

## FEDERAL COURTS

### *United States v Murillo*, 6/24/19 - **REVERSAL**

The appellant, a LPR, pleaded guilty in Federal District Court to conspiracy to distribute cocaine. Throughout the plea negotiations, his primary concern was avoiding deportation. Because his attorney failed to advise him that his offense was an aggravated felony, the appellant moved under 28 USC § 2255 to vacate his conviction. District Court summarily denied the motion. The **Fourth Circuit** reversed. The plea agreement mentioned that deportation was a possibility, but defense counsel assured the appellant that he would be able to fight deportation. The appellant explained that, if he had been properly advised, he would have asked for a jury trial—even if the chances of winning were small and he might get more prison time. District Court erred indicating that the appellant had to show that rejecting the plea offer would have been rational. Further, as to prejudice, the lower court erroneously found dispositive a single line in the agreement. Avoiding deportation was clearly the highest priority for appellant, who had lived here since age seven. Because the trial court did not consider whether counsel’s performance was deficient, the reviewing court declined to address that issue. One justice dissented.

<https://cases.justia.com/federal/appellate-courts/ca4/18-6844/18-6844-2019-06-24.pdf?ts=1561402874>

## APPELLATE DIVISION

### Guilty Pleas – Immigration Issues

#### *People v Bermudez*, 6/25/19 – **PEQUE / REVERSED**

The defendant appealed from a judgment of Bronx County Supreme Court, convicting him of 2<sup>nd</sup> degree robbery. The **First Department** reversed and vacated the plea. Previously, the reviewing court had remitted the matter for a hearing on *Peque* grounds. *See* 154 AD3d 410. The remittal court found a reasonable possibility that the defendant would not have pleaded guilty, had the court advised him of the possibility of deportation. The Center for Appellate Litigation (Arielle Reid, of counsel) represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05063.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05063.htm)

#### *People v Olivarez*, 6/25/19 – **PEQUE / UNPRESERVED**

The defendant appealed from judgments of NY County Supreme Court, convicting him of bail jumping and a drug sale offense and from an order denying his CPL 440.10 motion. The **First Department** affirmed. The defendant had not established that the narrow exception to the preservation requirement applied to his *People v Peque* (22 NY3d 168) claim. He was informed of potential of deportation by a notice the People served at arraignment. In any event, the appellate court saw no reason to provide relief. While *Peque* warnings ordinarily are required whether a defendant is a citizen or not, this defendant misrepresented that he was a U.S. citizen. Counsel did not render ineffective assistance by failing to discover that the defendant was not a citizen.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05092.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05092.htm)

## Guilty Pleas – Other Issues

### ***People v Lopez*, 6/26/19 – CONFLICT / REVERSED**

The defendant appealed from a judgment of Nassau County Supreme Court, convicting him of 3<sup>rd</sup> degree robbery. The **Second Department** remitted for a hearing on the defendant's application to withdraw his plea of guilty, for which he was to be appointed new counsel. The defendant's right to counsel was violated when his attorney took a position adverse to him with respect to his application to withdraw his plea at sentencing. Before determining the motion, Supreme Court should have assigned substitute counsel. Michael Fiechter represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05153.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05153.htm)

### ***People v Palmer*, 6/27/19 – CONFLICT / REVERSED**

The defendant appealed from a judgment of Broome County Court, convicting him of a drug possession charge. The **Third Department** reversed. The People conceded that, during the criminal action, the Public Defender's office simultaneously represented the defendant and the confidential informant, who had opposing interests. The defendant never waived the conflict. Kevin James represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05228.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05228.htm)

### ***People v Skyers*, 6/27/19 – NARROW EXCEPTION / REVERSED**

The defendant appealed from a judgment of Clinton County Court, convicting him of 1<sup>st</sup> degree assault (two counts). The **Third Department** reversed and remitted. Midway through his plea allocution, the defendant asserted that he was not guilty and that "everything was an accident," prompting County Court to adjourn the matter. The following day, the defendant pleaded guilty. When he returned for sentencing, the defendant expressed remorse, stating that, on the day in question, he had overdosed on medications while intoxicated; was not in his right state of mind; was not trying to hurt anyone; and did not recall what happened. Such statements raised the possibility of an intoxication defense, triggering the narrow exception to the preservation requirement and imposing a duty on the trial court to inquire further or to give the defendant an opportunity to withdraw the plea. William Reddy represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05233.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05233.htm)

### ***People v Bloodworth*, 6/28/19 – IAC / SPEEDY TRIAL / REVERSED**

The defendant appealed from a judgment convicting him of robbery and grand larceny charges. The **Fourth Department** reversed, based on ineffective assistance that infected the plea-bargaining process. In a motion to dismiss on speedy trial grounds, defense counsel failed to correct the trial court's calculation error and to assert that the relevant period exceeded the six-month statutory period. Counsel instead focused on the constitutional speedy trial claim. Linda Campbell represented the appellant.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05284.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05284.htm)

### ***People v Walker*, 6/27/19 – MOTION TO WITHDRAW PLEA / DENIED**

The defendant appealed from a judgment of Albany County Court, convicting him of 1<sup>st</sup> degree manslaughter. The **Third Department** affirmed. Contrary to the defendant's

contention, defense counsel's frank advice regarding the unlikelihood of success at trial, given the strength of the People's case, and the potential for increased sentencing exposure, was generally not coercive or threatening conduct. Further, the defendant's unsupported claim of innocence was insufficient to warrant withdrawal of his guilty plea. In addition, before accepting the plea, County Court engaged in a detailed plea colloquy wherein the defendant repeatedly verified that he was not being coerced or threatened into pleading guilty.

[http://nycourts.gov/reporter/3dseries/2019/2019\\_05229.htm](http://nycourts.gov/reporter/3dseries/2019/2019_05229.htm)

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