richardson, pled guilty to four counts of murder in the second degree.[1985] At this

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(b) The judgment was procured by duress, misrepresentation or fraud on the part of the court or a prosecutor or a person acting for or in behalf of a court or a prosecutor; or

(c) Material evidence adduced at a trial resulting in the judgment was false and was, prior to the entry of the judgment, known by the prosecutor or by the court to be false; or

(d) Material evidence adduced by the people at a trial resulting in the judgment was procured in violation of the defendant's rights under the constitution of this state or of the United States; or

(e) During the proceedings resulting in the judgment, the defendant, by reason of mental disease or defect, was incapable of understanding or participating in such proceedings; or

(f) Improper and prejudicial conduct not appearing in the record occurred during a trial resulting in the judgment which conduct, if it had appeared in the record, would have required a reversal of the judgment upon an appeal therefrom; or

(g) New evidence has been discovered since the entry of a judgment based upon a verdict of guilty after trial, which could not have been produced by the defendant at the trial even with due diligence on his part and which is of such character as to create a probability that had such evidence been received at the trial the verdict would have been more favorable to the defendant; provided that a motion based upon such ground must be made with due diligence after the discovery of such alleged new evidence; or

(h) The judgment was obtained in violation of a right of the defendant under the constitution of this state or of the United States.

Id.

1982. U.S. CONST. amend. VI. ("In all criminal prosecutions, the accused shall . . . have the assistance of counsel for his defense.").

1983. 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 . . . .").

1984. *Richardson*, 159 Misc. 2d at 170, 603 N.Y.S.2d at 703.

time, the defendant clearly informed the court that she had discussed her guilty plea with her attorney and understood the consequences of such a plea.[1986] Richardson also indicated that she had been advised of her rights and was satisfied with her counsel.[1987] Moreover, the defendant responded in the affirmative when asked whether she pled guilty because she was truly guilty and whether her plea was entered of her own free will.[1988] Six years later, the defendant made a motion to have the court vacate this judgment and requested a court appointed attorney to aid her in this task.[1989]

The court began its analysis of defendant's claim by reiterating that the United States Constitution requires states to provide counsel at trial for indigent defendants.[1990] This right extends to an indigents' first appeal as of right as well,[1991] but does not extend to discretionary appeals nor does it extend past the initial appeal.[1992] In addition, the right to counsel has been held not to extend to indigent defendants in collateral proceedings.[1993] However, "[w]hile the Federal Constitution does not mandate appointment of counsel to indigents, States are free to interpret their own constitutional provisions differently."[1994]

Prior to this decision, New York had not yet addressed the issue of whether its State Constitution provided an indigent defendant with the right to counsel in a post-conviction motion to

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1985. *See* N.Y. L.J., October 4, 1993, at 26.

1986. *Id.*

1987. *Id.*

1988. *Id.* at 27.

1989. *Id.*

1990. *Richardson*, 159 Misc. 2d at 168, 603 N.Y.S.2d at 701; *see also* U.S. CONST. amend. VI.

1991. *See Richardson*, 159 Misc. 2d at 168, 603 N.Y.S.2d at 701; *see also* Douglas v. California, 372 U.S. 358, 357-58 (1963).

1992. *See Richardson*, 159 Misc. 2d at 168, 603 N.Y.S.2d at 701; *see also* Ross v. Moffitt, 417 U.S. 600, 612 (1974) (refusing to extend Sixth Amendment right to counsel after the initial appeal or to discretionary appeals).

1993. *See* Pennsylvania v. Finley, 481 U.S. 551, 555-57 (1987).

1994. *Richardson*, 159 Misc. 2d at 168, 603 N.Y.S.2d at 702.

vacate a judgment.[1995] The court stated that in deciding whether state constitutional rights differs from the federal constitutional rights, the courts should look to "'interpretive' and 'non-interpretive' factors" surrounding the case.[1996] Interpretive factors include "'differences in the text, structure, or historical underpinning' of the State and Federal Constitutions."[1997] Non-interpretive factors include, in part, "whether the right is of local concern," balanced against practical considerations and the need for uniformity.[1998]

Turning to interpretive factors, the court utilized a textual analysis of the New York State Constitution.[1999] The word "trial" had to be interpreted in this context and for this particular right.[2000] The court held that the word "trial" does not include post-judgment motions. Rather, a trial terminates when a verdict is delivered.[2001] The court further determined that a judgment is entered upon sentencing.[2002] Consequently, the court held that the word trial would not include post-judgment motions.[2003]

The court noted that historically, New York had not granted defendants the right to counsel in post-conviction matters.[2004] Further, any such right that has been granted had its "genesis" in

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1995. *Id.* at 169, 603 N.Y.S.2d at 702.

1996. *Id.* (quoting People v. P.J. Video, 68 N.Y.2d 296, 302, 501 N.E.2d 556, 560, 508 N.Y.S.2d 907, 911 (1986), *cert. denied*, 497 U.S. 1091 (1987)).

1997. *Id.* at 169, 603 N.Y.S.2d at 702. (quoting People v. Alvarez, 70 N.Y.2d 375, 378, 515 N.E.2d 898, 899, 521 N.Y.S.2d 212, 213 (1987)).

1998. *Id.* at 169, 603 N.Y.S.2d at 702.

1999. *Id.*

2000. *Id.* (citing People v. Anderson, 16 N.Y.2d 282, 288, 213 N.E.2d 445, 448, 266 N.Y.S.2d 110, 114 (1965)).

2001. *Id.* at 169, 603 N.Y.S.2d at 703; *see also* N.Y. CRIM. PROC. LAW § 1.20(11) (McKinney 1993) ("[A] jury trial commences with the selection of the jury and includes all further proceedings through the rendition of a verdict . . . .").

2002. *Richardson*, 159 Misc. 2d at 169, 603 N.Y.S.2d at 703; *see also* N.Y. CRIM. PROC. LAW § 1.20(15) (McKinney 1993) ("A judgment is comprised of a conviction and the sentence imposed thereon and is completed by imposition and entry of the sentence.")

2003. *Richardson*, 159 Misc. 2d at 169, 603 N.Y.S.2d at 703.

2004. *Id.*

the Federal Constitution.[2005] Hence, since the court found no actual or historical right to counsel in post-judgment motions within the New York Constitution, nor any financial reason to create one, it concluded that there was no mandate to provide indigent defendants with counsel in such situations.[2006]

Based on its failure to find a federal or state constitutional mandate and the fact that the defendant's case was not a "proper" matter in which the court could exercise its power to appoint counsel, the court denied petitioner's request for appointed counsel.

2005. *Id.*

2006. *Id.* Although the court found no constitutional right to counsel in this case, it went on to analyze several New York statutes. *Id. See also* N.Y. CRIM. PROC. LAW § 210.15 (McKinney 1993). This section states in relevant part:

> [t]he defendant has a right to the aid of counsel at the arraignment and at every subsequent stage of the action, and, if he appears upon such arraignment without counsel, has the following rights: . . . To have counsel assigned by the court in any case where he is financially unable to obtain the same.

Id. However, the court reached the conclusion that a criminal action terminates with sentencing and consequently, anything following is not a "stage of the action." *Richardson*, 159 Misc. 2d at 169, 603 N.Y.S.2d at 703. *See* N.Y. CRIM. PROC. LAW § 1.20 (McKinney 1993) ("A criminal action . . . terminates with the imposition of sentence or some other final disposition in a criminal court of the last accusatory instrument filed in the case.").