

## NY COURT OF APPEALS

### *People v Suazo*, 11/27/18 – NONCITIZEN DEFENDANTS / JURY TRIAL RIGHTS

A noncitizen defendant who demonstrates that a charged crime carries the potential penalty of deportation is entitled to a jury trial. This applies to such defendants who are facing class B misdemeanor charges, notwithstanding CPL 340.40 requiring nonjury trials in NYC Criminal Court for such crimes. To the extent that the statute denies jury trials to noncitizens facing potentially deportable offenses, it is unconstitutional. Writing for the majority, Judge Stein observed that the Sixth Amendment requires that defendants accused of serious crimes be afforded the right to trial by jury; the most relevant criteria as to seriousness is the severity of the maximum penalty; and the penalty refers to more than prison time. The Court agreed with the defendant that the penalty of deportation, one of utmost severity, rebutted the presumption that the class B misdemeanors he faced were petty for Sixth Amendment purposes. Although the People were correct that deportation—a federally imposed penalty—is technically a collateral consequence of a state conviction, deportation is intimately related to the criminal process and virtually inevitable for a vast number of noncitizens convicted of crimes. New York courts will now have to determine potential immigration consequences as to pending charges in the narrow context of cases involving CPL 340.40-mandated nonjury trials of lesser misdemeanors in NYC. But in weighing harms and benefits on a constitutional scale, the possibility of some lost judicial efficiency is not a determinative factor. Further, it is the defendant's burden to overcome the presumption that the crime charged is petty and to establish a right to a jury trial. Judges Garcia and Wilson filed dissenting opinions. The Center for Appellate Litigation (Mark Zeno, of counsel) represented the appellant.

[http://www.nycourts.gov/reporter/3dseries/2018/2018\\_08056.htm](http://www.nycourts.gov/reporter/3dseries/2018/2018_08056.htm)

## APPELLATE DIVISION

### Plea Cases – Non-Immigration Issues

#### *People v McGee*, 11/29/18 – INEFFECTIVE ASSISTANCE IN PLEA / REVERSAL

The defendant appealed from a judgment of Clinton County Court convicting him of drug and weapons charges. He asserted that he received ineffective assistance of counsel. Although the issue was unpreserved by a post-allocation motion, the **Third Department** exercised its interest of justice jurisdiction and reversed and remitted. Before the defendant entered into the underlying plea agreement, defense counsel said that: (1) he had misconstrued what the defendant was willing to do relative to the plea offer on the table at that time; and (2) because of counsel's conduct, a previous more favorable plea offer was no longer available. County Court failed to take appropriate action. Counsel's statements disqualified him from continuing to represent the defendant. The plea court should have adjourned to allow for the substitution of counsel and then conducted a hearing to determine whether the defendant received ineffective assistance during the plea negotiations. County Court failed to appreciate that, if he made the requisite showing, it

could direct the People to reoffer the purported prior more favorable plea. Rebecca Fox represented the appellant.

[http://nycourts.gov/reporter/3dseries/2018/2018\\_08203.htm](http://nycourts.gov/reporter/3dseries/2018/2018_08203.htm)

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