

SUPREME COURT OF CONNECTICUT

State v. Peeler

SC 19282 · No. SC 19282 · Decided March 8, 2016

SUMMARY

The Connecticut Supreme Court held that a defendant whose right to counsel of choice was violated and who received a new trial is not automatically entitled to representation by the previously disqualified attorney. On remand, the trial court must consider whether that attorney is willing and able to represent the defendant under a mutually acceptable fee arrangement, including assignment if the defendant is indigent. Because Attorney Mastronardi would not accept assigned-counsel rates, the court affirmed the denial of the defendant’s request for state funding or dismissal of the charges.

CASE DETAILS

COURT	Supreme Court of Connecticut
WRITING FOR THE COURT	Robinson, J.; Rogers, C. J.; Palmer, J.; Zarella, J.; Eveleigh, J.; McDonald, J.; Espinosa, J.
JURISDICTION	Connecticut
DECIDED	March 8, 2016
DOCKET	SC 19282
DISPOSITION	affirmed
PROCEDURAL POSTURE	The defendant appealed directly to the Supreme Court of Connecticut from the judgment of conviction entered after a retrial. He challenged the denial of his motion to require the state to fund his previously chosen private attorney at private fee rates or, alternatively, to dismiss the charges.
STANDARD OF REVIEW	Plenary review applies to the constitutional question whether an indigent defendant is entitled to the services of a particular attorney at a new trial ordered as a remedy for a prior violation of the right to counsel of choice.
PRECEDENTIAL VALUE	published
PARTIES	Russell Peeler v. State of Connecticut

TOPICS

right to counsel

sixth amendment

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QUESTIONS PRESENTED

1. Whether a criminal defendant who became indigent after an appellate court ordered a new trial as the remedy for an unconstitutional deprivation of counsel of choice was entitled to have the state pay the previously chosen attorney's private fee rates.
2. Whether the trial court was required to dismiss the charges when the previously chosen attorney was unwilling to represent the indigent defendant at assigned-counsel rates.
3. What procedure and remedy apply on remand when the attorney whose prior disqualification caused the new trial is unwilling or unable to represent the defendant under a mutually acceptable fee arrangement.

HOLDINGS

1. A defendant remanded for a new trial to remedy a violation of the right to counsel of choice is entitled only to a new trial, with the defendant's options for representation determined by the financial and other circumstances existing at the time of the new trial.
2. When a new trial is ordered to remedy a counsel-of-choice violation, the trial court must consider whether it is feasible for the defendant to be represented by the previously disqualified attorney under a mutually acceptable fee arrangement, including assignment if the defendant has become indigent.
3. The defendant was not entitled to require the state to pay Mastronardi's private fee rates because Peeler was indigent and Mastronardi would not accept assigned-counsel rates.
4. Dismissal of the charges was not required because the defendant could receive the constitutionally required remedy through a new trial and appointment or hiring of other counsel, and the record did not show egregious prosecutorial interference warranting dismissal.

KEY QUOTATIONS

"Accordingly, we conclude that, on remand for a new trial to remedy the violation of a criminal defendant's right to counsel of choice; see United States v. Gonzalez-Lopez, supra, 548 U.S. 150; the trial court is required to consider whether it is feasible to allow the defendant the attorney of his choice at that new trial."

"If, however, that attorney is unwilling or unable to represent the defendant at the new trial at a mutually agreeable fee, the defendant's sole relief lies in the new trial itself and the hiring or appointment of new counsel."

FACTUAL BACKGROUND

Russell Peeler was convicted of attempted murder, two counts of risk of injury to a child, and murder arising from a drive-by shooting and the subsequent killing of Rudolph Snead. His retained attorney, Gary Mastronardi, had been improperly disqualified before the original trial, and the original convictions were reversed with an

order for a new trial. By the time of the retrial, Peeler was indigent, Mastronardi had returned the unearned portion of his retainer, and Mastronardi declined to represent Peeler at the assigned-counsel rates. The retrial proceeded with assigned counsel Robert Sullivan, resulting in convictions and a total effective sentence of 105 years.

PROCEDURAL HISTORY

In the original proceedings, the trial court disqualified the defendant's chosen attorney, Gary Mastronardi, after the state indicated that it intended to call him as a witness in a separate murder case. The Supreme Court of Connecticut reversed the resulting convictions in *State v. Peeler*, 265 Conn. 460, 828 A.2d 1216 (2003), concluding that the disqualification violated the defendant's right to counsel of choice and required a new trial. On remand, the defendant had become indigent, Mastronardi would not accept assigned-counsel rates, and the trial court denied the defendant's request for state funding or dismissal. The defendant was retried with assigned counsel Robert Sullivan, convicted on all counts, and appealed; the Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- *United States v. Gonzalez-Lopez*, 548 U.S. 140, 126 S. Ct. 2557, 165 L. Ed. 2d 409 (2006)
- *State v. Peeler*, 265 Conn. 460, 828 A.2d 1216 (2003), cert. denied, 541 U.S. 1029, 124 S. Ct. 2094, 158 L. Ed. 2d 710 (2004)
- *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617, 109 S. Ct. 2646, 105 L. Ed. 2d 528 (1989)
- *Wheat v. United States*, 486 U.S. 153, 108 S. Ct. 1692, 100 L. Ed. 2d 140 (1988)
- *Morris v. Slappy*, 461 U.S. 1, 103 S. Ct. 1610, 75 L. Ed. 2d 610 (1983)
- *United States v. Childress*, 58 F.3d 693 (D.C. Cir. 1995) (per curiam), cert. denied, 516 U.S. 1098 (1996)
- *H. P. T. v. Commissioner of Correction*, 310 Conn. 606, 79 A.3d 54 (2013)
- *Ullmann v. State*, 230 Conn. 698, 647 A.2d 324 (1994)
- *State v. Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992)
- *State v. Skok*, 318 Conn. 699, 122 A.3d 608 (2015)
- *State v. Chambliss*, 128 Ohio St. 3d 507, 947 N.E.2d 651 (2011)
- *State ex rel. Keenan v. Calabrese*, 69 Ohio St. 3d 176, 631 N.E.2d 119 (1994) (Wright, J., concurring)
- *Commonwealth v. Johnson*, 550 Pa. 298, 705 A.2d 830 (1998)
- *State v. Payne*, 260 Conn. 446, 797 A.2d 1088 (2002)
- *State v. Curcio*, 191 Conn. 27, 463 A.2d 566 (1983)
- *Burger & Burger, Inc. v. Murren*, 202 Conn. 660, 522 A.2d 812 (1987)
- *State v. Rapuano*, 192 Conn. 228, 471 A.2d 240 (1984)
- *State v. Vumback*, 247 Conn. 929, 719 A.2d 1172 (1998)
- *Flanagan v. United States*, 465 U.S. 259, 104 S. Ct. 1051, 79 L. Ed. 2d 288 (1984)

- State v. Lantz, 120 Conn. App. 817, 993 A.2d 1013 (2010)
- Stearnes v. Clinton, 780 S.W.2d 216 (Tex. Crim. App. 1989)
- Commonwealth v. Rucker, 563 Pa. 347, 761 A.2d 541 (2000)
- Commonwealth v. Prysock, 972 A.2d 539 (Pa. Super. 2009)
- State v. Wang, 312 Conn. 222, 92 A.3d 220 (2014)
- State v. Stuart, 297 Conn. 26, 996 A.2d 259 (2010)
- United States v. Stein, 495 F. Supp. 2d 390 (S.D.N.Y. 2007)
- State v. Lenarz, 301 Conn. 417, 22 A.3d 536 (2011), cert. denied, 567 U.S. 924 (2012)
- United States v. McKeighan, 685 F.3d 956 (10th Cir. 2012), cert. denied, 568 U.S. 1113 (2013)
- State v. Peeler, 271 Conn. 338, 857 A.2d 808 (2004), cert. denied, 546 U.S. 845 (2005) (Peeler II)

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