



1993

Trial by Jury

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



Part of the [Constitutional Law Commons](#), [Courts Commons](#), [Criminal Law Commons](#), [Criminal Procedure Commons](#), [Jurisprudence Commons](#), [State and Local Government Law Commons](#), and the [Supreme Court of the United States Commons](#)

Recommended Citation

(1993) "Trial by Jury," *Touro Law Review*. Vol. 9 : No. 3 , Article 64.

Available at: <https://digitalcommons.tourolaw.edu/lawreview/vol9/iss3/64>

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.

Seventh Amendment “require[s] a jury trial on the merits in those actions that are analogous to ‘Suits at common law.’”²⁰²¹ The Supreme Court has also concluded that when a “complaint requests a money judgment it presents a claim which is unquestionably legal.”²⁰²² Additionally, whether a jury trial is required in a federal court “depends on the nature of the issue to be tried rather than the character of the overall action.”²⁰²³

People v. Callahan²⁰²⁴
(decided October 27, 1992)

This case was a consolidation of the appeals of three defendants²⁰²⁵ who sought to appeal guilty pleas which included a bargained-for waiver of the right to appeal. Defendant Sutton claimed that his bargained-for waiver was invalid because impaired his ability to obtain review of his right to a speedy trial, as guaranteed by the state²⁰²⁶ and federal²⁰²⁷ constitutions, as a

2021. *Tull v. United States*, 481 U.S. 412, 417 (1987) (quoting U.S. CONST. amend VII).

2022. *Dairy Queen, Inc. v. Wood*, 369 U.S. 469, 476 (1962).

2023. *Ross v. Bernhard*, 396 U.S. 531, 538 (1970). The Court also stated that “the ‘legal’ nature of an issue is determined by considering, first, the pre-merger custom with reference to such questions; second, the remedy sought; and, third, the practical abilities and limitations of juries.” *Id.* at n.10.

2024. 80 N.Y.2d 273, 604 N.E.2d 108, 590 N.Y.S.2d 46 (1992).

2025. Defendant Callahan’s appeal is not addressed here because he did not claim that his bargained-for waiver violated the New York State Constitution. The court of appeals stated that while defendant Callahan categorized his challenge as questioning the legality of the sentence, in reality, he was questioning the adequacy of procedures used by the court to determine the sentence. *Id.* at 278, 604 N.E.2d at 110, 590 N.Y.S.2d at 49. The court found that appeals based upon challenges to procedures used in the determination of a sentence are waived if not raised before the trial court, as provided by Criminal Procedure Law section 470.05. *Id.* at 281, 604 N.E.2d at 112-13, 590 N.Y.S.2d at 50-51 (citing N.Y. CRIM. PROC. LAW § 470.05 (McKinney 1983)). The court held that the defendant “voluntarily and intelligently” waived the right to appeal by entering his guilty plea. *Id.* at 281, 604 N.E.2d at 112-13, 590 N.Y.S.2d at 50-51.

2026. N.Y. CONST. art. I, § 6.

result of the prosecution's thirteen month delay in responding to his omnibus motion.²⁰²⁸ Defendant DeSimone claimed that his bargained-for waiver was constitutionally²⁰²⁹ defective because it was not made knowingly, intelligently and voluntarily.²⁰³⁰

The court of appeals held, as to defendant Sutton, "that a bargained-for waiver of the right to appeal [was] ineffective to the extent that it impair[ed] the defendant's ability to obtain appellate review of a constitutional speedy trial claim."²⁰³¹ In addressing defendant DiSimone, the court held that the "record simply [did] not afford a sufficient basis for concluding that the defendant's waiver of his right to appeal was knowing, intelligent or voluntary."²⁰³² Thus, the court found that DiSimone's waiver should not have been enforced by the appellate division.

Defendant Sutton was arrested and charged with various counts of drug possession. Thereafter, he moved to dismiss the charges on the ground that his right to a speedy trial had been violated by a thirteen month delay by the prosecution in response to his omnibus motion.²⁰³³ This motion was denied and defendant pleaded guilty to criminal sale of a controlled substance. As a condition to the plea, he waived all his rights to appeal.²⁰³⁴ Defendant Sutton subsequently tried to obtain appellate review of the speedy trial claim and the appellate division dismissed the appeal, stating that such a constitutional claim was waivable.²⁰³⁵

2027. U.S. CONST. amend. VI, cl. 1.

2028. *Callahan*, 80 N.Y.2d at 279, 604 N.E.2d at 111, 590 N.Y.S.2d at 49.

2029. N.Y. CONST. art. I, § 6.

2030. *Callahan*, 80 N.Y.2d at 279, 604 N.E.2d at 111, 590 N.Y.S.2d at 49.

2031. *Id.* at 282, 604 N.E.2d at 108, 590 N.Y.S.2d at 51.

2032. *Id.* at 283, 604 N.E.2d at 114, 590 N.Y.S.2d at 52.

2033. *Id.*

2034. *Id.*

2035. *Id.* The appellate division, relying on *People v. Rodriguez*, 50 N.Y.2d 553, 407 N.E.2d 475, 429 N.Y.S.2d 631 (1980) (holding that when a defendant knowingly abandons a constitutional claim, the courts will not second guess that decision on appeal), held the waiver to be enforceable unless it was made under duress, and the fairness of a trial to be questionable due to the delay. *See also* *People v. Sutton*, 175 A.D.2d 272, 273, 573 N.Y.S.2d 915, 912 (2d Dep't 1991); *People v. Rodriguez*, 50 N.Y.2d 553, 407 N.E.2d 475, 429 N.Y.S.2d 631 (1980) (a speedy trial constitutional claim asserted at

Defendant DeSimone, who was also indicted on drug charges, pleaded guilty to a single lesser charge.²⁰³⁶ Thereafter, the prosecutor informed the court that the defendant had signed a written waiver of his right to appeal, but the court did not refer to the waiver during his plea allocution.²⁰³⁷ Defendant sought review of his sentence in the appellate division arguing that the waiver was without effect because during the plea allocution the court failed to inquire of the defendant whether his waiver was knowingly and voluntarily made.²⁰³⁸

Initially, the court reviewed *People v. Seaberg*,²⁰³⁹ which held that the right to appeal may be waived as a condition of a sentence or plea bargain.²⁰⁴⁰ The court noted that *Seaberg* rejected the notion that “bargained-for” waivers of appeal should be disregarded by appellate courts, but that a criminal defendant’s appellate claim may be reviewed in certain situations despite the existence of the waiver.²⁰⁴¹ Such a waiver will not be enforceable unless it was made “knowingly, intelligently and voluntarily.”²⁰⁴² However, certain claims may not be waived, such as those involving the right to a speedy trial,²⁰⁴³ claims

trial must be pursued up until final disposition in trial court or it is considered forfeited and not preserved for appeal).

2036. *Callahan*, 80 N.Y.2d at 279, 604 N.E.2d at 111, 590 N.Y.S.2d at 49.

2037. *Id.*

2038. *Id.*

2039. 74 N.Y.2d 1, 541 N.E.2d 1022, 543 N.Y.S.2d 968 (1989).

2040. *Id.* at 5, 541 N.E.2d at 1023, 543 N.Y.S.2d at 969.

2041. *Callahan*, 80 N.Y.2d at 279-80, 604 N.E.2d at 111-12, 590 N.Y.S.2d at 49-50. *See Seaberg*, 74 N.Y.2d at 5, 541 N.E.2d at 1023, 543 N.Y.S.2d at 969.

2042. *Callahan*, 80 N.Y.2d at 279-80, 604 N.E.2d at 111-12, 590 N.Y.S.2d at 49-50 (citing *Seaberg*, 74 N.Y.2d at 10, 541 N.E.2d at 1026, 543 N.Y.S.2d at 972).

2043. *Id.* at 280, 604 N.E.2d at 112, 590 N.Y.S.2d at 50 (citing *Seaberg*, 74 N.Y.2d at 11, 541 N.E.2d at 1026, 543 N.Y.S.2d at 972 citing *People v. Blakely*, 34 N.Y.2d 311, 314-15, 313 N.E.2d 763, 357 N.Y.S.2d 459 (1974) (holding that where defendant withdraws speedy trial claim as condition of plea, waiver is coercive and ineffectual)).

challenging the legality of sentences,²⁰⁴⁴ and defendants competency to stand trial.²⁰⁴⁵

In first turning to defendant Sutton's claim, the court of appeals held that the nature of the speedy trial guarantee was such that a plea offered on the condition that a speedy trial claim be waived must be vacated as inherently coercive.²⁰⁴⁶ The court found that the appellate division's reliance upon *People v. Rodriguez*²⁰⁴⁷ in rejecting Sutton's appeal was misplaced. The court of appeals stated that the appellate division "misconstrued" *Rodriguez*, and explained that *Rodriguez* simply stood "for the limited proposition that a defendant who initially interposes a constitutional speedy trial claim but subsequently abandons it before a determination on the claim is made cannot subsequently raise that claim on appeal."²⁰⁴⁸ The court of appeals also referred to its decision in *People v. Blakely*,²⁰⁴⁹ which held "that a reduced plea conditioned upon a waiver of a speedy trial claim must be vacated."²⁰⁵⁰ Thus, the court of appeals restated its reliance on *Seaberg*,²⁰⁵¹ and held that defendant Sutton's bargained-for waiver of his right to appeal was ineffective

2044. *Id.* (citing *Seaberg*, 74 N.Y.2d at 9, 541 N.E.2d at 1025, 543 N.Y.S.2d at 971 and *People v. Francabandera*, 33 N.Y.2d 429, 434 n.2, 310 N.E.2d 292, 354 N.Y.S.2d 609 (1974) (defendant suffering from amnesia had standing to appeal due to substantial question of voluntariness of guilty plea)).

2045. *Id.* (citing *Seaberg*, 74 N.Y.2d at 9, 541 N.E.2d at 1025, 543 N.Y.S.2d at 971 citing *People v. Armlin*, 37 N.Y.2d 167, 172, 332 N.E.2d 870, 371 N.Y.S.2d 691 (1975) (where court failed to provide psychiatric examination to determine defendant's capacity to stand trial a contradiction existed because defendant could not knowingly and intelligently waive his right to appeal if there was a possibility that he was incompetent)).

2046. *Id.* at 282, 604 N.E.2d at 113, 590 N.Y.S.2d at 51.

2047. 50 N.Y.2d 553, 407 N.E.2d 475, 429 N.Y.S.2d 631 (1980) (holding that defendant who raised then abandoned speedy trial claim before final disposition forfeited the right to raise claim on appeal).

2048. *Callahan*, 80 N.Y.2d at 281, 604 N.E.2d at 113, 590 N.Y.S.2d at 51. *See also Rodriguez*, 50 N.Y.2d at 558, 407 N.E.2d at 477, 429 N.Y.S.2d at 633.

2049. 34 N.Y.2d 311, 313 N.E.2d 763, 357 N.Y.S.2d 459 (1974).

2050. *Id.* at 315, 313 N.E.2d at 765, 357 N.Y.S.2d at 462.

2051. 74 N.Y.2d 1, 543 N.Y.S.2d at 968, 541 N.E.2d 1022 (1989).

because it impaired a constitutional speedy trial claim.²⁰⁵² Consequently, the order of the appellate division was reversed, and the case was remitted for consideration of the merits of defendant's speedy trial claim.²⁰⁵³

Turning next to defendant DeSimone's claim, the court questioned whether the waiver was obtained "under constitutionally acceptable circumstances."²⁰⁵⁴ The court pointed to its analysis in *People v. Seaberg*, and inquired whether the waiver was "voluntary, knowing and intelligent."²⁰⁵⁵ Using this standard, the court of appeals found that the record was devoid of any showing that the defendant had knowledge of the contents of the waiver.²⁰⁵⁶ Furthermore, it appeared that the trial court was unaware of the waiver until the prosecutor informed it of the existence of the document.²⁰⁵⁷ Therefore, the waiver was not executed under constitutionally acceptable circumstances, and the appellate division erred by enforcing it.²⁰⁵⁸ Thus, the court determined that DeSimone's waiver was unenforceable.²⁰⁵⁹

The United States Court of Appeals for the Eleventh Circuit discussed similar questions in *Stano v. Dugger*.²⁰⁶⁰ In *Stano*, the court stated that a guilty plea will satisfy due process and thus be upheld upon review "if a defendant understands the charges against him, understand the consequences of a guilty plea, and voluntarily chooses to plead guilty, without being coerced to do so"²⁰⁶¹ Furthermore, in *United States v. Bell*,²⁰⁶² the

2052. *Callahan*, 80 N.Y.2d at 282, 604 N.E.2d at 113, 590 N.Y.S.2d at 51.

2053. *Id.*

2054. *Id.* at 283, 604 N.E.2d at 113, 590 N.Y.S.2d at 51.

2055. *Id.* at 283, 604 N.E.2d at 114, 590 N.Y.S.2d at 52.

2056. *Id.*

2057. *Id.*

2058. *Id.*

2059. *Id.*

2060. 921 F.2d 1125 (11th Cir. 1991) (affirming defendant's guilty plea for murder although he received death sentence and testimony indicated defendant thought he would receive life sentence since the judge who sentenced him to death had previously sentenced him to life on separate guilty plea for murder).

2061. *Id.* at 1141 (quoting *Frank v. Blackburn*, 646 F.2d 873, 882 (5th Cir. 1980) (en banc), *modified on other grounds*, 646 F.2d 902 (5th Cir.), *cert denied*, 454 U.S. 840 (1981)). The court stated that a guilty plea is tantamount

Fifth Circuit held that "a speedy trial violation is a non-jurisdictional defect [that could be] waived by a guilty plea."²⁰⁶³ The court noted that its determination comported with other circuits which have addressed this issue.²⁰⁶⁴ In order for a defendant to preserve a speedy trial claim for review when pleading guilty he or she must enter a "conditional" plea pursuant to Rule 11(a)(2) of the Federal Rules of Criminal Procedure.²⁰⁶⁵

The appellate division, second department, recently decided two cases involving the foreclosure of the right to appeal, upholding the waivers in both cases. In *People v. Diaz*,²⁰⁶⁶ the court held that the defendant's waiver barred a claim that he was deprived of his right to a fair trial because he "explicitly stated that his pleas were not coerced."²⁰⁶⁷ Similarly, in *People v. Torres*²⁰⁶⁸ the court held that the defendant knowingly and intelligently negotiated a plea bargain, and fully understood the consequences of the waiver.²⁰⁶⁹ Because the defendant was adequately represented by counsel, the waiver was upheld.²⁰⁷⁰

In conclusion, it is apparent that a waiver of a right to appeal will be upheld if it is made knowingly and intelligently. The only claims which may not be waived in New York State Courts are

to a conviction, and thus the courts must determine its voluntariness at the time it is made. *Id.* See also FED. R. CRIM. P. 11 (establishes constitutional minimum for determining voluntariness of a knowing and voluntary plea).

2062. 966 F.2d 914 (5th Cir. 1992).

2063. *Id.* at 915. See also *United States v. Broussard*, 645 F.2d 504, 505 (5th Cir. 1981).

2064. See, e.g., *United States v. Bohn*, 956 F.2d 208, 209 (9th Cir. 1992); *United States v. Pickett*, 941 F.2d 411, 415-17 (6th Cir. 1991); *Lebowitz v. United States*, 877 F.2d 207, 209 (2d Cir. 1989); *United States v. Andrews*, 790 F.2d 803, 810 (10th Cir. 1986), *cert. denied*, 481 U.S. 1018 (1987); *United States v. Yunis*, 723 F.2d 795, 796 (1st Cir. 1984). See also *Speedy Trial Act*, 18 U.S.C. § 3161-3174 (1985).

2065. *Bell*, 966 F.2d at 915; FED. R. CRIM. P. 11(a)(2).

2066. 592 N.Y.S.2d 29, 32 (2d Dep't 1993).

2067. *Id.* at 31.

2068. 592 N.Y.S.2d 620 (3d Dep't 1992).

2069. *Id.* at 620.

2070. *Id.*

those involving the right to a speedy trial,²⁰⁷¹ claims challenging the legality of sentences,²⁰⁷² and defendant's competency to stand trial.²⁰⁷³ However, under federal law such a claim is waived unless the defendant enters a conditional plea pursuant to Rule 11 of the Federal Rules of Criminal Procedure.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

People v. Rampersant²⁰⁷⁴
(Decided April 2, 1992)

Defendant claimed that his right to trial by an impartial jury guaranteed by article I, section 2 of the New York State Constitution²⁰⁷⁵ was violated because the court allowed only one question to be asked of the third panel of prospective jurors as a whole, while permitting both the prosecution and defense equal time for questioning the first and second panel individually.²⁰⁷⁶ The appellate division held that limiting the prosecution and defense counsel to one question directed at the third panel as a whole denied fair opportunity to question prospective jurors.²⁰⁷⁷ The decision of the supreme court was unanimously reversed and remanded for a new trial.²⁰⁷⁸

2071. See *People v. Seaberg*, 74 N.Y.2d 1, 9, 541 N.E.2d 1022, 1025, 543 N.Y.S.2d 968, 971 (1989) (citing *People v. Blakely*, 34 N.Y.2d 311, 314-15, 313 N.E.2d 763, 764-65, 357 N.Y.S.2d 459, 462 (1974)).

2072. *Seaberg*, 74 N.Y.2d at 9, 541 N.E.2d at 1025, 543 N.Y.S.2d at 971 (citing *People v. Francabandera*, 33 N.Y.2d 429, 434 n.2, 310 N.E.2d 292, 294 n.2, 354 N.Y.S.2d 609, 612 n.2 (1974)).

2073. *Id.* at 9, 541 N.E.2d at 971, 543 N.Y.S.2d at 971 (citing *People v. Armlin*, 37 N.Y.2d 167, 172, 332 N.E.2d 870, 874, 371 N.Y.S.2d 691, 697 (1975)).

2074. 182 A.D.2d 373, 581 N.Y.S.2d 784 (1st Dep't 1992).

2075. N.Y. CONST. art I, § 2.

2076. *Rampersant*, 182 A.D.2d at 373, 581 N.Y.S.2d at 784.

2077. *Id.* at 374, 581 N.Y.S.2d at 785.

2078. *Id.* at 373, 581 N.Y.S.2d at 784.