

SUPREME COURT OF COLORADO

People v. Nozolino

298 P.3d 915 (Colo. 2013) · No. 2013 CO 19 · Decided March 25, 2013

SUMMARY

The Colorado Supreme Court reviewed an original proceeding challenging the disqualification of the Office of the State Public Defender from representing Bruce J. Nozolino in a homicide case. The court held that any conflict involving the defendant's attorneys was, at most, potential and waivable, and that disqualification was not warranted on the record. It made the rule absolute and remanded for an on-the-record advisement and determination of whether Nozolino voluntarily, knowingly, and intelligently waives conflict-free representation.

CASE DETAILS

COURT	Supreme Court of Colorado
WRITING FOR THE COURT	Justice Rice
JURISDICTION	Colorado
DECIDED	March 25, 2013
DOCKET	2013 CO 19
DISPOSITION	writ_granted
PROCEDURAL POSTURE	Original proceeding under C.A.R. 21 seeking extraordinary relief from an order disqualifying the Office of the State Public Defender from representing Nozolino in a homicide case.
STANDARD OF REVIEW	Interpretation of a rule of professional conduct is reviewed de novo. A trial court's decision to disqualify counsel for a conflict of interest is reviewed for abuse of discretion.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Colorado; precedential.
PARTIES	Bruce J. Nozolino v. People of the State of Colorado

TOPICS

right to counsel

criminal procedure

appellate procedure

appellate jurisdiction

standard of review

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a conflict of interest involving a Public Defender attorney who was designated as a prosecution witness in a separate case was imputed to the attorneys continuing to represent Nozolino.
2. Whether any conflict affecting Roy or Chalmers was nonwaivable and required disqualification of the Public Defender's office.
3. Whether the trial court abused its discretion by disqualifying Nozolino's counsel of choice without finding that continued representation would cause prejudice or that disqualification was the only effective remedy.
4. Whether Nozolino was entitled to an opportunity to make a voluntary, knowing, and intelligent waiver of conflict-free representation.

HOLDINGS

1. Any conflict Thompson may have had as a result of being a witness in the perjury case was not imputed to Roy and Chalmers because Thompson withdrew from the homicide case and was screened from it.
2. A defendant may waive the right to conflict-free representation in appropriate circumstances when counsel reasonably believes competent and diligent representation remains possible and the defendant gives informed consent after full disclosure of the potential and existing conflicts.
3. The trial court abused its discretion by disqualifying Roy and Chalmers because the record did not show a direct conflict, actual prejudice, or that disqualification was the only effective remedy; any conflict was potential and waivable.

KEY QUOTATIONS

“Disqualification of a party’s chosen attorney is an extreme remedy and is only appropriate where required to preserve the integrity and fairness of the judicial proceedings.” (298 P.3d at 918)

“When determining whether a defendant may waive his right to conflict-free representation — and thereby whether disqualification of the attorney is necessary — the trial court must examine: (1) the defendant’s preference for particular counsel; (2) the public’s interest in maintaining the integrity of the judicial process; and (3) the nature of the particular conflict.” (298 P.3d at 920)

FACTUAL BACKGROUND

Nozolino was charged with thirty-one homicide-related offenses and was represented by Public Defender attorneys Carrie Thompson, Rosalie Roy, and later Kimberly Chalmers. He was separately charged with perjury based on information in his applications for appointed counsel, and the prosecution designated Thompson as a witness in that case. Thompson withdrew from the homicide representation, and the Public Defender's office screened her from the homicide case while Roy and Chalmers continued representing Nozolino. Despite Nozolino's express desire to retain Roy and Chalmers, the trial court disqualified the entire Public Defender's office.

PROCEDURAL HISTORY

The El Paso County District Court disqualified the Office of the State Public Defender after determining that a conflict involving supervising attorney Carrie Thompson, who had been designated as a prosecution witness in a separate perjury case, was unwaivable and imputed to the entire office. The district court denied reconsideration and ordered Alternate Defense Counsel to represent Nozolino. The Colorado Supreme Court issued a rule to show cause, made the rule absolute, and remanded for a conflict advisement and waiver determination.

DISPOSITION

writ_granted

REMAND INSTRUCTIONS

The trial court must conduct an on-the-record advisement allowing Nozolino to decide whether to waive conflict-free representation. The court must appoint independent counsel to advise him regarding the conflict, including its nature and the specific ways it could affect representation. The advising attorney must place any potential conflict on the record and confirm that complete disclosure was made, and the trial court must determine whether any waiver is voluntary, knowing, and intelligent.

CASES CITED

- City & County of Broomfield v. Farmers Reservoir & Irrigation Co., 239 P.3d 1270, 1275 (Colo. 2010)
- People v. Shari, 204 P.3d 453, 457, 459-60, 462 (Colo. 2009)
- People v. Harlan, 54 P.3d 871, 877-79 (Colo. 2002)
- People v. Martinez, 869 P.2d 519, 524, 527-28 (Colo. 1994)
- Rodriguez v. District Court, 719 P.2d 699, 703-08, 710 (Colo. 1986)
- Dunlap v. People, 173 P.3d 1054, 1070 (Colo. 2007)
- People v. Castro, 657 P.2d 932, 943-44 (Colo. 1983)
- Holloway v. Arkansas, 435 U.S. 475, 483-84 (1978)
- In re Estate of Myers, 130 P.3d 1023, 1025-27 (Colo. 2006)
- Williams v. District Court, 700 P.2d 549, 555 (Colo. 1985)