Touro Law Review

Volume 24 | Number 2

Article 14

May 2014

# Court of Appeals of New York - People v. Ramchair

Joseph Maehr

Follow this and additional works at: http://digitalcommons.tourolaw.edu/lawreview

Part of the Constitutional Law Commons, and the Criminal Procedure Commons

Recommended Citation

Maehr, Joseph (2014) "Court of Appeals of New York - People v. Ramchair," *Touro Law Review*: Vol. 24: No. 2, Article 14.
Available at: http://digitalcommons.tourolaw.edu/lawreview/vol24/iss2/14

This Effective Assistance of Counsel 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 administrator of Digital Commons @ Touro Law Center. For more information, please contact ASchwartz@tourolaw.edu.

# Court of Appeals of New York - People v. Ramchair

**Cover Page Footnote**
24-2

This effective assistance of counsel is available in Touro Law Review: http://digitalcommons.tourolaw.edu/lawreview/vol24/iss2/14

# COURT OF APPEALS OF NEW YORK

## People v. Ramchair[1]
(decided March 29, 2007)

Racky Ramchair's conviction of first and second degree robbery was affirmed by the Appellate Division, Second Department.[2] Ramchair was granted leave to appeal after filing a petition for writ of *error coram nobis*,[3] after the defendant's application was denied by the Appellate Division without comment.[4] Ramchair claimed that he received ineffective assistance of counsel during his appeal in violation of the United States Constitution[5] and the New York State Constitution,[6] when his appellate counsel failed to argue the trial court erred when it denied his trial attorney's motion for a mistrial.[7] The New York Court of Appeals denied Ramchair's petition and affirmed the Appellate Division's order.[8]

Cabdriver Austin Olek was held at gunpoint and robbed by

[1] 864 N.E.2d 1288 (N.Y. 2007).

[2] People v. Ramchair, 764 N.Y.S.2d 725, 726-27 (App. Div. 2d Dep't 2003).

[3] BLACK'S LAW DICTIONARY 362 (8th ed. 2004) ("A writ of error directed to a court for review of its own judgment and predicated on alleged errors of fact.").

[4] *Ramchair*, 864 N.E.2d at 1290.

[5] U.S. CONST. amend. VI states, in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to . . . have the Assistance of Counsel for his defense."

[6] N.Y. CONST. art. I, § 6 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* as in civil actions . . . ." (emphasis added).

[7] *Ramchair*, 864 N.E.2d at 1290-91.

[8] *Id.* at 1291. The court held, as a matter of law, that the appellate counsel was not ineffective for merely choosing not to argue one possible issue on appeal (the mistrial application), where counsel vigorously argued a defense that constituted a reasonable appellate strategy. *Id.*

two male passengers in his cab on April 30, 1995.[9] Olek told the police one of the perpetrators was black and the other, Ramchair, was Guyanese.[10] Fifteen minutes after Olek picked up the two men as a fare in Queens, the black man grabbed Olek by the neck, "put a gun to his head, and threatened to 'blow his head off.' "[11] The men stole Olek's cab after one of them had shoved the unfortunate cabdriver out of the car and snatched forty dollars from the his hand.[12] Olek fought back, and was able to escape and call the police.[13]

Ramchair was eventually arrested for suspected robbery. On June 15, 1995, Olek viewed a lineup that Detective Winnik composed of the defendant and five "fillers."[14] Ramchair's appointed counsel, Jonathan T. Latimer, was at the lineup.[15] To mitigate differences in hair style or color, the fillers were instructed to cover their heads with baseball caps.[16] In a further effort to minimize the differences among the fillers, the detective had the fillers rub carbon paper on their faces to make it appear as if they had facial hair similar to the defendant.[17] Thereafter, Olek identified Ramchair as one of the two passengers who robbed him, and Ramchair was subsequently charged with first and second degree robbery.[18]

Latimer continued to represent Ramchair and moved to sup-

[9] Ramchair v. Conway, No. 04 CV 4241(JG), 2005 WL 2786975, at *1 (E.D.N.Y. Oct. 26, 2005).
[10] *Id.*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Ramchair*, 2005 WL 2786975, at *1.
[15] *Id.*
[16] *Id.*
[17] *Id.*
[18] *Id.*

press the identification "on the ground that the lineup was unnecessarily suggestive," because Ramchair was the only Guyanese in the lineup.[19] Claiming the lineup was prejudicial, Latimer moved for suppression because when Olek reported the incident to the police and testified in court, he explained he knew one of the perpetrators was Guyanese.[20] Olek had reported and testified that the perpetrator was Guyanese and claimed this was "an important characteristic" to him in his identification.[21] In the suppression motion, Latimer argued that because Ramchair was the only person in the lineup to fit the description of a Guyanese, the lineup was prejudicial to his identification.[22] The motion, however, was denied.[23]

At the first trial, before Detective Winnik was able to testify about the lineup, Ramchair's request for a mistrial was granted because an assault in jail rendered him incapable of assisting his counsel in his own defense.[24]

During the defendant's second trial, defense counsel asserted Olek's identification was tainted.[25] Detective Winnik testified he could not identify who the attorney present at the lineup was, just as he had previously testified at the suppression hearing.[26] Additionally, Winnik never testified the counsel, Latimer, who was present at the

---

[19] *Ramchair*, 2005 WL 2786975, at *2.
[20] *Id.* at *1.
[21] *Id.*
[22] *Id.* at *2.
[23] *Id.*
[24] *Ramchair*, 2005 WL 2786975, at *2.
[25] *Id.*
[26] *Id.*

lineup, objected to the lineup procedure or its composition.[27] After deliberation had begun, a juror was hospitalized due to chest pains and the court declared a second mistrial over defense's objection.[28] Subsequently, after the second mistrial, the defense moved that, in the event of a third trial, Ramchair would be placed in double jeopardy, but the court denied the motion.[29] The judge recognized the attachment of double jeopardy, but reasoned the mistrial was necessary due to the juror's condition and because no other possible alternatives were available.[30]

During the third trial, Latimer maintained the same defense, challenging Olek's identification even though Olek's testimony remained unchanged.[31] Detective Winnik, however, made two additional assertions during the course of his testimony that he had failed to make during the second trial or the suppression hearing.[32] Winnik now testified it was Latimer who was present at the lineup, when he previously could not recall this information.[33] Winnik also testified that Latimer failed to raise any objections to the procedure or composition of the lineup, thus implying Latimer's consent to a fair lineup and essentially transformed Latimer into a witness—because the only way for him to rebut the implication would be to take the stand and testify on his own behalf.[34]

---

[27] *Id.*

[28] *Ramchair*, 2005 WL 2786975, at *2, 3.

[29] *Id.* at *3.

[30] *Id.*

[31] *Id.*

[32] *Id.*

[33] *Ramchair*, 2005 WL 2786975, at *3.

[34] *Id.* at *4.

Although Latimer had valid reasons to stay silent at the line-up,[35] the judge did not allow him to testify as to those reasons why he thought it was unfair.[36] After protracted objections to Winnik's testimony and the line of questioning, Latimer was overruled and forbidden to rebut Winnik's testimony.[37] Ramchair was sentenced to two concurrent terms, ten to twenty years for first degree robbery and five to ten years for second degree robbery.[38]

On appeal, Ramchair was represented by new counsel who argued Ramchair's rights were violated, asserting the third trial put him in double jeopardy because the judge improperly declared the second trial a mistrial, though the defense objected.[39] But due to the extenuating circumstance of the hospitalized juror, the appellate court reasoned that the "mistrial was manifestly necessary" and it was "physically impossible to proceed with the trial in conformity with the law."[40]

Ramchair's new counsel also argued a constitutional right to raise a defense was deprived during the third trial, when the trial judge did not permit Latimer to rebut the testimony elicited by the prosecutor from Detective Winnik.[41] The appellate court determined it was proper to exclude Latimer's proposed testimony because he

---

[35] *Id.* at *7 (asserting both the use of carbon paper and the lineup composition were objectionable and any changes would have been superficial, but as a result, if counsel did not object then the " 'police have put themselves in the position to assert that defense counsel was consulted and assisted in the same lineup procedure that is later challenged as unfair' ").

[36] *Id.* at *8 (paraphrasing an affidavit submitted to the Court regarding "why defense counsel might stay silent even during an unfair line-up").

[37] *Id.* at *4-6.

[38] *Ramchair*, 2005 WL 2786975, at *7.

[39] *Ramchair*, 764 N.Y.S.2d at 726.

[40] *Id.* (internal quotations omitted).

[41] *Id.*

was still acting in a representative capacity and thus could not also be a witness.[42]

The appellate counsel notably did not argue the trial court erred by denying Latimer's motion for a mistrial before the third trial commenced.[43] On that contention, Ramchair went before the New York Court of Appeals, alleging ineffective assistance of counsel for failure to raise the issue on appeal.[44]

Because Ramchair filed a petition for habeas relief that was held in abeyance until he exhausted all his state claims, it is important to analyze Ramchair's claim of ineffective assistance of counsel under both the federal and state standards.[45] The federal standard used to assess whether a defendant's rights have been violated by ineffective assistance of counsel was set forth in *Strickland v. Washington*.[46] The *Strickland* Court created a rule to ensure a fair trial for the defendant and preserve the defendant's Sixth Amendment right under the United States Constitution.[47]

The Sixth Amendment of the United States Constitution prescribes certain rights of the accused, including the right to effective

---

[42] *Id.* at 726-27.

[43] *Ramchair*, 864 N.E.2d 1288, 1290-91.

[44] *Id.* at 1289, 1291. The New York Court of Appeals affirmed the Appellate Division and held that "defendant was [not] denied meaningful representation when his appellate counsel failed to argue that the trial court should have granted his motion for a mistrial," because there was a "solid legal basis for appellate counsel's strategy." The court held that "as a matter of law" the appellate counsel was not ineffective for merely choosing not to argue a possible issue on appeal in further detail (the mistrial application), where they vigorously argued a defense argument on such appeal that constituted a reasonable appellate strategy. *Id.* at 1291.

[45] *Ramchair*, 2005 WL 2786975, at *18.

[46] 466 U.S. 668 (1984).

[47] *Strickland*, 466 U.S. at 684-85 ("The Constitution guarantees a fair trial through the Due Process Clauses, but it defines the basic elements of a fair trial largely through the several provisions of the Sixth Amendment, including the counsel clause.").

assistance of counsel.[48] In *Strickland*, the defendant committed a plethora of crimes, specifically, "murders, torture, kidnapping, severe assaults, attempted murders, attempted extortion, and theft."[49] The defendant pleaded guilty to all charges, confessed to three murders and waived his right to a trial by jury against his experienced counsel's advice.[50] During the plea allocution, the defendant "told the trial judge that . . . [he] had no significant prior criminal record [and that] . . . [during the crime spree] . . . he was under extreme stress caused by his inability to support his family."[51]

After the testimony provided by the defendant during his plea, defendant's counsel did not ask for a psychiatric examination because there was no indication, based on defendant's counsel's conversations and interactions with the client, that the client had psychological problems.[52] The defendant's counsel claimed he relied on the plea allocution for the information regarding defendant's background and his defense of extreme emotional duress because the State would not be able to cross-examine the defendant on his claim or proffer its own psychiatric evidence.[53] Lastly, the defense counsel never requested a pre-sentence report because it would have included defendant's criminal history, which was plainly contradictive to what the defendant told the judge during the plea allocution.[54] The defendant waived his right to an advisory jury during sentencing, again against his coun-

---

[48] U.S. Const. amend. VI.
[49] *Strickland*, 466 U.S. at 671-72.
[50] *Id.* at 672.
[51] *Id.*
[52] *Id.* at 673.
[53] *Id.*
[54] *Strickland*, 466 U.S. at 673.

sel's wishes and chose to be sentenced by the judge, who sentenced him to death for each murder committed and years in prison for all the other crimes he committed.[55]

Thus, after an exhaustive appellate process from state to federal court, the defendant alleged ineffective assistance of counsel. The defendant based this claim on his trial counsel's failure to request a pre-sentence report, failure "to request a psychiatric report" and failure to "investigate and present character witnesses," all of which, he argued, violated his Sixth Amendment rights.[56] The Supreme Court found no serious error in the decisions made by the defendant's trial counsel, as each decision was a strategic one, which ultimately resulted in the exclusion of the criminal record, detrimental evidence at the sentencing stage, and the psychiatric-cross and character evidence that could otherwise have been proffered by the state.[57] The Court found defendant's counsel to be effective after applying a two prong test created in order to assess the effectiveness of counsel.[58]

The Supreme Court reasoned the adversarial system is dependent on the critical role played by counsel, since it is the counsel's skill set that is necessary to aid in the accused's defense in order to meet the prosecution's case.[59] "Thus a fair trial is one in which evidence subject to adversarial testing is presented to an impartial tri-

---

[55] *Id.* at 672, 675.

[56] *Id.* at 675.

[57] *Id.* at 699.

[58] *Id.* at 700 (requiring defendant to show both deficient performance and sufficient prejudice for a successful ineffective assistance of counsel claim).

[59] *Strickland*, 466 U.S. at 685.

bunal for resolution of issues defined in advance of the proceeding."[60] Therefore, counsel's assistance is deemed ineffective where a lawyer's conduct undermined the purpose of the adversarial process to the point where the trial cannot be deemed fair because it created an unjust or unreliable result.[61] The constitutional command prescribed by the Sixth Amendment requires from an attorney more than mere presence at trial to guarantee the rights afforded to the accused.[62] The Court concluded "the right to counsel is the right to the effective assistance of counsel."[63]

The Court cited two different situations where a defendant's rights can be violated by ineffective assistance of counsel.[64] The first, and more direct, is where the government actually interferes with counsel's ability to make independent decisions regarding a client's defense.[65] The second is where counsel fails to provide a minimally adequate measure of representation.[66] In short, the Constitution contemplates a minimum acceptable level of service from defense counsel, and service that falls below that level deprives a defendant of a protected right. The two prong test, created to determine whether the counsel had failed to provide effective counsel, is as follows:

> *First, the defendant must show that counsel's performance was deficient.* This requires showing that

[60] *Id.*
[61] *Id.* at 686.
[62] *Id.* at 685.
[63] *Id.* at 686 (internal quotations omitted).
[64] *Strickland*, 466 U.S. at 686.
[65] *Id.*
[66] *Id.*

> counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment. *Second, the defendant must show that the deficient performance prejudiced the defense.* This requires showing that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.[67]

Both of the elements in the test must be met to establish ineffective assistance of counsel.[68] Although the defendant's counsel in *Strickland* did fail to perform certain tasks, his conduct was not deemed unreasonable, as he sought to exclude detrimental evidence and possible expert testimony in order to sustain the mitigating factors. In short, he appeared to have a plan.[69] "Because advocacy is an art and not a science, and because the adversary system requires deference to counsel's informed decisions, strategic choices must be respected in these circumstances if they are based on professional judgment."[70] Thus, defendant's counsel's decision to omit those tasks should be respected and granted deference, where such omissions were based on the exercise of "reasonable professional judgment."[71]

Lastly, defense counsel's omissions in no way prejudiced the outcome of the trial,[72] because even if everything the defendant com-

---

[67] *Id.* at 687 (emphasis added).

[68] *Id.*

[69] *Strickland*, 466 U.S. at 688 ("The proper measure of attorney performance remains simply reasonableness under prevailing professional norms.").

[70] *Id.* at 681.

[71] *Id.*

[72] *See* Williams v. Taylor, 529 U.S. 362, 391 (2000) ("To establish prejudice he 'must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome.' " (quoting *Strickland*, 466 U.S. at 694)).

plained his counsel failed to do had been done, it would not amount to enough mitigating factors to outweigh the aggravating factors to avoid a sentence of death, as the Judge found all three murders "especially heinous, atrocious, and cruel, all involving repeated stabbings."[73]

In contrast, federal courts have found that counselors who supply erroneous advice to their clients regarding their possibility of parole eligibility have acted deficiently.[74] In *Meyers v. Gillis*, the defendant pleaded guilty to second degree murder after repeatedly bludgeoning his victim with a baseball bat.[75] The defendant's counsel informed him if he pled guilty, he would be eligible for parole in seven years.[76] The advice regarding the parole proved to be wrong, as second degree murder carried with it a mandatory life sentence without the possibility for parole in Pennsylvania.[77] The Court of Appeals for the Third Circuit applied the *Strickland* test, and the defendant was granted relief because his counsel's conduct was deemed to be ineffective.[78] The court found that the defendant satisfied both prongs when it concluded the advice proffered by trial counsel was " 'grossly misleading' " and thus counsel did not meet the "objective standard of reasonableness" afforded by the first prong of the *Strick-*

[73] *Strickland*, 466 U.S. at 674, 678 ("The plain fact is that the aggravating circumstances proved in this case were completely *overwhelming* . . ." (quoting Application to Petition for Certiorari at A230, Knight v. State, 394 So.2d 997 (Fla. 1981) (No. 59741))).

[74] Meyers v. Gillis, 142 F.3d 664, 665 (3d Cir. 1998).

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.* at 666-67.

*land* test.[79] The court concluded there was enough testimony on the record to support defendant's claim of erroneous advice and ineffective assistance of counsel, thus prejudicing the defendant and satisfying the second prong of the *Strickland* test.[80] The court concluded, "Meyers has met his burden of showing that there is a reasonable probability that, but for counsels' erroneous advice, he would not have . . . [pleaded] guilty, and that he has been prejudiced by doing so."[81]

However, New York has followed a different test, articulated in *People v. Baldi*,[82] to determine whether a defendant received effective assistance of counsel.[83] The standard established by *Baldi* is one of "meaningful representation."[84] Joseph Baldi was convicted of separate, unrelated crimes at two different trials.[85] On September 5, 1971, after the first set of crimes was committed, the defendant was approached by two investigating officers, who were responding to a prowler complaint in the area.[86] The officers asked for Baldi's identification; he responded by pulling out a handgun and fired it at the police.[87] The gun misfired and Baldi was disarmed, arrested and charged with "attempted murder of a police officer, burglary, and possession of a weapon."[88] Defendant was sent to a state hospital as

---

[79] *Meyers,* 142 F.3d at 666-67 (quoting Strickland, 466 U.S. at 687-88).
[80] *Id.* at 670.
[81] *Id.* at 668.
[82] 429 N.E.2d 400 (N.Y. 1981).
[83] *See Baldi*, 429 N.E.2d at 400.
[84] *Id.* at 405.
[85] *Id.* at 401.
[86] *Id.* at 401-02.
[87] *Id.*
[88] *Baldi*, 429 N.E.2d at 402.

he was deemed unfit to stand trial; he was released in less than a year.[89]

On June 17, 1972, Deborah Januszko, who was fifteen years old, was stabbed to death in her sleep after leaving a bedroom window open, and Baldi was questioned after being found in this area at 5:00 a.m., three days after her murder.[90] Subsequently, when questioned at the police station, "Baldi went into a trance-like state and pantomimed the stabbing."[91] The following day, after several other acted-out confessions, Sidney Sparrow was assigned to defendant Baldi for the Januszko slaying and later assumed Baldi's defense for the crimes committed on September 5, 1971, including the attempted murder of a police officer.[92] Baldi eventually admitted to the Januszko slaying again and to three other murders and ten assaults on women, but after a *Huntley* hearing,[93] these confessions were suppressed due to Sparrow's successful arguments.[94] However, the court ruled the original pantomimed confession was voluntary and admissible in

---

[89] *Id.*

[90] *Id.*

[91] *Id.* at 402-03.

[92] *Id.* at 402-03.

[93] Dianne K. Leverrier, People v. Berg, 16 TOURO L. REV. 703, 704 n.15 (2000).

> [E]stablishing the Huntley hearing: a separate proceeding in a criminal case wherein "[t]he Judge must find voluntariness [of the confession] beyond a reasonable doubt before the confession can be submitted to the trial jury. The burden of proof as to voluntariness is on the People. The prosecutor must, within a reasonable time before trial, notify the defense as to whether any alleged confession or admission will be offered in evidence at the trial. If such notice be given by the People[,] the defense, if it intends to attack the confession or admission as involuntary, must, in turn, notify the prosecutor of a desire by the defense of a preliminary hearing on the such issue."

*Id.* (citing People v. Huntley, 204 N.E.2d 179, 183 (1965) (alteration in original)).

[94] *Baldi*, 429 N.E.2d at 403-04 (indicating Baldi's constitutional rights would have been violated if the statements were not suppressed).

the murder trial.[95]

When defendant's insanity defense failed, defendant lost both trials and was sentenced for the attempted murder of a police officer and the murder of Januszko.[96] In an attempt to bolster the defendant's insanity defense, and with the consent of both the prosecution and the court, Sparrow testified to the defendant's behavior that he personally witnessed in both of the trials and the *Huntley* hearing.[97] The defendant acquired new counsel on appeal and alleged that his constitutional rights were violated due to ineffective assistance of counsel on the part of Sparrow.[98] The appellate court reversed the convictions after it found Sparrow's assistance of counsel ineffective.[99] The New York Court of Appeals reversed the appellate court's order and declared that Sparrow's conduct satisfied the state's effective assistance of counsel standard.[100]

The Court of Appeals' primary concern was to establish an approach to analyze the effective assistance of counsel, without implementing an inflexible standard that would confuse effectiveness with losing tactics as a result of a retrospective analysis.[101] The court recognized two different standards were being used to analyze counsel's effectiveness.[102] The first standard was "[t]he traditional standard . . . whether the attorney's shortcomings were such as to render

---

[95] *Id.* at 403.
[96] *Id.* at 404.
[97] *Id.* at 403.
[98] *Id.* at 404.
[99] *Baldi*, 429 N.E.2d at 404.
[100] *Id.* at 407, 408.
[101] *Id.* at 405.
[102] *Id.* at 404.

the 'trial a farce and a mockery of justice.' "[103] The second was the federal standard, "whether the attorney exhibited 'reasonable competence,' " determined by the *Strickland* test.[104] The Court of Appeals chose not to adopt either of the existing tests and instead created the "meaningful representation" test: "[s]o long as the evidence, the law, and the circumstances of a particular case, viewed in totality and as of the time of the representation, reveal that the attorney provided meaningful representation, the constitutional requirement [for effective assistance of counsel] will have been met."[105]

The court concluded Sparrow did, in fact, provide meaningful representation given the evidence presented (a confession to murder), the circumstances of the case (an allegedly insane repeat offender), and his innovative way to bolster his client's defense by testifying as a lay person to his client's unusual behavior.[106] "His professional conduct cannot be said either to have been unreasonable or to have made a farce and mockery of the trial."[107]

Subsequently, in *People v. Stultz*,[108] the Court of Appeals extended the meaningful representation standard to appellate counsel as well.[109] The defendant was sentenced to twenty-five years to life for second degree murder and weapons possession.[110] On the eve of trial, a witness came forward and claimed she had witnessed the murder

---

[103] *Id.*
[104] *Baldi*, 429 N.E.2d at 405 (quoting People v. Aiken, 380 N.E.2d 272, 275 (N.Y. 1978)).
[105] *Id.*
[106] *Id.* at 407.
[107] *Id.* at 408.
[108] 810 N.E.2d 883 (N.Y. 2004).
[109] *Stultz*, 810 N.E.2d at 886.
[110] *Id.* at 884.

and it was not the defendant, but another person who she knew, who was the shooter.[111] However, the witness refused to testify, evoking her privilege against self-incrimination and the defense counsel never tried to get the witness's statements into evidence.[112] After the sentence was confirmed on appeal, the defendant argued his rights were violated by ineffective assistance of counsel because his appellate counsel did not attack the trial counsel's failure to proffer the witness's statements into evidence.[113]

In determining whether to extend the "meaningful representation" standard to appellate counsel, the court began with the principal that criminal defendants are afforded both a state and federal constitutional right to have their appellate counsel render effective assistance.[114] Specifically, the New York Constitution reads, in part, "In any trial in any court whatever the party accused shall be allowed to appear and defend in person *and with counsel* . . . ."[115] Additionally, the court noted it was important that it retained *Baldi* when evaluating whether trial counsel rendered effective assistance of counsel as opposed to the adoption of the federal standard.[116] The court ultimately held that the "53-page brief, prepared by two lawyers highly experienced in criminal law and appeals," where their brief reflected their skill, did "*meaningfully represent*" their client because it reflected a "competent grasp of the facts, the law and appellate procedure,

---

[111] *Id.*
[112] *Id.* at 885.
[113] *Id.*
[114] *Stultz*, 810 N.E.2d at 886.
[115] N.Y. CONST. art. I, § 6 (emphasis added).
[116] *Stultz*, 810 N.E.2d at 886.

supported by appropriate authority and argument."[117]

Although both the federal and state standards for determining ineffective assistance of counsel appear the same, the New York State standard is a more flexible one.[118] New York does not require the quantum of prejudice found in the *Strickland* test, nor does it require the "defendant to show that, but for counsel's ineffectiveness, the outcome would probably have been different."[119] The New York standard of "meaningful representation" regards "a defendant's showing of prejudice as a significant but not indispensable element in assessing meaningful representation."[120] Under the *Strickland* test, however, a federal court would not be able to disregard such prejudice, except where counsel's performance was deemed not deficient, but then the application of the test would be moot, as neither prong could be satisfied.[121] The "meaningful representation" test is a more subjectively flexible standard due to its many factors, thus making it more difficult to apply consistently. By probability alone, when one takes into consideration all of the factors the judges must look at in order to make a determination, (evidence, the law, and the circumstances of a particular case viewed in totality and as of the time of the representation), the test is more likely to be applied conflictingly.

---

[117] *Id.* at 888 ("Effective appellate representation by no means requires counsel to brief or argue every issue that may have merit. When it comes to the choice of issues, appellate lawyers have latitude in deciding which points to advance and how to order them.").

[118] *Id.* at 887.

[119] *Id.*

[120] *Id.*

[121] *See* Edward Puerta, Note, People v. Dillard, 23 TOURO LAW. REV. 425, 434 ("Unlike federal courts, a New York appellate court may find that although a verdict of 'guilty' would have resulted despite the best theoretical defense strategy, relief in the form of a new trial is justified because the strategy actually presented was meaningless.").

Due to these contrasting standards, a hybrid approach ("*Hybrid* test") might be more appropriate to determine whether an attorney has provided effective assistance of counsel. Some scholars believe a categorical checklist of the duties imposed upon counsel by their clients' constitutional rights would force the courts to actually "decide what is meant by" ineffective assistance of counsel and thus, what is actually required of an attorney to effectuate such assistance.[122] The *Hybrid* test would be a two-tiered system utilizing a categorical checklist as the floor of the standard, not the ceiling, and, where the case is so unique it cannot be assessed by the simplistic approach of the first tier, it shall then be assessed under the second tier, by applying the *Strickland* test to determine effectiveness, ultimately based on the reasonableness of the attorney's conduct.[123]

Ultimately, if Ramchair takes an appeal to the Supreme Court, and unless the Court looks past the four corners of Ramchair's argument to the underlying claim in his due process argument, "that the trial court erred by failing to grant Latimer's motion for a mistrial," the case will be decided analogously to *Strickland v. Washington*.[124]

---

[122] Martin C. Calhoun, *How to Thread the Needle: Toward a Checklist-Based Standard For Evaluating Ineffective Assistance of Counsel Claims*, 77 GEO. L.J. 413, 437 (1988).

> Utilizing a list of objective criteria that constitute effective representation, the first tier would grant the defendant relief upon proof that his defense attorney failed to substantially satisfy one of these basic criteria provided that the government fails to prove that the omission was either justified or insubstantial. If, however, the representation satisfied all of the first tier's objective criteria and the defendant nevertheless alleges that counsel's performance was unreasonable due to the unusual circumstances of his case, then the claim would be evaluated, in the second tier, under the more stringent, two-prong *Strickland* standard.

[123] *Id.* at 442.

[124] Ramchair v. Conway, No. 04 CV 4241(JG), 2005 WL 2786975, at *7 (E.D.N.Y. Oct. 26, 2005).

For example, in *Ramchair*, defense counsel did not argue that the court erred in denying defenses' motion for a mistrial, just as counsel in *Strickland* did not argue emotional duress with expert testimony. In *Strickland*, where the defense had a valid reason to not implore the psychiatric tactic, the court deemed it reasonable. Ramchair's counsel just as likely had a valid reason not to argue mistrial, as the counsel may have thought there was a greater chance to pursue a defense argument, thus the court will deem their conduct reasonable, just as they did in *Strickland* and the cases will be decided the same, with the attorneys deemed to have given effective counsel.[125]

*Joseph Maehr*

[125] *Strickland*, 466 U.S. at 681 (establishing that because law requires "deference to counsel's informed decisions, strategic choices must be respected in these circumstance if they are based on [reasonably] professional judgment").

## EXCESSIVE FINES

United States Constitution Amendment VIII:

*Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.*

New York Constitution article I, section 5:

*Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted . . . .*