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SUPREME COURT, APPELLATE DIVISION

SECOND DEPARTMENT

People v. Oyola⁶⁴
(decided May 15, 1995)

Angel Oyola appealed his sentence on the ground that the allowance of the victim's statement into testimony violated the Due Process Clause of both the New York State⁶⁵ and United States⁶⁶ Constitutions due to the court's authorization of a victim's impact statement at sentencing.⁶⁷ The Appellate Division, Second Department, affirmed the county court's ruling, holding that the defendant's due process was not violated because "[t]he psychological impact that the defendant's crime had on his victim was undoubtedly a proper factor to be considered by the County Court in imposing [the] sentence."⁶⁸ The court further acknowledged that "[n]othing in the State or Federal Constitutions prohibited the County Court from considering the victim's own account of the defendant's crime in assessing the true dimensions of this psychological impact."⁶⁹

The defendant, Angel Oyola, pled guilty to and was convicted of rape in the first degree.⁷⁰ Pursuant to New York Criminal Procedure Law [hereinafter CPL] section 380.50(2)(b),⁷¹ the

64. 215 A.D.2d 597, 626 N.Y.S.2d 849 (2d Dep't 1995).

65. N.Y. CONST. amend. art. I, § 6. This section provides in relevant part: "No person shall be deprived of life, liberty or property without due process of law." *Id.*

66. U.S. CONST. amend. XIV, § 1. This provision states in pertinent part: "No state shall . . . deprive any person of life, liberty, or property, without due process of law" *Id.*

67. *Oyola*, 215 A.D.2d at 597-98, 626 N.Y.S.2d at 850.

68. *Id.* at 597, 626 N.Y.S.2d at 850.

69. *Id.* at 597-98, 626 N.Y.S.2d at 850.

70. *Id.* at 597, 626 N.Y.S.2d at 850.

71. N.Y. CRIM. PROC. LAW § 380.50(2)(b) (McKinney Supp. 1995). This provision provides in pertinent part:

(b) If the defendant is being sentenced for a felony the court, if requested at least ten days prior to the sentencing date, shall accord the

sentencing judge permitted the victim of the defendant's crime to make a statement at the sentencing proceeding.⁷² On appeal, defendant contended that "CPL 380.50(2)(b) is unconstitutional in that 'it serves no useful purpose in the sentencing process.'" ⁷³

However, the court reasoned that one of the necessary factors for the sentencing judge's consideration was the psychological impact of the defendant's crime on his victim.⁷⁴ Additionally, the *Oyola* court considered whether the New York State or the United States Constitution barred the victim's version of the defendant's crime when determining the extent of the psychological impact upon the victim.⁷⁵ Relying on five cases, the *Oyola* court concluded that "CPL 380.50(2)(b) advances a legitimate State interest, and its application in this case did not deprive the defendant of any of his constitutionally-guaranteed rights."⁷⁶

The first case cited by the *Oyola* court, in support of the proposition that CPL 380.50(2)(b) does not deprive the defendant of any constitutionally-guaranteed rights, was *Williams v. New York*.⁷⁷ *Williams* explored the methods available to a sentencing

victim the right to make a statement with regard to any matter relevant to the question of sentence

Id.

72. *Oyola*, 215 A.D.2d 597, 626 N.Y.S.2d at 850.

73. *Id.*

74. *Oyola*, 215 A.D.2d at 597, 626 N.Y.S.2d. at 850 (citing *People v. White*, 192 A.D.2d 736, 597 N.Y.S.2d 117 (2d Dep't 1993)).

75. *Id.* at 597-98, 626 N.Y.S.2d at 850.

76. *Id.* at 598, 626 N.Y.S.2d at 850.

77. 337 U.S. 241 (1949). In *Williams*, the defendant was convicted of murder in the first degree and sentenced to life imprisonment by a New York jury; however, the trial judge imposed the death penalty. *Id.* at 242. The defendant argued that section 482 of the New York Criminal Code violated the Due Process Clause of the Fourteenth Amendment of the Federal Constitution. *Id.* at 243. Section 482 of the New York Criminal Code reads in pertinent part: "Before rendering judgment or pronouncing sentence the court . . . may seek any information that will aid in determining the proper treatment of such defendant." *Id.* The Supreme Court held that the above section did not violate the Constitution, reasoning that a sentencing judge should have the best and most information available when determining a defendant's sentence. *Id.* at 249, 252.

judge in order to acquire information that would aid in the determination of an appropriate sentence for a convicted defendant.⁷⁸ Recognizing that “New York judges are given a broad discretion to decide the type and extent of punishment for convicted defendants,”⁷⁹ the Court explained that a sentencing judge is authorized to contemplate information “obtained outside the courtroom from persons whom a defendant has not been permitted to confront or cross-examine.”⁸⁰

Justice Black, writing for the majority, advised that different evidentiary rules govern the trial and sentencing phases of the action.⁸¹ The policy behind the differing rules is to “prevent tribunals concerned solely with the issue of guilt of a particular offense from being influenced to convict for that offense by evidence that the defendant had habitually engaged in other misconduct.”⁸² The opinion continued: “Highly relevant if not essential to [the sentencing court’s] selection of an appropriate sentence is the possession of the fullest information possible concerning the defendant’s life and characteristics.”⁸³

Moreover, the court considered the opinions in *People v. Jones*⁸⁴ and *People v. Wright*,⁸⁵ where both courts considered

78. *Id.* at 244-45.

79. *Id.* at 245.

80. *Id.*

81. *Id.* at 246.

82. *Id.* at 247.

83. *Id.*

84. 195 A.D.2d 482, 599 N.Y.S.2d 860 (2d Dep’t 1993). In *Jones*, the defendant was convicted of manslaughter in the first degree and appealed his sentence on the ground that the sentencing court’s conversation with his victim’s brother was improper. *Id.* at 482-83, 599 N.Y.S.2d at 861. The appellate division agreed that the Supreme Court, Kings County, erred by speaking with the victim’s brother. *Id.* See N.Y. CRIM. PROC. LAW § 390.30 (McKinney 1994) (providing that the victim’s family can communicate their sentiments to the court only via a written impact statement). The court found, however, that there was no indication that the sentencing court was excessively influenced by such conversation. *Jones*, 195 A.D.2d at 483, 599 N.Y.S.2d at 861.

85. 187 A.D.2d 1016, 590 N.Y.S.2d 365 (4th Dep’t 1992). In *Wright*, the defendant was convicted of vehicular manslaughter in the second degree, and appealed his sentence on the ground that it was improper for the Niagara

the extent that the victims' relatives' statements influenced the sentencing determinations.⁸⁶ The defendant's sentence was affirmed in *Jones* because the appellate court concluded there was no indication "that the sentencing court was unduly influenced by its conversation with the victim's brother."⁸⁷ Similarly, in *Wright*, the defendant's sentence was also affirmed because the improper communications between the court and the victim's family were not so unduly influential to the sentencing court as to compel the court to vacate the imposed sentence.⁸⁸

Furthermore, in *People v. Lader*,⁸⁹ the Second Department affirmed the defendant's sentence and rejected the defendant's assertion that the sentencing court's conversations with some of the defendant's victims violated his right to due process of law.⁹⁰ The court explained that "[t]he Sentencing Judge merely gave those victims present the opportunity to express dissatisfaction with her decision to grant an adjournment of the sentencing date and to state what impact defendant's offenses had upon them."⁹¹ Such action was not barred by the due process clause.

County Court to hold a private interview with the victim's family before the imposition of the defendant's sentence. *Id.* at 1016, 590 N.Y.S.2d at 366. At the time of the interview, CPL 380.50 was not amended to allow such communications. Therefore, the appropriate means of communication would have been a written victim impact statement. *Id.* at 1017, 590 N.Y.S.2d at 366. See N.Y. CRIM. PROC. LAW § 390.30 (McKinney 1994).

86. *People v. Oyola*, 215 A.D.2d 597, 598, 626 N.Y.S.2d 849, 850 (2d Dep't 1995). In both cases, the defendants failed to preserve for appellate review the issue of whether the communications between the victims' relatives and the respective courts violated their constitutionally-guaranteed rights. *Jones*, 195 A.D.2d at 483, 599 N.Y.S.2d at 861; *Wright*, 187 A.D.2d at 1017, 590 N.Y.S.2d at 366.

87. *Jones*, 195 A.D.2d at 483, 599 N.Y.S.2d at 861.

88. *Wright*, 187 A.D.2d at 1017, 590 N.Y.S.2d at 366.

89. 114 A.D.2d 390, 494 N.Y.S.2d 33 (2d Dep't 1985). In *Lader*, the defendant pled guilty to and was convicted of grand larceny. The defendant then appealed his sentence on the ground that his constitutionally-guaranteed right to due process was violated by the communications between some of the defendant's victims and the sentencing court. *Id.* at 390-92, 494 N.Y.S.2d at 34-36.

90. *Id.*

91. *Id.* at 393, 494 N.Y.S.2d at 36.

Finally, the court considered *Payne v. Tennessee*,⁹² where the Supreme Court held that the Federal Constitution does not operate as a per se bar to victim impact statements in a capital sentencing jury case.⁹³ In *Payne*, the Court declined to uphold the principle established in *Booth* that victim impact evidence should be barred at a capital sentencing proceeding.⁹⁴ *Payne* expressly overruled the Court's earlier decision in *Booth v. Maryland*.⁹⁵

Writing for the majority, Chief Justice Rehnquist rejected the reasoning in *Booth*, which provided that "victim impact evidence must be excluded because it would be difficult, if not impossible, for the defendant to rebut such evidence without shifting the focus of the sentencing hearing away from the defendant, thus creating a "mini-trial' on the victim's character."⁹⁶ Furthermore, the Court declined to accept the *Booth* Court's explanation that "[victim impact statements] create an impermissible risk that the capital sentencing decision will be made in an arbitrary manner."⁹⁷ In its decision to overrule

92. 501 U.S. 808 (1991). In *Payne*, the defendant was convicted and sentenced to death for the first degree murder of a mother and her two-year-old daughter and first degree assault with intent to murder her three-year-old son. *Id.* at 811. Defendant appealed the sentence, arguing that the Eighth Amendment is a per se bar prohibiting victim impact statements in a capital jury sentencing case. *Id.* at 816. The Supreme Court affirmed the Tennessee Supreme Court's decision and held that the Eighth Amendment is not a per se bar prohibiting victim impact statements from consideration during the sentencing phase of a capital trial. *Id.* at 830.

93. *Id.*

94. *Id.* at 830.

95. 482 U.S. 496 (1989), *overruled by*, 501 U.S. 808 (1991). In *Booth*, the defendant was convicted of two counts of first degree murder, robbery and conspiracy to commit robbery. *Id.* During the sentencing phase of the trial, the prosecution introduced a victim impact statement, pursuant to a Maryland statute, which required consideration of such a statement. *Id.* The Supreme Court held that the introduction of a victim impact statement at the sentencing phase of a capital murder trial violated the defendant's rights under the Eighth Amendment of the Federal Constitution and ruled that the Maryland statute was invalid. *Id.* at 509.

96. *Payne*, 501 U.S. at 823 (quoting *Booth*, 482 U.S. at 506-07).

97. *Id.* at 819 (quoting *Booth*, 482 U.S. at 505).

Booth, the *Payne* Court also acknowledged that the *Booth* opinion was a five to four decision.⁹⁸

Applying these principles to *Oyola*, the court considered the interest of the State in providing information to the sentencing court with regard to the psychological impact upon the victim.⁹⁹ The *Oyola* court denied defendant's request for resentencing opining that "CPL 380.50(2)(b) advances a legitimate State interest, and its application in this case did not deprive the defendant of any of his constitutionally-guaranteed rights."¹⁰⁰ The court concluded that "[t]he terms of CPL 380.50(2)(b) advance the State's 'legitimate interest in * * * reminding the sentencer that just as the [convicted criminal] should be considered as an individual, so too the victim is an individual.'"¹⁰¹

As the *Oyola* decision points out, the New York Due Process Clause goes only as far as the Federal Due Process Clause in protecting a convicted defendant from the arbitrary sentencing so often involved with victim impact statements.

SUPREME COURT

ALBANY COUNTY

Bradstreet v. Sobo¹⁰²
(decided July 17, 1995)

Plaintiff contended that defendant's regulation prohibiting home-schooled students from participating in interscholastic sports constituted a violation of the Equal Protection Clause of

98. *Id.* at 817.

99. *People v. Oyola*, 215 A.D.2d 597, 598, 626 N.Y.S.2d 849, 850 (2d Dep't 1995).

100. *Id.*

101. *Id.* (citation omitted).

102. 165 Misc. 2d 931, 630 N.Y.S.2d 486 (Sup. Ct. Albany County 1995).