

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 or gspencer@nycourts.gov.

To be argued Thursday, October 12, 2017

No. 115 People v Mario Arjune

Mario Arjune immigrated to the United States with his parents from Suriname in 2006 and was a lawful permanent resident in 2008, when he was arrested after an altercation in a Queens restaurant in which he stabbed a man with a utility knife. He then hid the knife behind a ceiling tile. He was acquitted at trial of attempted murder and assault, but was convicted of tampering with physical evidence and fourth-degree weapon possession and sentenced to one to three years in prison. According to the sentencing transcript, the court clerk said, "Let the record reflect the defendant is being handed a notice of appeal." Arjune's trial attorney, who was retained by his parents, filed a timely notice of appeal at the Appellate Division, Second Department in 2009, but took no further steps to perfect the appeal. In 2013, the prosecution moved to dismiss the appeal as abandoned and served a copy on his trial counsel, who did not respond. A copy was also mailed to his parents' address, but Arjune no longer lived there. The Appellate Division dismissed his appeal in December 2013.

Arjune was placed in custody of U.S. Immigration and Customs Enforcement for deportation in December 2014, based on his felony conviction. He was released on bond four months later after his immigration attorney referred him to an indigent defense provider. In April 2015, his assigned appellate counsel moved to reinstate his appeal. The Appellate Division denied the motion and a subsequent motion to reconsider. Arjune then sought a writ of error coram nobis to reinstate his appeal, arguing that his trial counsel had been ineffective in failing to protect his right to appeal. In an affirmation, trial counsel said he did not remember informing Arjune of the steps needed to perfect his appeal or receiving the prosecution's motion to dismiss the appeal. He said it "was understood" that he was not appellate counsel. Arjune also submitted a psychological report that said he was cognitively impaired and barely literate. The Appellate Division denied his application, saying he "has not established his entitlement to the relief requested (see People v Syville, 15 NY3d 391 [2010])."

Arjune argues his "petition for a writ of error coram nobis should have been granted because trial counsel, ignorant of his professional responsibilities, failed to protect his cognitively limited, barely literate, incarcerated client's fundamental right to a first-tier appeal of his felony trial conviction by (a) failing to explain his entitlement to poor person relief and how to seek it, and (b) failing to take any action when counsel was served with the People's motion to dismiss the appeal."

The prosecution argues, "The Appellate Division properly denied coram nobis relief because his factual allegations were contradicted by the record and his own motion, because he was well aware of his right to appeal and to apply for poor person relief, and because, in any event, he never established his indigency."

For appellant Arjune: Jenin Younes, Manhattan (212) 693-0085

For respondent: Queens Assistant District Attorney William H. Branigan (718) 286-6652

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No. 116 People v Leroy Savage Smith

Leroy Smith was charged with assault for striking his supervisor on the forehead with a hammer, and fracturing his skull, during a dispute over withheld wages at a Syracuse work site in 2012. As jury selection was set to begin, Smith asked Onondaga County Court to relieve his assigned counsel, saying "I think it's in my best interest.... One, in the basic interest he's failed to investigate employee-told defense in my case. He's failed to list and subpoena any witnesses exculpatory to the defendant. He has failed to keep the defendant informed as to ongoing status of this case, and he's failed to file all copies of motions, answers to motions of discovery. He did not hire a private investigator to investigate some of the witnesses in this case cause he said I don't have the money or the resources to hire a proper private investigator at this time. So it's in my best interest to get rid of him. I don't think he's doing a good enough job." The court denied his request without asking any questions of Smith or his counsel, saying, "Well..., this is the first I heard about that, and the jury is about to come into this courtroom, and I'm not going to, based upon what you've said, and in this very general way, I'm not going to ... assign you another lawyer." The court ultimately permitted Smith to represent himself at trial, with his original assigned counsel remaining at his side to advise him. Smith was convicted of first-degree assault and misdemeanor weapon possession and was sentenced to 20 years in prison.

The Appellate Division, Fourth Department affirmed. "[W]e conclude that County Court did not abuse its discretion in denying [Smith's] request for substitution of counsel inasmuch as 'defendant failed to proffer specific allegations of a "seemingly serious request" that would require the court to engage in a minimal inquiry,'" the Appellate Division said, quoting People v Porto (16 NY3d 93 [2010]).

Smith argues the trial court "failed to conduct an adequate inquiry pursuant to People v Sides (75 NY2d 822 [1990]) when it summarily denied [his] request for new counsel predicated upon specific complaints demonstrating ineffective assistance as a matter of law." He says his case is "fully distinguishable" from Porto, in which defendants made "vague and belated complaints" about their assigned attorneys, because Smith "raised specific claims of ineffectiveness through failure to investigate and ignorance of the expert resources available to indigent defendants." He says the seriousness of his allegations "demanded at least minimal inquiry by the trial court," which "improperly focused on just the late timing of the request" and asked no questions.

For appellant Smith: Philip Rothschild, Syracuse (315) 218-0179

For respondent: Onondaga County Chief Asst. Dist. Attorney James P. Maxwell (315) 435-2470

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No. 117 People v Marlo S. Helms

Marlo Helms was arrested in Rochester for illegal possession of a .32 caliber revolver in 2012. He pled guilty to a reduced charge of attempted criminal possession of a weapon in the second degree with an agreement that his sentence would depend on whether his 1999 conviction for "residential burglary" in Georgia was equivalent to a New York felony, making him eligible for sentencing as a repeat felon. The Georgia statute at that time provided, "A person commits the offense of burglary when, without authority and with the intent to commit a felony or theft therein, he enters or remains within the dwelling house of another." The prosecutor argued the Georgia crime was equivalent to second-degree burglary in New York under Penal Law § 140.25(2), which provides that a defendant "is guilty of burglary ... when he knowingly enters or remains unlawfully" in a dwelling "with intent to commit a crime therein." Helms admitted his prior conviction, but argued it could not serve as a predicate felony because the Georgia statute does not require proof that the defendant "knowingly" entered a dwelling without legal authority, as does the New York law.

Monroe County Court found the two burglary statutes were equivalent and sentenced Helms as a second violent felony offender to five years in prison.

The Appellate Division, Fourth Department vacated his sentence on a 4-1 vote, finding the Georgia felony was not a predicate conviction because the Georgia crime of burglary "is lacking as essential element required by the equivalent New York statute." It remitted the matter to County Court, which resentenced Helms as a first-time felony offender to one year in jail.

The majority said, "[O]n its face, the Georgia statute is lacking an essential element -- knowledge that the entry or decision to remain is unlawful. Because New York law requires proof of an element that Georgia law does not, defendant's Georgia conviction cannot serve as a predicate.... [T]he inquiry into whether a foreign state's conviction should be used as a predicate is limited 'to a comparison of the crimes' elements as they are respectively defined in the foreign and New York penal statutes'.... Although it is a requirement that a person act intentionally in order to be convicted of burglary in Georgia, the fact remains that the element of acting 'knowingly' is not included in the statute." It said, "In any event, the dissent has failed to present any Georgia case law specifically reading the 'knowingly' requirement into the Georgia burglary statute."

The dissenter said that, while determining which foreign felonies can serve as predicates is "generally" limited to comparing the crimes' elements as defined in the penal statutes, "I respectfully disagree with the majority's mechanical application of this standard inasmuch as the Court of Appeals routinely looks to the foreign state's statutory definitions and to case law...." He said, "In my view, the majority is comparing words in the two burglary statutes rather than elements.... Under Georgia law, burglary is a 'crime,' which is defined as 'a violation of a statute of this state in which there is a joint operation of an act or omission to act and intention or criminal negligence'.... Thus, the 'act' of entering under Georgia's burglary statute is only a 'crime' if it was 'intentional.' This statutory interpretation is substantiated by Georgia case law."

For appellant: Monroe County Assistant District Attorney Leah R. Mervine (585) 753-4354

For respondent Helms: David R. Juergens, Rochester (585) 753-4093