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rationale of *Codispoti* when it recognized that a court “[n]eed not look to the punishment actually imposed, [when the court is] able to discern Congress’ judgment of the character of the offense.”⁵⁴

In sum, Foy’s aggregate sentence approach failed. The basis for the court’s rationale was its analysis of the severity of the offense. That severity is, in effect, determined by the Legislature in its punishment classification. It is believed that those prosecuted for “serious” offenses, i.e. greater than six months imprisonment, have a greater exposition to the deprivation of liberty and therefore, the inalienable guarantee deeply rooted in both the Federal and State Constitutions is to provide for a trial by jury.⁵⁵ It was along that line of reasoning that the court firmly dismissed the allegation that the offenses were consolidated solely for efficiency reasons.⁵⁶ The emphasis, the Court explained, is on the examination of each offense *individually and separately* and not an aggregation of the sentences promulgated as petty offenses.⁵⁷ Therefore, in order for a defendant to invoke the Sixth Amendment right to a jury trial, he or she must first have been charged with at least a single offense that has been legislatively qualified as “serious.”

People v. Knowles⁵⁸
(decided October 22, 1996)

The defendant, Newton Knowles, claimed that his right to counsel was violated under the Federal⁵⁹ and State

that a defendant has been charged with multiple counts of a petty offense because the legislature has already determined the gravity and appropriate punishment for that offense. *Id.*

54. *Id.* at 2168.

55. *Foy*, 88 N.Y.2d at 747, 673 N.E.2d at 593, 650 N.Y.S.2d at 83.

56. *Id.* at 747, 673 N.E.2d at 593, 650 N.Y.S.2d at 83.

57. *Id.* at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81 (emphasis added).

58. 88 N.Y.2d 763, 673 N.E.2d 902, 650 N.Y.S.2d 617 (1996).

59. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to have the Assistance of Counsel for his defense.” *Id.*

Constitutions,⁶⁰ when his request for a second attorney was denied by the trial court.⁶¹ The Appellate Division, Second Department, disapproved of the court's reasoning, but nevertheless affirmed the conviction, finding that no constitutional rights were violated.⁶² The New York State Court of Appeals, however, reversed their decision and ordered a new trial.⁶³

After a jury trial, Knowles was convicted of criminal possession of a controlled substance.⁶⁴ The defendant was assigned two attorneys, Robert Jones and Melody Glover, by The Legal Aid Society.⁶⁵ The attorneys were designated to share responsibilities during the trial.⁶⁶ Prior to the start of the trial, defense attorney Jones requested that attorney Glover cross-examine the defendant's arresting officer.⁶⁷ The trial court, however, denied the request stating that "Jones had appeared for defendant at pretrial hearings without Glover's assistance, the case was 'very simple and straightforward' and the Legal Aid Society 'almost always [has] one attorney trying the case when there is one defendant.'" ⁶⁸ The Appellate Division, Second Department "strongly disapprove[d] of and [found] totally unacceptable the trial court's reason for denying defense counsel to assist him."⁶⁹ Despite the appellate division's disapproval of the trial courts determination, the court affirmed the conviction because Knowles' "constitutional rights were not impaired and

60. N.Y. CONST. art. I, § 6. This section 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" *Id.*

61. 88 N.Y.2d at 766, 673 N.E.2d at 904, 650 N.Y.S.2d at 619.

62. *Id.*

63. *Id.*

64. *Id.* at 765, 673 N.E.2d at 903, 650 N.Y.S.2d at 618.

65. *Id.*

66. *Id.*

67. *Id.*

68. *Id.* at 765, 673 N.E.2d at 904, 650 N.Y.S.2d at 619 (alterations in original).

69. *Id.* at 766, 673 N.E.2d at 904, 650 N.Y.S.2d at 619 (alterations in original).

[he] was not prejudiced by the court's exclusion of Glover."⁷⁰ The New York Court of Appeals reversed the conviction and ordered a new trial on the basis that Knowles' Sixth Amendment rights were violated.⁷¹ The court explained that, in denying Knowles the assistance of co-counsel, the courts "interfered with defense tactics in violation of defendant's right to the effective assistance of counsel"⁷²

In support of its holding, the majority relied primarily on New York State cases, rather than on federal cases.⁷³ In *People v. Hall*,⁷⁴ the lawyer for the defendant was disqualified after he admitted to having once represented the identification witness for the prosecution and having previously been intimately involved with a member of that witness' family.⁷⁵ Although it has been established that courts have the authority "to impose reasonable rules to control the conduct of the trial,"⁷⁶ the *Hall* court contended that "a court should be hesitant to interfere in an established attorney-client relationship."⁷⁷ The court held that, under these circumstances, the disqualification was proper

70. *Id.*

71. *Id.*

72. *Id.*, at 768, 673 N.E.2d at 905, 650 N.Y.S.2d at 620. See *People v. Joseph*, 84 N.Y.2d 995, 996, 998, 646 N.E.2d 807, 808-09, 622 N.Y.S.2d 505, 506-07 (1994) (holding that defendant who was prohibited from discussing his testimony with his attorney during the weekend recess was denied effective assistance of counsel). See also *People v. Hillard*, 73 N.Y.2d 584, 586-87, 540 N.E.2d 702, 702-03 542 N.Y.S.2d 507, 507, 508 (1989) (holding that defendant who was prohibited from having contact with his attorney for thirty days because of being found in contempt of court, was denied effective assistance of counsel).

73. See *People v. Joseph*, 84 N.Y.2d 995, 646 N.E.2d 807, 622 N.Y.S.2d 505 (1994); *People v. Hillard*, 73 N.Y.2d 584, 540 N.E.2d 702, 542 N.Y.S.2d 507 (1989); *People v. Arroyave*, 49 N.Y.2d 264, 401 N.E.2d 393, 425 N.Y.S.2d 282 (1980); *People v. Hall*, 46 N.Y.2d 873, 387 N.E.2d 610, 414 N.Y.S.2d 678 (1979), *cert. denied*, 444 U.S. 848 (1979).

74. 46 N.Y.2d 873, 387 N.E.2d 610, 414 N.Y.S. 2d 678 (1979), *cert. denied*, 444 U.S. 848 (1979).

75. *Id.* at 874, 387 N.E.2d at 610, 414 N.Y.S.2d at 678.

76. 88 N.Y.2d at 766, 673 N.E.2d at 904, 650 N.Y.S.2d at 618 (quoting *Hillard*, 73 N.Y.2d at 586, 540 N.E.2d at 702, 542 N.Y.S.2d at 507).

77. *Hall*, 46 N.Y.2d at 875, 387 N.E.2d at 611, 414 N.Y.S.2d at 679.

because the defendant was not deprived of his constitutional rights.⁷⁸ In addition, the court argued that it was appropriate to disqualify the attorney because “it appeared very likely that his continuance in the case would work unfair prejudice either to the prosecution or to the defendant.”⁷⁹ The continued participation by the attorney created a conflict of interest because of his prior relationships with the prosecution’s witness.⁸⁰

A conflict of interest and judicial efficiency are two factors in determining whether it is proper to disqualify an attorney. *Knowles* indicated that “judicial interference with an established attorney-client relationship in the name of trial management may be tolerable only where the court first determines that counsel’s participation presents a conflict of interest or where defense tactics may compromise the orderly management of the trial or the fair administration of justice.”⁸¹ However, this intervention

78. *Id.* at 874, 387 N.E.2d at 611, 414 N.Y.S.2d at 679.

79. *Id.*

80. *Id.* at 874, 387 N.E.2d at 611, 414 N.Y.S.2d at 679.

81. 88 N.Y.2d at 766-67, 673 N.E.2d at 904, 650 N.Y.S.2d at 619. *See* *People v. Arroyave*, 49 N.Y.2d 264, 401 N.E.2d 393, 425 N.Y.S.2d 282 (1980). In *Arroyave*, the defendant wrote a letter to an attorney requesting his assistance. *Id.* at 268, 401 N.E.2d at 395, 425 N.Y.S.2d at 284. The defendant did not receive a response from the attorney until shortly before the trial; it was held by the Department of Corrections. *Id.* When he did receive the letter, he immediately responded, explaining the circumstances of his case to the attorney. *Id.* The attorney applied for a delay in the trial in order to prepare. *Id.* at 269, 401 N.E.2d at 395, 425 N.Y.S.2d at 285. That request was denied and the defendant was represented by assigned counsel. *Id.* at 269, 401 N.E.2d at 396, 425 N.Y.S.2d at 285. The defendant was found guilty of two counts of criminal sale of controlled substances in the first degree. *Id.* On appeal, the court of appeals held that “[a]lthough a defendant has the constitutionally guaranteed right to be defended by counsel of his own choosing, this right is qualified in the sense that a defendant may not employ such right as means to delay judicial proceedings.” *Id.* at 271, 401 N.E.2d at 397, 425 N.Y.S.2d at 286. The court reasoned that

[t]he efficient administration of the criminal justice system is a critical concern to society . . . and unnecessary adjournments for the purpose of permitting a defendant to retain different counsel will disrupt dockets, interfere with the right of other criminal defendants to a speedy trial, and inconvenience witnesses, jurors and opposing counsel.

Id.

should only be used sparingly, especially when an attorney-client relationship develops that is predicated on trust.⁸² The court found that, under the circumstances, Glover's removal was improper.⁸³

The trial court asserted that there was no conflict of interest present.⁸⁴ The primary concern of the trial court judge was that the addition of Glover, a black woman, was a deliberate tactic by the defense to evoke sympathy from members of the jury and that her selection was not made in good faith.⁸⁵ The court of appeals rejected that argument because of a lack of record support.⁸⁶

Additionally, the court did not find any reason to conclude that the presence of Glover adversely impacted the efficiency of the trial or the fair administration of justice.⁸⁷ Even if the presence of multiple attorneys did cause a disruption, the court could only impose reasonable restrictions "to ensure the fair and orderly conduct of the proceedings."⁸⁸ According to the trial court, Glover was "fully prepared to proceed with the cross-examination . . . without delay."⁸⁹ The court argued that the mere fact that Glover and the defendant were both black, did not at all relate "to the efficient management of the trial."⁹⁰ In addition, given the fact that the prosecutor was permitted to

82. 88 N.Y.2d at 767, 673 N.E.2d at 904, 650 N.Y.S.2d at 619.

83. *Id.*

84. *Id.*

85. *Id.* at 767, 673 N.E.2d at 905, 650 N.Y.S.2d at 620. The trial judge stated that:

I will put on the record and be very frank, this defendant is black, you are white, the other attorneys are white, Ms. Glover is black. I think all you're doing is trying to put in some type of sympathy, to have a very seasoned appearance. I think you're trying to gain some undue advantage and I will not permit that. I think your application is made in bad faith.

Id. at 766, 673 N.E.2d at 904, 650 N.Y.S.2d at 619.

86. *Id.* at 767, 673 N.E.2d at 905, 650 N.Y.S.2d at 620.

87. *Id.* at 768, 673 N.E.2d at 905, 650 N.Y.S.2d at 620.

88. *Id.* at 767, 673 N.E.2d at 904, 650 N.Y.S.2d at 619. The court indicated, however, that this discretion should be used sparingly, particularly when the defendant has developed a trust from his or her attorneys. *Id.*

89. *Id.*, 673 N.E.2d at 905, 650 N.Y.S.2d at 620.

90. *Id.* at 768, 673 N.E.2d at 905, 650 N.Y.S.2d at 620.

obtain assistance for the trial, “no legitimate claim can be made that Glover’s presence at the defense table would have impaired the efficient conduct of the trial.”⁹¹ The addition of Glover would not have “disrupted the efficient conduct of the trial or resulted in prejudice”⁹² The court also acknowledged that it is a matter of routine practice to have more than one attorney representing a client.⁹³ It was a strategy utilized by Jones “because ‘two heads are better than one’ and because the dual representation would be ‘mutually rewarding’ to both attorneys.”⁹⁴ Therefore, the trial court was found to have acted arbitrarily and to have abused its discretion.⁹⁵

The dissent’s primary contention is that Knowles’ constitutional rights were not violated because he never claimed that “he received ineffective assistance of counsel or that he did not receive a fair trial”⁹⁶ Therefore, although the court erred in disqualifying Glover, the error was harmless because it did not violate the constitution and Knowles was not prejudiced by the courts ruling.⁹⁷ Thus, the court did not deprive Knowles of counsel, nor was his counsel ineffective.⁹⁸ He did not receive ineffective representation merely because he was limited to one attorney; an indigent defendant is not constitutionally entitled to two attorneys.⁹⁹ Therefore, the dissent argued that he received a fair trial.¹⁰⁰

91. *Id.*

92. *Id.*

93. *Id.* at 767, 673 N.E.2d at 904, 650 N.Y.S.2d at 619.

94. *Id.* at 775, 673 N.E.2d at 909, 650 N.Y.S.2d at 624 (Simons, J., dissenting).

95. *Id.* at 768, 673 N.E.2d at 905, 650 N.Y.S.2d at 620.

96. *Id.* at 773, 673 N.E.2d at 908, 650 N.Y.S.2d at 623 (Simons, J. dissenting).

97. *Id.* at 774, 673 N.E.2d at 909, 650 N.Y.S.2d at 624 (Simons, J. dissenting). Simons further opined that “the judge’s conduct constituted trial error, not constitutional error, and it is subject to harmless error analysis.” *Id.*

98. *Id.*

99. *Id.* at 773, 673 N.E.2d at 908, 650 N.Y.S.2d at 623 (Simons, J. dissenting). The Supreme Court has never actually reviewed this issue. See *Bell v. Watkins*, 692 F.2d 999, 1009 (5th Cir. 1982), *cert. denied*, 464 U.S. 843 (1983) (stating that “[a]lthough Mississippi courts may customarily appoint two lawyers in a capital case, the Constitution dictates no such requirement);

The majority in *Knowles* adhered to United States Supreme Court's analysis of the Sixth Amendment. In *Gideon v. Wainwright*,¹⁰¹ the Supreme Court held that the Sixth Amendment extends to the states through the Fourteenth Amendment so that indigent defendants, being prosecuted in state court, have the right to have counsel appointed for them.¹⁰²

In *Wheat v. United States*,¹⁰³ the defendant was charged with conspiracy to possess marijuana.¹⁰⁴ One of the defendant's co-conspirators decided to plead guilty.¹⁰⁵ At the conclusion of the plea proceedings, the co-conspirator's attorney was contacted by the defendant to try his case.¹⁰⁶ The district court objected, fearing potential conflicts of interest.¹⁰⁷ The conflict they primarily feared was that the attorney would be representing the defendant and the co-conspirator simultaneously, and there was a likelihood that the co-conspirator would be called to testify by the Government against the defendant.¹⁰⁸ Such events would have been problematic since it is ethically forbidden for an attorney to

Crum v. Hunter, 151 F.2d 359, 361 (10th Cir. 1945), *cert. denied*, 328 U.S. 850 (1946) (stating that a defendant does not have a constitutional right to more than one attorney unless it is essential for his defense).

100. *Knowles*, 88 N.Y.2d at 776, 673 N.E.2d at 910, 650 N.Y.S.2d at 625 (Simons, J. dissenting).

101. 372 U.S. 335 (1963). In *Gideon*, the defendant was charged with a felony. *Id.* at 336. Upon appearing in a Florida state court without money or a lawyer, Gideon made a request to have a lawyer appointed to represent him. *Id.* at 337. However, the court denied his request because they held that lawyers can only be appointed in capital offense cases. *Id.* Thus, he conducted his entire defense by himself. *Id.* The jury found him guilty and he was sentenced to five years in state prison. *Id.* His petition for habeas corpus was denied by the Florida Supreme Court. *Id.* However, the United States Supreme Court granted certiorari and held that the Sixth Amendment extends to the states by the Fourteenth Amendment. *Id.* at 338, 342.

102. *Id.* at 342, 344-45. Justice Sutherland noted that "[t]he right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel." (quoting *Powell v. Alabama* 287 U.S. 45 (1932)).

103. 486 U.S. 153 (1988).

104. *Id.* at 154.

105. *Id.* at 155.

106. *Id.*

107. *Id.* at 157.

108. *Id.*

cross-examine his client, and additionally, because it would provide the defendant with ineffective assistance of counsel.¹⁰⁹ The defendant appealed, asserting that his Sixth Amendment rights were violated.¹¹⁰

The Supreme Court, however, affirmed the decision of the district court and reasoned that “when a trial court finds an actual conflict which impairs the ability of a criminal defendant’s chosen counsel to conform with the ABA Code of Professional Responsibility, the court should not be required to tolerate an inadequate representation of a defendant.”¹¹¹ The Court continued by stating that the purpose of the Sixth Amendment “is to guarantee an effective advocate for each criminal defendant rather than to ensure that a defendant will inexorably be represented by the lawyer he prefers.”¹¹² Those guarantees are meant to “insure that those charged with [a] crime are represented by an effective advocate and thus ensure that they receive a fair trial.”¹¹³ The State can violate that right to effective assistance “when it interferes . . . with the ability of counsel to make independent decisions about how to conduct the defense.”¹¹⁴

Therefore, it is clear that both New York and the Supreme Court have the same objectives. Both consider whether the additional attorney would present a conflict of interest and whether it would adversely impact the efficiency of the trial. The ultimate purpose

109. *Id.*

110. *Id.* at 157-58.

111. *Id.* at 162 (quoting *United States v. Dolan*, 570 F.2d 1177, 1184 (3d Cir. 1978)).

112. *Id.* at 159.

113. *Knowles*, 88 N.Y.2d at 772, 673 N.E.2d at 908, 650 N.Y.S.2d at 623 (Simons, J. dissenting) (citing *Wheat*, 486 U.S. at 159; *Strickland v. Washington*, 466 U.S. 668, 689 (1984); *United States v. Cronin*, 466 U.S. 648, 658 (1984)).

114. *Strickland*, 466 U.S. at 686. *See, e.g., Geders v. United States*, 425 U.S. 80 (1976) (noting that barring an attorney the right to client consultation during overnight recess violates the right to effective assistance); *Herring v. New York*, 422 U.S. 853 (1975) (noting that barring summation at a bench trial violates the right to effective assistance).

of the Sixth Amendment of both the Federal and New York Constitutions is to insure that there is a fair trial.

People v. Page¹¹⁵
(decided April 2, 1996)

Defendant Kenneth Page moved to set aside his convictions for grand larceny and unauthorized use of a motor vehicle.¹¹⁶ He based his motion on the fact that an alternate juror had, without his written consent, been substituted for a regular juror subsequent to the beginning of deliberations.¹¹⁷ Page argued that, unlike the Sixth Amendment of the Federal Constitution,¹¹⁸ the New York State Constitution¹¹⁹ guarantees criminal defendants the right to a jury of twelve persons.¹²⁰ Thus, when the alternate juror was

115. 88 N.Y.2d 1, 665 N.E.2d 1041, 643 N.Y.S.2d 1 (1996).

116. *Id.* at 4, 665 N.E.2d at 1042, 643 N.Y.S.2d at 2.

117. *Id.* at 4, 665 N.E.2d at 1042-43, 643 N.Y.S. 2d at 2-3.

118. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In 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.*

119. N.Y. CONST. art. 1, § 2. This section provides:

Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to prescribed by law. The legislature may provide, however, by law, that a verdict may be rendered by not less than five-sixths of the jury in any civil case. A jury trial may be waived by the defendant in all criminal cases, except those in which the crime charged may be punishable by death, by a written instrument signed by the defendant in person in open court before and with the approval of a judge or justice of a court having jurisdiction to try the offense. The legislature may enact laws, not inconsistent herewith, governing the form, content, manner and time of presentation of the instrument effectuating such waiver.

Id.

120. *Page*, 88 N.Y.2d at 3, 665 N.E.2d at 1042, 643 N.Y.S.2d at 2. Though Article I, § 2 of the New York State Constitution does not specifically grant a constitutional right to twelve jurors in a criminal trial, New York courts take the view that a right to twelve jurors is a fundamental right based