

DISTRICT OF COLUMBIA COURT OF APPEALS

Benitez v. United States

60 A.3d 1230 (D.C. 2013) · Decided February 21, 2013

SUMMARY

The District of Columbia Court of Appeals considered an ineffective-assistance claim arising from defense counsel’s failure to communicate a wired plea offer. The court held that demonstrating prejudice required a reasonable probability that the defendant would have accepted the offer and that the co-defendant would have accepted it or the government would have unwired it. Because the issue was raised only after the evidentiary record had closed, the court remanded for further evidentiary proceedings.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Associate Judge Glickman; Blackburne; Glickman; Rigsby; Terry
JURISDICTION	District of Columbia
DECIDED	February 21, 2013
DISPOSITION	remanded
PROCEDURAL POSTURE	Benitez appealed the denial of his D.C. Code § 23-110 motion to vacate his convictions based on ineffective assistance of counsel for failing to communicate a wired plea offer.
STANDARD OF REVIEW	The court accepted the trial court's factual findings unless unsupported by evidence and reviewed its legal determinations de novo; ineffective-assistance components were treated as mixed questions of law and fact.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the District of Columbia Court of Appeals.
PARTIES	Basilio Benitez v. United States

TOPICS

- ineffective assistance
- plea bargaining
- sixth amendment
- post-conviction relief
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. What burden and standard must a defendant satisfy to establish prejudice under Strickland when counsel fails to communicate a plea offer?
2. Whether a defendant challenging counsel's failure to communicate a wired plea offer must show a reasonable probability that the co-defendant would have accepted the offer or that the government would have waived the wiring condition.
3. Whether remand was appropriate for additional evidence where the wired-plea issue was raised after the evidentiary record had been closed.

HOLDINGS

1. A defendant must prove the factual contentions underlying an ineffective-assistance claim by a preponderance of the evidence, but the facts need only establish a reasonable probability that, absent counsel's deficient performance, the proceeding's outcome would have been different; the defendant need not prove a different outcome by a preponderance of the evidence.
2. When a plea offer is conditioned on a co-defendant's acceptance, a defendant must show a reasonable probability that either the government would have waived the condition or the co-defendant would have accepted the offer, in addition to showing that the defendant would have accepted it and that the plea would have produced a more favorable result.
3. Remand was appropriate to give Benitez a full opportunity to present evidence concerning whether the wired-plea condition could have been overcome because the issue was raised only after the evidentiary record had been closed and the government had not relied on it below.

KEY QUOTATIONS

“But that is not enough to establish Strickland prejudice: “Defendants must also demonstrate a reasonable probability the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion” under applicable law.” (1236-1237)

“Thus, we think the attractiveness of a wired plea offer will rarely, if ever, be enough by itself to demonstrate a reasonable probability that a defendant would have taken it had he been able to do so.” (1239)

“Therefore, to afford Benitez a full opportunity to show that the outcome of his criminal prosecution was adversely affected by his counsel’s deficient performance and to give the trial court the opportunity to consider all the available evidence on the issue, we choose to remand the case for further evidentiary proceedings.” (1240)

FACTUAL BACKGROUND

Benitez and Carlos Sarmiento-Morales were charged with offenses arising from an armed assault and robbery. The government offered each defendant a written plea agreement under which the other charges would be dismissed and the government would make a favorable sentencing recommendation, but the offer was expressly

conditioned on both co-defendants accepting it. Counsel failed to inform Benitez of the offer, and the trial court found that Benitez would have accepted it if properly advised. Benitez was instead tried, convicted of several offenses, and sentenced to 182 months in prison.

PROCEDURAL HISTORY

Benitez and his co-defendant were convicted after rejecting or failing to accept identical wired plea offers requiring both defendants to accept. Benitez later sought post-conviction relief, asserting that counsel failed to inform him of the offer. After an evidentiary hearing, the Superior Court credited Benitez's testimony, found deficient performance and that he would have accepted the offer, but denied relief because he had not shown a reasonable probability that the co-defendant would have accepted or that the government would have unwired the offer. The District of Columbia Court of Appeals affirmed the legal prejudice framework but remanded for further evidentiary proceedings because the wired-plea issue was raised only after the evidentiary record had been closed.

DISPOSITION

remanded

REMAND INSTRUCTIONS

The trial court must conduct further evidentiary proceedings addressing Strickland prejudice under the standard articulated in the opinion, including whether there was a reasonable probability that the government would have waived the wiring condition or that Sarmiento-Morales would have accepted the plea offer, and whether the plea would have produced a more favorable result.

CASES CITED

- Strickland v. Washington, 466 U.S. 668, 687, 694 (1984)
- Benitez v. United States, 05-CF-1507 (D.C. July 17, 2008) (memorandum opinion and judgment)
- Arnold v. Thaler, 630 F.3d 367, 371 (5th Cir. 2011)
- Arnold v. Thaler, 484 Fed. App'x 978, 980 (5th Cir. 2012)
- United States v. Gaviria, 116 F.3d 1498, 1512-13 (D.C. Cir. 1997)
- Holland v. Jackson, 542 U.S. 649, 654-55 (2004)
- United States v. Dominguez Benitez, 542 U.S. 74, 83 n. 9 (2004)
- Cosio v. United States, 927 A.2d 1106, 1123, 1132 (D.C. 2007) (en banc)
- Missouri v. Frye, 566 U.S. 134, 147-50 (2012)
- Lafler v. Cooper, 566 U.S. 156, 164 (2012)
- Metts v. United States, 877 A.2d 113, 124 (D.C. 2005)