



1998

Recent Developments: *Yoswick v. State*: Guilty Plea Not Rendered Involuntary, Even if Defendant Is Not Informed of Parole Consequences

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Recommended Citation

Shapiro, Samuel N. (1998) "Recent Developments: *Yoswick v. State*: Guilty Plea Not Rendered Involuntary, Even if Defendant Is Not Informed of Parole Consequences," *University of Baltimore Law Forum*: Vol. 28 : No. 1 , Article 15.

Available at: <http://scholarworks.law.ubalt.edu/lf/vol28/iss1/15>

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Yoswick v. State:

In a case of first impression, the Court of Appeals of Maryland held, in *Yoswick v. State*, 347 Md. 228, 700 A.2d 251 (1997), that parole eligibility is a collateral rather than a direct consequence of a criminal defendant's guilty plea. Therefore, the defendant does not need to be informed of the parole ramifications for the plea to be considered voluntary. In so holding, the court clarified the fact that criminal defendants in Maryland do not have a constitutional right to be informed of the consequences of their pleas with regards to future parole opportunities.

On February 25, 1992, David Yoswick ("Yoswick") kidnapped Frank Storch ("Storch") and kept him handcuffed in a motel bathroom overnight. Yoswick then took Storch via automobile to a remote location in Carroll County where Yoswick stabbed Storch in the stomach with a knife. Yoswick then tried to drown Storch by holding his head under water at a nearby creek. Storch feigned death and Yoswick left the scene. Storch managed to stagger to a nearby road where he was picked up and taken to the Maryland Shock Trauma Unit.

On February 27, 1992, Yoswick drove to a landfill and attempted to dump a bag of Storch's possessions. Soon thereafter, Yoswick was apprehended. Yoswick was then indicted by a Grand Jury in Carroll County in a twenty count indictment including kidnapping, robbery and attempted first degree murder. Charges were

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also pending against Yoswick in Howard and Anne Arundel Counties as a result of this incident.

Pursuant to a plea agreement, Yoswick pleaded guilty to attempted first degree murder and kidnapping in Carroll County. The State, in exchange for his plea, entered a *nolle prosequi* on the other eighteen charges and recommended to other jurisdictions in Maryland that they drop their charges against Yoswick. As a result of the plea, Yoswick received life imprisonment with all but forty years suspended on the attempted murder charge and also received thirty years on the kidnapping charge, with the time to be served concurrently. Yoswick could have potentially received, if convicted on all charges in all three jurisdictions, up to life plus 170 years in prison.

After the court accepted his plea and sentenced him, Yoswick filed a Petition for Post Conviction Relief, alleging that he was improperly informed of the parole consequences of his plea. Yoswick stated that his defense counsel wrongly informed him that

he would be eligible for parole in ten years, when a sentence of life imprisonment carries a statutory fifteen-year time limit before parole eligibility commences. Yoswick also alleged that he was not informed of the necessity of obtaining the Governor's approval before he could receive parole. He asserted that he pleaded guilty because he had received ineffective assistance of counsel. The circuit court rejected his claims and concluded that the plea was knowing and voluntary. The Court of Special Appeals of Maryland affirmed. After careful examination, the Court of Appeals of Maryland also affirmed the decision.

The Court of Appeals of Maryland began its analysis by examining what makes a plea valid. *Yoswick*, 347 Md. at 239, 700 A.2d at 256. First, a guilty plea must be made voluntarily and intelligently. *Id.* (citing *Boykin v. Alabama*, 395 U.S. 238, 242 (1969)). The court explained that the defendant must have knowledge of the direct consequences of the plea. *Id.* (citing *Brady v. United States*, 397 U.S. 742, 755 (1970); *Hudson v. State*, 286 Md. 569, 595 (1979), *cert. denied*, 449 U.S. 845 (1980)).

The court then defined a direct consequence of a guilty plea as one that has "a definite, immediate, and largely automatic effect on the range of the defendant's punishment." *Id.* (quoting *Cuthrell v. Director, Patuxent Inst.*, 475 F.2d 1364, 1366 (4th Cir.1973)). It reasoned that parole eligibility depends

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upon a number of factors that are largely controlled by the inmate's conduct as well as the decisions of the Parole Commission. *Id.* at 241, 700 A.2d at 257. The court stated that it has no control over these factors and that parole eligibility is a collateral, not a direct, consequence. *Id.* The court noted that due process does not require that the defendant be informed of the collateral consequences of his or her plea. *Id.* Also, a guilty plea is not rendered involuntary because the defendant was not informed of the collateral consequences of the plea. *Id.* It pointed to several other court decisions which agreed. *Id.* at 241-42, 700 A.2d at 257-58 (citing *Hill v. Lockhart*, 474 U.S. 52, 56 (1985); *United States v. Sanclemente-Bejarano*, 861 F.2d 206, 209 (9th Cir. 1988); *Brown v. Perini*, 718 F.2d 784, 788 (6th Cir. 1983); *Strader v. Garrison*, 611 F.2d 61, 63 (4th Cir. 1979)).

The court then turned its attention to whether the trial court imposed a mandatory fifteen-year sentence on Yoswick. *Id.* at 242, 700 A.2d at 258. If there was a mandatory sentence of which Yoswick was not informed, Yoswick's plea would be invalid. *Id.* (citing *Hunter v. Fogg*, 616 F.2d 55, 61 (2d Cir.1980)). The court opined that a mandatory minimum sentence is one where the court cannot exercise its discretion when sentencing. *Id.* (citing *State ex. rel. Sonner v. Shearin*, 272 Md. 502, 518-19,

325 A.2d 573, 582 (1974); *State v. Coban*, 520 So.2d 40, 42 (Fla.1988)). The court held that Yoswick did not receive a mandatory minimum sentence because the trial court exercised its discretion by imposing a life sentence with all but forty years suspended. *Id.* at 242-43. Article 41, section 4-516 of the Annotated Code of Maryland, which provides for a fifteen-year period before parole can be granted, does not constitute a mandatory minimum sentence because, as the court explained, "it does not change the nature of the parole eligibility to make it an automatic, definite, and immediate consequence of pleading guilty." *Id.* at 243.

The court then analyzed whether Yoswick's counsel's wrong advice pertaining to parole deprived him of effective assistance of counsel. *Id.* at 244, 700 A.2d at 259. In order to sustain a claim of ineffective assistance of counsel, the court stated, Yoswick must "prove that counsel's performance was deficient and that the deficient performance prejudiced the defense." *Id.* (quoting *Oken v. State*, 343 Md. 256, 283, 409 A.2d 692, 705 (1996), cert. denied, 117 S.Ct. 742 (1997)). The court stated that in order to prove prejudice, Yoswick must show that but for his counsel's errors, he would not have pleaded guilty and would have insisted on a trial. *Id.* at 245 (citing *Hill v. Lockhart*, 474 U.S. 52, 59 (1985)). The court bolstered its argument by pointing

out that Yoswick could have received life imprisonment plus 170 years if he had proceeded to trial, compared to the forty years of imprisonment he actually received. *Id.* at 246-47, 700 A.2d at 260. Additionally, the record did not reflect any reluctance on Yoswick's part when he made the plea. *Id.* The court also noted that Yoswick could become eligible for parole in less than fifteen years, possibly even less than eleven years and two months. *Id.* at 249 n.7, 700 A.2d at 261 n.7. The court held that Yoswick was not prejudiced by his counsel's misinformation because the court believed that a reasonable defendant in Yoswick's situation would have pleaded guilty even without any information about parole eligibility. *Id.* at 246, 700 A.2d at 260. The court concluded that Yoswick "clearly received the benefit of the bargain." *Id.* at 247.

Significantly, the Court of Appeals of Maryland in *Yoswick v. State* held that the parole consequences of a guilty plea are collateral. As a result of this decision, trial courts and defense counsel in Maryland are not required to advise criminal defendants of the ramifications of guilty pleas on parole eligibility. Thus, the court held that parole eligibility is not a mitigating factor to be considered when a criminal defendant makes a guilty plea and subsequently attempts to reverse a guilty plea by raising parole issues on appeal.