State of New York Court of Appeals

Summaries of cases before the Court of Appeals are prepared by the Public Information Office for background purposes only. The summaries are based on briefs filed with the Court. For further information contact Gary Spencer at (518) 455-7711.

To be argued Wednesday, September 11, 2013

No. 161 Brightonian Nursing Home v Daines

Five for-profit nursing homes and the New York State Health Facilities Association brought this action to challenge Public Health Law § 2808(5)(c), which requires private nursing home owners and operators to obtain prior approval from the state health commissioner before withdrawing equity or assets that in the aggregate would exceed 3 percent of the facility's total revenue for the prior year. In reviewing such requests, the statute provides that the commissioner "shall consider the facility's overall financial condition, any indications of financial distress, whether the facility is delinquent in any payment owed to the department, whether the facility has been cited for immediate jeopardy or substandard quality of care, and such other factors as the commissioner deems appropriate." The statute was enacted to protect the financial solvency of nursing homes and their ability to provide adequate patient care.

Supreme Court declared section 2808(5)(c) unconstitutional, saying the provision that allows the commissioner to consider "such other factors as the commissioner deems appropriate" is an improper delegation of legislative authority and is void for vagueness. The language "is so broad as to have no limits at all," the court said. It also found the statute violates the plaintiffs' due process rights.

The Appellate Division, Fourth Department affirmed, holding that the provision "permitting the Commissioner to consider 'such other factors as [he or she] deems appropriate' ... constitutes an unconstitutional delegation of legislative authority because it grants the Commissioner unfettered discretion in assessing equity withdrawal requests. The statute provides no standards to guide the Commissioner in determining what factors are 'appropriate'...." It said the same language is unconstitutionally vague because it "does not adequately apprise nursing home owners and operators of the standards used to assess their equity withdrawal requests and precludes meaningful judicial review...." It ruled the entire statute violates substantive due process. While "ensuring the financial viability of nursing homes and protecting the welfare of their vulnerable residents constitutes a legitimate governmental purpose," the court said, the statute "is not reasonably related to the governmental purpose and thus ... violates due process" because it applies to all facilities "regardless of financial viability.... We conclude that it is manifestly unfair and unreasonable to freeze the equity of all nursing homes in excess of 3% of their respective annual revenues...."

The State argues the plaintiffs "failed to carry their heavy burden of demonstrating that the statute is unconstitutional on its face. In addition, the clause authorizing the Commissioner to consider other appropriate factors in addition to the financial and quality of care factors specified in the statute is neither an unconstitutional delegation nor void for vagueness. Instead..., the clause merely authorizes the Commissioner to consider unenumerated factors of the same general kind or class as those specifically mentioned." It says section 2808(5)(c) "satisfies the rationality requirement of substantive due process" because it "furthers the goals of ensuring the facility's continued financial viability and quality of care by mandating that the Commissioner review and approve significant withdrawals of assets from the business." If the Court finds any part of the statute unconstitutional, "it should sever that part and uphold the remainder of the statute."

For appellant State: Assistant Solicitor General Victor Paladino (518) 473-4321
For respondent nursing homes: Thomas G. Smith, Rochester (585) 232-6500

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To be argued Wednesday, September 11, 2013

No. 162 Soto v J. Crew, Inc.

Jose A. Soto was employed by a commercial cleaning company that contracted with J. Crew, Inc. to provide general cleaning services at its store in lower Manhattan. In November 2008, he climbed an A-frame ladder, provided by J. Crew, to dust the top of a display shelf. Soto was injured when the ladder tipped and he fell. He brought this personal injury action under Labor Law § 240(1) against J. Crew and the building's owner, The Mercer I LLC.

Supreme Court granted the defendants summary judgment dismissing the suit, finding that a cleaner performing routine dusting is not engaged in a protected activity under the statute.

The Appellate Division, First Department affirmed. "The dusting of the shelf constituted routine maintenance and was not the type of activity that is protected under the statute...," it said. "The term 'cleaning' as used under the statute is not to be as broadly applied as plaintiff suggests (see Dahar v Holland Ladder & Mfg. Co., 18 NY3d 521, 526 [2012])."

One member of the panel concurred "because I am constrained by" Dahar, which he asserted "cannot be reconciled with extensive recent precedent of the Court or the plain wording of Labor Law § 240(1)." He said, "In Dahar, the focus has shifted from i) that 'cleaning' is a protected activity and ii) the application of gravity to that activity, to an analysis based solely on the locus of the activity and the nature of the object being cleaned."

Soto argues the Appellate Division misread the Court of Appeals decision. Dahar did not preclude section 240(1) coverage of "routine maintenance cleaning," he says, but rather held "that a 'manufactured product' was not a 'structure' within the meaning of [section] 240(1)." He says Dahar did not turn on the nature of the cleaning performed by the injured worker, but instead held that the statute's protection "does not extend to 'an injury suffered while cleaning a product in the course of a manufacturing process' [18 NY3d at 526]."

For appellant Soto: Fred R. Profeta, Jr., Manhattan (212) 577-6500
For respondents J. Crew and Mercer: Anthony F. DeStefano, Woodbury (516) 487-5800

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To be argued Wednesday, September 11, 2013

No. 163 People v Juan Jose Peque, a/k/a Juan Jose Peque Sicajian *(papers sealed)*
No. 164 People v Richard Diaz
No. 165 People v Michael Thomas, a/k/a Neil Adams
No. 211 People v Felix Hernandez *(papers sealed)*

These appeals address the obligations of trial courts and defense attorneys to inform defendants, before they plead guilty, of the potential immigration consequences of a guilty plea.

The primary issue in three of them -- Peque, Diaz, and Thomas -- is whether the courts' failure to explain that they could or would be deported rendered their pleas invalid. In exchange for reduced sentences, Juan Jose Peque pled guilty to first-degree rape, and Richard Diaz and Michael Thomas pled guilty to felony drug charges. They later sought to withdraw their pleas, arguing they were not knowing, intelligent and voluntary because the judges who took the pleas did not adequately advise them of the possible immigration consequences. Peque and Thomas also claimed their attorneys' failure to explain those consequences deprived them of effective assistance of counsel.

The Appellate Division affirmed all three convictions based on People v Ford (86 NY2d 397 [1995]), which held that "deportation is a collateral consequence of conviction" and a court's failure to inform the defendant does not affect the voluntariness of the plea. In Diaz, the First Department said, "[T]he duties of a trial court upon accepting a guilty plea are not expanded by Padilla v Kentucky [559 US 356 (2010)], which deals exclusively with the duty of defense counsel to advise a defendant of the consequences of pleading guilty when it is clear that deportation is mandated."

Defendants argue that deportation must be considered a direct consequence of conviction in the wake of Padilla, which said "deportation is an integral part -- indeed, sometimes the most important part -- of the penalty that may be imposed on noncitizen defendants who plead guilty to specified crimes." Diaz argues, "It is impossible to reconcile Padilla's recognition that deportation is now an 'integral' part of the 'penalty' imposed on noncitizens convicted of specified crimes with Ford's characterization of deportation as merely a 'collateral consequence.'"

Felix Hernandez pled guilty to first-degree sexual abuse and was sentenced to five years. He moved under CPL 440.10 to vacate the judgment, claiming his attorney's failure to tell him the plea would lead to automatic deportation deprived him of effective assistance of counsel. Supreme Court denied the motion and the First Department affirmed in a 3-2 decision. Noting Hernandez would have faced up to 14 years at trial, it said the record showed he "decided to accept the plea, not because he was defectively advised on the immigration issue, but rather because pleading guilty was the course most advantageous to him." The dissenters said he demonstrated he was prejudiced by his counsel's failure when he testified that "he took the plea because he thought doing so was the best way to minimize his separation from his six children" and that "if he had known that his plea would automatically cause him to be deported and indefinitely separated from his family, he would have proceeded to trial."

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For respondent: Chemung County Asst. District Attorney Susan Rider-Ulacco (607) 737-2944
For appellant Diaz: Rosemary Herbert, Manhattan (212) 402-4100
For respondent: Manhattan Assistant District Attorney Vincent Rivellese (212) 335-9000
For appellant Thomas: Lynn W.L. Fahey, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney Jennifer Hagan (718) 286-5902
For appellant Hernandez: Bonnie C. Brennan, Manhattan (212) 577-3262
For respondent: Manhattan Assistant District Attorney Hope Korenstein (212) 335-9000

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To be argued Wednesday, September 11, 2013

No. 166 People v Jocelyn Clermont

Jocelyn Clermont was arrested for weapon possession in Jamaica, Queens in October 2006. His assigned counsel moved to suppress the handgun on the ground that it was the product of an illegal police stop. Defense counsel moved to be relieved prior to the suppression hearing, saying he had "an overwhelming amount of work" and was not able "to competently represent" all of his clients, but he agreed to conduct the hearing at the court's request.

At the hearing, the detective who made the arrest testified that he and his partner were patrolling an area known for gang activity when they saw Clermont walking down the street with another man and adjusting the waistband of his pants. When the officers approached them, displayed their shields, and identified themselves as police, Clermont fled and the detective chased after him. He said Clermont removed a handgun from his waistband and threw it down during the chase. Supreme Court denied the motion to suppress, saying the officers' initial approach was reasonable based on their "observation of defendant continuously adjusting his waist band area while walking in a known gang location. Once the detective observed the defendant throw the gun on the ground he was justified in chasing the defendant and subsequently arresting him and recovering the gun." The court also granted defense counsel's request to be relieved. Clermont was ultimately convicted of criminal possession of a weapon in the second and third degrees and was sentenced to eight years in prison.

The Appellate Division, Second Department affirmed in a 3-1 decision, rejecting Clermont's claim that he was deprived of effective assistance of counsel at the suppression hearing. "Notwithstanding the absence of an opening or closing statement and the suppression court's mistaken factual finding as to when the defendant dropped the weapon, we find that the evidence, the law, and the particular circumstances of this case, viewed in totality, reveal that defense counsel provided meaningful representation.... Defense counsel moved for, and obtained, a suppression hearing.... [D]efense counsel's cross-examination of the detective was reasonably competent and thorough. In lieu of a closing argument, both the prosecutor and defense counsel relied upon the record."

The dissenter argued Clermont "was not provided with 'meaningful representation' at the suppression hearing." He said, "Assigned counsel's written motion was based on the wrong facts and he admitted that he was unable to adequately prepare. Although counsel acknowledged that the submission of post-hearing arguments was necessary, such submissions were never presented to the hearing court.... Although the hearing court's decision was premised on an incorrect version of the underlying facts [that the gun was discarded before, rather than during the chase], this flawed premise was never questioned, and the defendant's motion to suppress was never decided on the facts actually adduced at the hearing."

For appellant Clermont: Allegra Glashausser, Manhattan (212) 693-0085
For respondent: Queens Assistant District Attorney Suzanne H. Sullivan (718) 286-5848