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People v. Gaines²⁵⁰
(decided February 21, 1995)

The defendant asserted that he was denied a fair trial and that his subsequent convictions for second degree burglary, criminal possession of a weapon in the fourth degree, possession of burglar's tools and resisting arrest violated his right to counsel under the New York²⁵¹ and Federal²⁵² Constitutions.²⁵³ The Appellate Division, Second Department affirmed the judgment of the trial court and held that an indigent's right to counsel "does not encompass a right to the appointment of successive lawyers at the defendant's option."²⁵⁴

The defendant, Horace Gaines, an indigent, made a last minute request at trial for a new court appointed attorney.²⁵⁵ The defendant claimed that his present court-appointed attorney "was not representing [him] as far as the things that [needed] to be said."²⁵⁶ Upon further inquiry by the court, requesting the defendant to denote a specific complaint with his present counsel, the defendant merely indicated that he requested new counsel.²⁵⁷ The trial court denied his request claiming it was simply a delay tactic made without cause and prior to the voir dire of the jury.²⁵⁸ The defendant claimed that such denial violated his constitutionally guaranteed right to counsel.²⁵⁹

250. 212 A.D.2d 727, 622 N.Y.S.2d 970 (2d Dep't 1995).

251. N.Y. CONST. art. I, § 6. This provision states 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.*

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

253. *Gaines*, 212 A.D.2d at 727, 622 N.Y.S.2d at 970.

254. *Id.* at 727, 622 N.Y.S.2d at 970-71.

255. *Id.* at 728, 622 N.Y.S.2d at 971.

256. *Id.*

257. *Id.*

258. *Id.*

259. *Id.* at 727, 622 N.Y.S.2d at 970.

In analyzing the validity of the defendant's claim, the court relied on *People v. Koch*²⁶⁰ and agreed that "an indigent defendant in a criminal case is guaranteed the right to counsel."²⁶¹ However, this constitutionally based right to counsel does not, according to the court, carry with it the right of the defendant to arbitrarily seek to appoint successive attorneys.²⁶² In *People v. Sawyer*,²⁶³ the court of appeals addressed a similar situation in which the indigent defendant acknowledged he was not capable of defending himself but nevertheless continually refused to be represented by the public defender's office.²⁶⁴ In affirming the appellate division's reversal of the defendant's conviction,²⁶⁵ the court asserted:

[W]hile it is true that an indigent defendant is guaranteed the right to assistance of counsel by both our Federal and State

260. 299 N.Y. 378, 381, 87 N.E.2d 417, 418 (1949) (holding that "[t]he State constitutional guarantee has been implemented by . . . legislative act which makes it mandatory upon the court to inquire of the defendant . . . if 'he desires the aid of counsel, and if he does the court must assign counsel.'" (quoting CODE CRIM. PROC. § 308)); *People v. Price*, 262 N.Y. 410, 187 N.E. 298 (1933). In *Price*, the court of appeals pointed out the pre-legislative judicial authority to appoint counsel stating that "[e]ven prior to section 308 of the Code of Criminal Procedure, there was inherent power in the courts to assign counsel to defend a prisoner who was without an attorney and unable to employ one." *Id.* at 412, 187 N.E. at 299; *see also* *Glasser v. United States*, 315 U.S. 60, 70-71 (1942) (stating the right to counsel is one of the safeguards deemed necessary to insure fundamental human rights of life and liberty and a federal court cannot constitutionally deprive an accused whose life or liberty is at stake of the assistance of counsel).

261. *Gaines*, 212 A.D.2d at 727, 622 N.Y.S.2d at 970.

262. *Id.* at 727, 622 N.Y.S.2d at 970-71 (citing *People v. Sides*, 75 N.Y.2d 822, 824, 551 N.E.2d 1233, 1234, 552 N.Y.S.2d 555, 556 (1990)). In *Sides*, the defendant, at trial, requested and was denied new court assigned counsel. *Sides*, 75 N.Y.2d at 824, 551 N.E.2d at 1234, 552 N.Y.S.2d at 556. The court of appeals reversed the conviction and remitted for a new trial holding that "the right to be represented by counsel of one's choosing is a valued one, and a defendant may be entitled to new counsel upon showing 'good cause for substitution.'" *Id.*

263. 57 N.Y.2d 12, 438 N.E.2d 1133, 453 N.Y.S.2d 418 (1982).

264. *Id.* at 15-17, 438 N.E.2d at 1135-36, 453 N.Y.S.2d at 420-21.

265. *See People v. Sawyer*, 83 A.D.2d 205, 443 N.Y.S.2d 926 (2d Dep't 1981).

Constitutions, this is not to be equated with the right to choice of assigned counsel. . . . [T]rial judges have a duty to carefully evaluate complaints concerning court appointed counsel and, when appropriate, effect a change of counsel, "this is far from suggesting that an indigent's request that a court assign new counsel is to be granted casually."²⁶⁶

The *Gaines* court asserted that there may exist circumstances in which, following an inquiry by the court, a change of appointed counsel is warranted.²⁶⁷ In *People v. Medina*,²⁶⁸ the New York Court of Appeals analyzed the court's responsibilities as to a defendant's request for a change of court appointed counsel. The *Medina* court held that the mere appointment of counsel is not enough, that "[t]he legal assistance provided must be effective."²⁶⁹ In addition, the trial judge has the duty to "carefully evaluate serious complaints about counsel."²⁷⁰

However, the *Medina* court emphasized that it is the court, not the defendant, who dictates when there is to be a change of court appointed counsel. The court explained that "as long as assigned

266. *Sawyer*, 57 N.Y.2d at 18-19, 438 N.E.2d at 1136-37, 453 N.Y.S.2d at 421-22 (quoting *People v. Medina*, 44 N.Y.2d 199, 207, 375 N.E.2d 768, 772, 404 N.Y.S.2d 588, 592 (1978)). In *Sawyer*, the court held that the duty of the trial court went beyond repeatedly advising the defendant to accept the public defender. *Id.* at 21, 438 N.E.2d at 1138, 453 N.Y.S.2d at 423. Rather the trial court was obliged to make a "'searching inquiry' of a defendant to be reasonably certain that the 'dangers and disadvantages' of giving up the fundamental right to counsel have been impressed on the defendant." *Id.*

267. *Gaines*, 212 A.D.2d at 727, 622 N.Y.S.2d at 970 (citing to *People v. Medina*, 44 N.Y.2d 199, 375 N.E.2d 768, 404 N.Y.S.2d 588 (1978)).

268. 44 N.Y.2d 199, 375 N.E.2d 768, 404 N.Y.S.2d 588 (1978). In *Medina*, the defendant claimed he was denied his constitutional right to counsel by the trial court's refusal to replace his court appointed lawyer. *Id.* at 203, 375 N.E.2d at 769, 404 N.Y.S.2d at 590. The trial court judge stated that Medina's request came just prior to the start of trial and there was never "the slightest hint that the appellant was harboring any dissatisfaction with his lawyer." *Id.* at 205, 375 N.E.2d at 771, 404 N.Y.S.2d at 591. After repeated failed efforts by the trial judge to ascertain the cause of Medina's dissatisfaction with counsel, the request was denied as being no more than a delay tactic. *Id.* at 206, 375 N.E.2d at 771, 404 N.Y.S.2d at 591-92.

269. *Id.* at 207, 375 N.E.2d at 772, 404 N.Y.S.2d at 592.

270. *Id.*

counsel are men of ability and integrity, the discretion and responsibility for their selection rests with the court.”²⁷¹ However, where “good cause does exist a court is well advised to effect a change of counsel.”²⁷² The court in *Medina* supported their position by citing section 5.3 of the American Bar Association Standards which states:

Since a relationship of mutual confidence between a lawyer and client is important to the lawyer’s fulfillment of his professional functions, where good cause is shown by the defendant why that confidence does not exist the court should substitute counsel. Of course, the defendant should not be permitted to use this opportunity as a device to obstruct the orderly processes of the courts²⁷³

As to “when” a court should initiate an inquiry into whether or not there should be a change of counsel, the *Gaines* court stated that “such an inquiry is only required for *serious complaints* about counsel.”²⁷⁴

271. *Id.* at 207, 375 N.E.2d at 772, 404 N.Y.S.2d at 592-93 (quoting *People v. Brabson*, 9 N.Y.2d 173, 181, 173 N.E.2d 227, 231, 212 N.Y.S.2d 401, 407 (1961)).

272. *Id.* at 208, 375 N.E.2d at 772, 404 N.Y.S.2d at 593. The *Medina* court held that in determining whether “good cause” exists “a court must take into account such circumstances as whether the present counsel is reasonably likely to afford a defendant effective assistance and whether the defendant has unduly delayed in seeking new assignment.” *Id.*; see, e.g., *People v. Byrne*, 17 N.Y.2d 209, 215-16, 217 N.E.2d 23, 25-26, 270 N.Y.S.2d 193, 196-97 (1966). In *Byrne*, the court held a trial judge had abused his discretion in assigning one attorney to represent two defendants where there existed a conflict of interest. *Id.*; see also *People v. Bennett*, 29 N.Y.2d 462, 467, 280 N.E.2d 637, 639, 329 N.Y.S.2d 801, 804 (1972). In *Bennett*, the court held that the assigned counsel should have been replaced where he completely failed to investigate or prepare an available insanity defense and as such his representation of the defendant was deemed both inadequate and ineffective. *Id.*

273. *Medina*, 44 N.Y.2d at 208, 375 N.E.2d at 772, 404 N.Y.S.2d at 593 (quoting AMERICAN BAR ASSOCIATION STANDARDS § 5.3).

274. *People v. Gaines*, 212 A.D.2d 727, 728, 622 N.Y.S.2d 970, 971 (2d Dep’t 1995) (emphasis added). See also *People v. Mason*, 22 A.D.2d 957, 255 N.Y.S.2d 968 (1964). In *Mason*, the trial court gave an indigent defendant one week to obtain new counsel following the defendant’s motion to discharge his present appointed counsel. *Id.* at 958, 255 N.Y.S.2d at 969. The Appellate

Federal constitutional caselaw has been consistent with New York holdings in the area of an indigent's right to counsel. In *Gideon v. Wainwright*,²⁷⁵ the United States Supreme Court held that an indigent defendant in a felony case in a state court has a constitutional right to have counsel appointed to him.²⁷⁶ Under the Federal Constitution, the indigent's right to counsel extends to his first appeal as of right.²⁷⁷ However, this right to counsel recognized under the United States Constitution is not without its limits. In *Pennsylvania v. Finley*,²⁷⁸ the Court stated:

We have never held that prisoners have a constitutional right to counsel when mounting collateral attacks upon their conviction. . . . [O]ur cases establish that the right to appointed counsel extends to the first appeal of right, and no further. Thus,

Division, Second Department held that the trial court was in error for failing to inquire as to the grounds for such discharge of counsel, "which if true, would have warranted his discharge." *Id.*

275. 372 U.S. 335 (1963).

276. *Id.* at 343-44. The Court stated that:

The assistance of counsel is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . . [I]n our adversary system of criminal justice, any person who is haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him.

Id. at 343-44. See also *Johnson v. Zerbst*, 304 U.S. 458, 468 (1938) (holding that in federal courts "[i]f the accused . . . is not represented by counsel and has not competently and intelligently waived his constitutional right, the Sixth Amendment stands as a jurisdictional bar to a valid conviction and sentence depriving him of life or his liberty").

277. See *Douglas v. California*, 372 U.S. 353, 357 (1963) (stating that "[i]n federal courts . . . an indigent must be afforded counsel on appeal whenever he challenges a certification that the appeal is not taken in good faith . . . [and that] [t]he federal courts must honor his request for counsel regardless of what they think the merits of the case may be . . ."). But see *Ross v. Moffitt*, 417 U.S. 600, 610 (1974). In *Ross*, the Supreme Court refused to extend the right to counsel on the first appeal as of right to discretionary appeals, holding that "[t]he fact that an appeal has been provided does not automatically mean that a State then acts unfairly by refusing to provide counsel to indigent defendants at every stage of the way." *Id.*

278. 481 U.S. 551 (1987).

we have rejected suggestions that we establish a right to counsel on discretionary appeals.²⁷⁹

In conclusion, both New York and Federal Constitutional principles demand that although an indigent defendant is entitled to court appointed counsel in criminal cases, this right is not unrestricted. Certainly, the right to services of a court appointed attorney does not encompass the right to appointment of successive lawyers at the defendant's option. Where the accused can show a substantial need for new counsel, such as blatant ineffective representation or a legitimate irreconcilable attorney-client conflict, then the courts are obligated to provide the indigent defendant with representation. However, where there are de minimus or repetitive complaints by an indigent defendant, no such constitutional obligation exists.

279. *Id.* at 555 (citing *Wainwright v. Torna*, 455 U.S. 586 (1982); *Ross v. Moffitt*, 417 U.S. 600 (1974); *Boyd v. Dutton*, 405 U.S. 1 (1972) (Powell, J., dissenting)).