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Lettley v. State

Trial Court's Denial of Defense Counsel's Motion to Withdraw Based on Conflict of Interest Violated Defendant's Sixth Amendment Right to Effective Assistance of Counsel

By Amy E. Askew

The Court of Appeals of Maryland held that a trial court's denial of defense counsel's motion to withdraw, due to a conflict of interest violated the defendant's Sixth Amendment right to effective assistance of counsel. *Lettley v. State*, 358 Md. 26, 746 A.2d 392 (2000). The court further held that an attorney's applicable conflict of interest was not limited to multiple representation in the same case, but could also be created by the attorney's dual representation of the client and a third person, where the third person is not a party to the client's case.

Timothy Smith ("Smith") was shot three times at a parking lot in Baltimore City on December 10, 1997. After recovering from his injuries, Smith identified Donald Lettley ("Lettley") from a photo array as the shooter. Lettley was indicted by a Grand Jury in Baltimore City for attempted first degree murder and related offenses. Lettley privately retained an attorney on February 11, 1998.

On August 17, 1998, Lettley's attorney informed the court that she had a conflict of interest and requested that the court grant her motion to withdraw her appearance. The attorney told the court that an existing client, who was not the defendant in the instant case, had come to her in confidence implicating himself in the

Smith shooting. The attorney informed the court that her ability to effectively represent Lettley had thus been compromised, as it would force her to reveal confidential information that could harm another client, not a party to the instant case. After the court questioned the attorney regarding the alleged conflict, the judge permitted Lettley to consult with an independent counsel, who agreed there was a conflict of interest. Nevertheless, the judge denied Lettley's request for a postponement and advised Lettley that he had two options: to proceed with his present counsel or discharge her and proceed pro se. Lettley proceeded with his present counsel and was subsequently convicted for attempted murder and possession of a handgun.

Lettley filed a timely appeal to the Court of Special Appeals of Maryland, claiming that the trial judge denied him effective assistance of counsel as guaranteed to him under the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights. The Court of Appeals of Maryland granted a writ of certiorari on its own motion *sua sponte*.

The court of appeals first pointed out that typically claims of ineffective assistance of counsel are reviewed on post-conviction, not direct appeal. *Lettley*, 358 Md. at 32, 746 A.2d at

395. However, because the claim involved a conflict of interest and the trial record was clear, the need to wait until a post conviction hearing was eliminated. *Id.* The court then addressed the fundamental protection of the Sixth Amendment and Article 21 guarantees of a criminal defendant's right to effective assistance of counsel. *Id.* at 33, 746 A.2d at 396. According to the court, effective assistance of counsel includes the right to have representation absent conflicting interests. *Id.* at 34, 746 A.2d at 396. The court explained that while a typical conflict of interest issue arises in multiple representation settings, a defendant's right to "conflict free" representation continues in any situation in which the defense counsel has a conflicting obligation to both the defendant and some other party. *Id.* at 34, 746 A.2d at 397.

Generally, the standard that a defendant must meet in order to prove ineffective assistance of counsel is relatively high, as set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Id.* The defendant must prove that his counsel's representation fell below an objective standard of reasonableness and that the defendant was prejudiced. *Id.* However, the court of appeals pointed out that where the claim stems from a conflict of interest,

the strict standard in *Strickland* does not apply. *Id.* The court pointed to two United States Supreme Court approaches to the conflict of interest based claims of ineffective assistance of counsel, and explained that the determining factor used by that court was whether the conflict was noted on the record. *Id.* at 35, 746 A.2d at 397. If the defense counsel makes a timely objection as to the conflict, and a conflict is said to actually exist, then deference should be given to the defense attorney and the court should take adequate measures to ensure that the defendant's rights are not violated. *Id.* at 35-37, 746 A.2d at 397-98. (citing *Glasser v. U.S.*, 315 U.S. 60, 69 (1942); *Holloway v. Arkansas*, 435 U.S. 475, 482 (1978)). The existence of the conflict itself is said to be inherently prejudicial, as the evil is what the defense attorney is compelled to refrain from doing. *Id.* However, if the defense counsel fails to make a timely objection, thus denying the court the ability to correct the situation, the defendant must prove that the actual conflict adversely affected his counsel's performance (citing *Cuyler v. Sullivan*, 446 U.S. 335 (1980)). *Id.* at 37, 746 A.2d at 398. Once the conflict and the adverse effect are illustrated, prejudice is presumed. *Id.*

The court reviewed the last case seen in Maryland regarding ineffective assistance of counsel. *Id.* at 41, 746 A.2d at 401. In *Austin v. State*, 327 Md. 375, 609 A.2d 728 (1992), two lawyers from the same law firm represented co-defendants in a criminal case. *Id.* Once again, the court reiterated the language of the

United States Supreme Court and said that once a conflict is determined to exist, prejudice is presumed and the court should take steps to eliminate the conflict. *Id.* at 42, 746 A.2d at 401.

In the present case, Lettley's defense counsel had confidential information from one client that was crucial to the case of another client. *Id.* at 43, 746 A.2d at 402. Because of ethical obligations to the previous client, counsel was prohibited from using it to fulfill yet another ethical duty to her current client; the duty to represent a client zealously. *Id.* at 44, 746 A.2d at 402. The Court of Appeals of Maryland found the constraint obvious. *Id.* As counsel made a timely objection, the trial court abused its discretion by not allowing her to withdraw her representation and therefore violated Lettley's Sixth Amendment rights. *Id.* at 45, 746 A.2d at 403.

The fundamental right for a defendant to receive a fair trial resonates throughout this opinion. However, the possibility that this decision could be used to cause delay within the system could become a reality. Applying this decision to the heavy case-load of the Public Defender's Office, it appears that there will be times when finding a "conflict-free" representation will be extremely difficult. A public defender's client list is often vast, with many overlaps. Yet the Court of Appeals of Maryland seems to reason that any obstacle presented in finding representation is not as paramount as a defendant's right to effective assistance of counsel.

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