

NEW YORK COURT OF APPEALS

People v. Mitchell; People v. Deliser

21 N.Y.3d 964, 993 N.E.2d 405 (2013) · Decided June 11, 2013

SUMMARY

The New York Court of Appeals addresses defendants' right to effective assistance of counsel on motions to withdraw guilty pleas. It affirms the order in *People v. Mitchell* because new counsel was assigned after defense counsel opposed the motion, but reverses and remits in *People v. Deliser* because the court failed to assign new counsel after defense counsel took an adverse position.

CASE DETAILS

COURT	New York Court of Appeals
WRITING FOR THE COURT	Chief Judge Lippman; Judge Graffeo; Judge Read; Judge Smith; Judge Pigott; Judge Rivera
JURISDICTION	New York
DECIDED	June 11, 2013
DISPOSITION	other
PROCEDURAL POSTURE	Defendants appealed, by leave of a Judge of the New York Court of Appeals, from Appellate Division orders affirming their judgments of conviction and sentence and denying their motions to withdraw guilty pleas.
STANDARD OF REVIEW	Abuse of discretion for the motion court's handling of a motion to withdraw a guilty plea and its fact-finding inquiry.
PRECEDENTIAL VALUE	precedential
PARTIES	People v. Mitchell defendant, People v. Deliser defendant v. The People

TOPICS

right to counsel

criminal procedure

appellate procedure

plea bargaining

standard of review

PRACTICE AREAS

criminal procedure

appellate procedure

right to counsel

plea bargaining

QUESTIONS PRESENTED

1. Whether a defendant has a right to effective assistance of counsel on a motion to withdraw a guilty plea.
2. Whether defense counsel may take a position adverse to the defendant on a motion to withdraw a guilty plea.
3. Whether a court must assign new counsel when defense counsel takes a position adverse to the defendant on that motion.
4. Whether the motion courts properly handled Mitchell's and Deliser's plea-withdrawal motions.

HOLDINGS

1. A defendant has a right to the effective assistance of counsel on a motion to withdraw a guilty plea.
2. When a motion to withdraw a guilty plea is patently insufficient on its face, the court may deny it without inquiry; otherwise, the motion court has broad discretion in conducting its fact-finding inquiry, and a limited interrogation will often suffice.
3. When defense counsel's actions or inaction are challenged in a motion to withdraw a plea, counsel may explain the performance, but counsel may not take a position on the motion adverse to the defendant.
4. Once defense counsel takes a position contrary to the defendant's position on a motion to withdraw a guilty plea, a conflict of interest arises and the court must assign a new attorney to represent the defendant on the motion.
5. The Mitchell motion court acted within its discretion by assigning new counsel after original counsel stated opposition to the motion, and denial of the motion after new counsel was heard was supported by the record.
6. The Deliser motion court abused its discretion by failing to assign new counsel after defense counsel took a position contrary to Deliser's position on the motion.

KEY QUOTATIONS

“When doing so, defense counsel should be afforded the opportunity to explain his performance with respect to the plea (see People v Nelson, 7 NY3d 883 [2006]), but may not take a position on the motion that is adverse to the defendant (see People v Kennedy, 22 NY2d 280, 282 [1968]).” (967)

“At that point, a conflict of interest arises, and the court must assign a new attorney to represent the defendant on the motion.” (967)

FACTUAL BACKGROUND

Mitchell pleaded guilty to two counts of second-degree murder and alleged before sentencing that his counsel had coerced the plea. His counsel ultimately took a position contrary to the coercion claim, so the motion court assigned new counsel before denying the withdrawal motion. Deliser pleaded guilty to attempted second-degree murder and first-degree robbery and later alleged that defense counsel had pressured him into pleading guilty; counsel responded by defending his performance and stating that the plea was knowing and in Deliser's best interest, but the court did not appoint new counsel.

PROCEDURAL HISTORY

Mitchell pleaded guilty to two counts of second-degree murder and moved pro se before sentencing to withdraw his plea, alleging, among other things, coercion by counsel. The motion court assigned new counsel after original counsel took a position adverse to the motion, denied the motion, and the Appellate Division affirmed. Deliser pleaded guilty to attempted second-degree murder and first-degree robbery, moved pro se to withdraw his pleas based in part on alleged pressure by counsel, and the motion court denied relief without assigning new counsel after counsel took a position contrary to Deliser's claim; the Appellate Division affirmed. The Court of Appeals affirmed in Mitchell and reversed and remitted in Deliser.

DISPOSITION

other

REMAND INSTRUCTIONS

In *People v. Deliser*, the case was remitted to Supreme Court, Kings County, for further proceedings on the plea-withdrawal motion with new assigned counsel. The order was affirmed in *People v. Mitchell*.

CASES CITED

- *People v. Boyd*, 22 N.Y.2d 707 (1968)
- *People v. Rozzell*, 20 N.Y.2d 712 (1967)
- *People v. Tinsley*, 35 N.Y.2d 926, 927 (1974)
- *People v. Nelson*, 7 N.Y.3d 883 (2006)
- *People v. Kennedy*, 22 N.Y.2d 280, 282 (1968)
- *People v. Mitchell*, 89 A.D.3d 628 (1st Dep't 2011)
- *People v. Deliser*, 85 A.D.3d 1047 (2d Dep't 2011)

OPINION

PER CURIAM.

OPINION OF THE COURT Memorandum. The order of the Appellate Division should be affirmed in *People v Mitchell*, and the order of the Appellate Division should be reversed and the case remitted to Supreme Court in *People v Deliser* for further proceedings in accordance with this memorandum. *966 *People v Mitchell* Defendant pleaded guilty to two counts of murder in the second degree.

Prior to sentencing, he filed a pro se motion to withdraw that plea, arguing, among other things, that his counsel coerced him into pleading guilty. When asked by the court if defense counsel had anything to say on defendant's behalf, counsel said: "[0]nly that I do not adopt the merits or factual assertions relative to this [motion]." Defense counsel expressed his concern to the court

that if he did not respond to the motion, his silence might be deemed an acknowledgment that there was merit to the claims.

In response to this concern, the court indicated it would assign new counsel. The court permitted defense counsel to be heard, and defense counsel took a position contrary to defendant's claim of coercion. After a proceeding with new defense counsel, the motion was denied.

The Appellate Division affirmed the judgment of conviction and sentence (89 AD3d 628 [1st Dept 2011]). People v Deliser Defendant pleaded guilty to attempted murder in the second degree and robbery in the first degree in satisfaction of two indictments. He subsequently made a pro se motion to withdraw his plea in both cases, claiming that his pleas had been coerced by, among other things, defense counsel's alleged undue pressure on him.

Asked for his response, defense counsel explained the actions he took on defendant's behalf. He concluded with the statement that, in his opinion, the People had "two strong cases against [defendant] and I think he made a knowing plea and I think it was in his best interest." After reading portions of the plea minutes, the court denied defendant's motion to withdraw the pleas.

The Appellate Division affirmed the judgments of conviction and sentence (85 AD3d 1047 [2d Dept 2011]) concluding, among other things, that defendant's attorney did not take a position adverse to defendant's motion to withdraw his pleas. A Judge of this Court granted defendants leave to appeal. It is well settled that a defendant has a right to the effective assistance of counsel on his or her motion to withdraw a guilty plea (see People v Boyd, 22 NY2d 707 [1968]; People v Rozzell, 20 NY2d 712 [1967]).

The motion court has broad discretion in its fact-finding inquiry on the motion and often a "limited interrogation by the court will suffice" (People v Tinsley, 35 NY2d 926, 927 [1974]). "Only in the rare instance will a defendant be entitled to an evidentiary hearing" (id.). *967Thus, when a motion to withdraw a plea is patently insufficient on its face, a court may simply deny the motion without making any inquiry.

When certain actions or inaction on the part of defense counsel is challenged on the motion, it may very well be necessary for defense counsel to address the matter when asked to by the court. When doing so, defense counsel should be afforded the opportunity to explain his performance with respect to the plea (see People v Nelson, 7 NY3d 883 [2006]), but may not take a position on the motion that is adverse to the defendant (see People v Kennedy, 22 NY2d 280, 282 [1968]).

At that point, a conflict of interest arises, and the court must assign a new attorney to represent the defendant on the motion. In Mitchell, when defense counsel stated on the record his opposition to the motion, the court providently exercised its discretion in assigning new counsel.

The court's decision to deny defendant's motion after hearing from new defense counsel is supported by the record. In *Deliser*, the court abused its discretion in not assigning new counsel once defense counsel took a position contrary to the one taken by his client on the motion.

Thus defendant is entitled to be heard on his plea withdrawal motion with new assigned counsel. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur; Judge Abdus-Salaam taking no part. In *People v Mitchell*: Order affirmed, in a memorandum. Chief Judge Lippman and Judges Graffeo, Read, Smith, Pigott and Rivera concur; Judge Abdus-Salaam taking no part.

In *People v Deliser*: Order reversed and case remitted to Supreme Court, Kings County, for further proceedings in accordance with the memorandum herein.