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2002 Survey of Rhode Island Law: Cases: Constitutional Law

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Constitutional Law. *Pellegrino v. Rhode Island Ethics Commission*, 788 A.2d 119 (R.I. 2002). The state impliedly waived sovereign immunity by enacting a statute that provided for specific compensation to be paid to commission members. Plaintiffs have a vested property right in the compensation that was provided by statute; therefore, the taking of that compensation for the public's use without compensation violated the Rhode Island Constitution.

FACTS AND TRAVEL

The plaintiffs, former members of the Rhode Island Ethics Commission, brought suit against the Commission (defendant) to recover unpaid compensation that they were entitled to by statute.[1] A state statute provided for certain public officials to receive compensation for attending several commission meetings between 1991 and 1992.[2] On January 1, 1991, the governor issued an executive order suspending the pay of certain public employees, including the commission.[3] Thereafter, the order was ratified by the general assembly.[4] On June 7, 1991, the general assembly enacted a law,[5] which allowed those members of the commission who performed adjudicatory functions, including plaintiffs, to receive retroactive compensation to February 15, 1991.[6] On July 14, 1992, the general assembly enacted another law,[7] which suspended the pay of members of commissions and boards.[8] It did not contain an exception for those members who performed adjudicatory functions.[9]

Plaintiffs argued they were entitled to compensation for the meetings they attended between February 15, 1991, and July 14, 1992.[10] These were the dates between when the general assembly enacted the law providing an exception for the commission members who performed adjudicatory functions and when the general assembly enacted the law that suspended the commission mem-

1. Pellegrino v. R.I. Ethics Comm'n, 788 A.2d 1119, 1121 (R.I. 2002).
2. *Id.*
3. *Id.*
4. *Id.*
5. 1991 R.I. Pub. Laws ch. 44.
6. *Pellegrino*, 788 A.2d at 1121.
7. 1992 R.I. Pub. Laws ch. 133.
8. *Pellegrino*, 788 A.2d at 1121.
9. *Id.*
10. *Id.*

bers' pay without providing an exception for those members who performed adjudicatory functions.[11] Plaintiffs based their claim on the just-compensation clause of the state and federal constitutions.[12]

The motion justice dismissed the claim for failure to state a claim upon which relief can be granted, concluding that the doctrine of sovereign immunity barred the lawsuit.[13]

ANALYSIS AND HOLDING

The Rhode Island Supreme Court first considered whether the doctrine of sovereign immunity barred the plaintiffs' claim.[14] It answered in the negative.[15] The court held that by voluntarily enacting a statute providing specific compensation for the commission members, the state impliedly waived the doctrine of sovereign immunity when responding to the commission members' attempts to collect the compensation provided.[16] If the state were allowed to invoke the doctrine of sovereign immunity, the principle of the legislation would be flouted and the provisions would be nugatory.[17] In addition, by enacting a statute providing compensation to be paid to government officials in exchange for services rendered to the state, the state was acting as a private employer rather than a sovereign; therefore, the state could not invoke sovereign immunity in this respect.[18] Due to the aforementioned reasons, the court rejected the defendant's argument that the plaintiffs' claim was barred by the doctrine of sovereign immunity.[19]

The court then considered whether the plaintiffs' claim was supported by the just-compensation guarantees in the state and federal constitutions.[20] It answered in the affirmative.[21] The statute providing compensation for the commission members for attendance at meetings in 1991 and 1992, along with the commission

11. *Id.* at 1122.
12. *Id.*
13. *Id.*
14. *Id.* at 1123.
15. *Id.*
16. *Id.* at 1124.
17. *Id.* at 1125.
18. *Id.*
19. *Id.* at 1123.
20. *Id.* at 1126 (citing Perry v. Sindermann, 408 U.S. 593, 601 (1972)).
21. *Id.*

members' attendance at those meetings, gave the members a vested property interest in the compensation under the Rhode Island Constitution.[22] Since plaintiffs had a vested property interest in the compensation, the state violated the constitution by taking that compensation for the public's use without due process of law and just compensation.[23]

CONCLUSION

The state can impliedly waive the doctrine of sovereign immunity. In the instant case, the court held that the state could not invoke sovereign immunity to defend against an action seeking compensation under a statute that was voluntarily enacted by the state. The statute would be rendered meaningless if the state was allowed to invoke the doctrine of sovereign immunity.

The court also held that the taking of compensation for the public's use without just compensation is a violation of the Rhode Island Constitution. The commission members had a vested property right in the compensation; therefore, taking the compensation violated the just-compensation guarantees in the state constitution.

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22. *Id.*
23. *Id.*

Constitutional Law. *State v. Thornton*, 800 A.2d 1016 (R.I. 2002). An indigent defendant in a criminal case is entitled to court-appointed counsel, but unwarranted rejection of qualified attorneys can serve as a voluntary waiver of the right to counsel. A knowing and intelligent waiver of counsel does not require any special dialogue between the trial judge and defendant, but is based on the totality of the circumstances. Restriction on movement of a pro se defendant is not a violation of the Sixth Amendment right of self-representation.

FACTS AND TRAVEL

The defendant, Christopher S. Thornton (Thornton), had been involved with Debra Means (Debra) for six years; they had a daughter, Amy.[1] Thornton had physically abused Debra until she ended the relationship in Spring 1996.[2] In fear of further harm, Debra obtained a no-contact order against Thornton, but the order still allowed Thornton to visit his daughter.[3]

On June 18, 1996, as Debra was preparing to take Amy to her babysitter before going to work, Thornton unexpectedly arrived at her home.[4] He immediately threatened her with a knife and forced her to call her place of employment to explain she would be absent from work because of car trouble.[5] Shortly thereafter, the babysitter (Diane) called Debra a number of times, wanting to know when Debra would be bringing Amy over.[6] Sensing Debra was in danger, Diane asked Debra if Thornton was there.[7] When Debra replied "yes," Diane, knowing of the no-contact order, called the Narragansett police.[8]

Thornton kept Debra captive in the house during a fourteen-hour standoff with the police.[9] During this time, Thornton repeat-

1. State v. Thornton, 800 A.2d 1016, 1020 (R.I. 2002). Amy is not the child's real name. *Id.* at 1020 n.1.
2. *Id.* at 1020.
3. *Id.*
4. *Id.*
5. *Id.*
6. *Id.*
7. *Id.*
8. *Id.* During a later call to Debra, Diane talked to Thornton who threatened her if she were to testify against him on a different charge. *Id.* at 1020 n.3.
9. *Id.* at 1021. The police were able to persuade Thornton to release Amy shortly after the standoff began. *Id.*

edly threatened and assaulted Debra.[10] After deciding further negotiations would be unsuccessful, the Narragansett police requested assistance from the South Kingstown Emergency Services Unit.[11] That unit forcibly entered the house, rescued Debra, and captured Thornton.[12]

Thornton was indicted and charged with ten offenses.[13] After a trial, a jury convicted him of five: (1) felony assault with a dangerous weapon, (2) felony assault resulting in serious bodily injury, (3) violation of a no-contact order, (4) kidnapping Debra, and (5) intimidating a witness, Diane.[14] The court dismissed one charge on a defense motion after the state finished presenting its case.[15] The jury found Thornton not guilty on the remaining four charges.[16]

The primary point of contention throughout this case was Thornton's choice to represent himself pro se after rejection of his court-appointed attorneys.[17] After less than one month of representation, Thornton moved to dismiss his first court-appointed counsel, citing a lack of comfort with the attorney.[18] After the court deferred proceedings with instructions for Thornton and his counsel to work together to resolve their problems; Thornton, thereafter, renewed his request that a new public defender be appointed based on differences of opinion that were affecting the attorney-client relationship.[19] The hearing justice allowed appointment of new counsel, while warning that any future removal would require more justification.[20]

Three weeks prior to the scheduled trial, Thornton filed a disciplinary complaint against his second lawyer.[21] The motion jus-

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10. *Id.*
11. *Id.* The negotiations continued for twelve hours prior to this decision. *Id.*
12. *Id.* Debra was immediately hospitalized because of her injuries. *Id.*
13. *Id.*
14. *Id.* at 1021-22.
15. *Id.* at 1021 n.8. The charge dismissed was breaking and entering a dwelling. *Id.*
16. *Id.* at 1022. The four charges included: (1) first-degree sexual assault, (2) assault with a dangerous weapon in a dwelling, (3) assault with intent to commit murder, and (4) kidnapping Amy. *Id.*
17. *Id.* at 1022-31.
18. *Id.* at 1022.
19. *Id.* Five weeks passed between the initial request and the renewed request. *Id.*
20. *Id.* at 1022-23.
21. *Id.* at 1023.

tice allowed withdrawal of the second attorney because of a perceived conflict of interest, despite noting that Thornton was trying to delay the start of the trial.[22]

A few weeks later, Thornton appeared before the trial judge to determine whether he would proceed pro se, with his second attorney, or with private counsel.[23] Thornton complained that he was being forced to represent himself, but agreed to appointment of an experienced criminal defense attorney as standby counsel.[24] When the trial court proposed that standby counsel become the attorney of record; Thornton rejected the idea.[25] The trial court then ruled his doing so constituted a third rejection of counsel.[26]

During the trial, the judge placed limitations on the defendant's movements by: requiring defendant to be in handcuffs if he attended side-bar conferences, requiring standby counsel to participate in chamber conferences in lieu of the defendant, and prohibiting the defendant from approaching witnesses.[27] These restrictions were to apply during voir dire, as well as during the trial.[28] Thornton refused to participate in the side-bar conferences because he felt that the jury would be prejudiced by his appearance in handcuffs.[29] The trial judge noted that defendant's rights were protected by the participation of standby counsel in each of these conferences.[30] In addition, Thornton requested standby counsel file certain motions, make certain legal arguments, and question particular witnesses on his behalf.[31]

After conviction, the defendant appealed, citing multiple grounds, two of which were waiver of counsel and undue impairment of his right to self-representation.[32]

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22. *Id.*
23. *Id.*
24. *Id.* at 1024.
25. *Id.*
26. *Id.* Thornton later moved to dismiss his standby counsel on the grounds he was incompetent in the area of diminished capacity, an anticipated defense. *Id.*
27. *Id.* at 1031-39.
28. *Id.* at 1032.
29. *Id.* at 1034.
30. *Id.* at 1055 (Flanders, J., dissenting).
31. *Id.* at 1024-25.
32. *Id.* at 1022. Other grounds for appeal included: exclusion of evidence related to diminished capacity defense, introduction of past incidents of misconduct during cross examination of a witness, and denial of a motion to reduce sentence. *Id.*

ANALYSIS AND HOLDING

Thornton first asserted that his waiver of right to counsel was constitutionally invalid.[33] A constitutional waiver must be voluntary, knowing and intelligent.[34] Thornton conceded the waiver was voluntary.[35] However, he contended his waiver was not knowing and intelligent because the trial judge did not engage him in a detailed colloquy.[36] The Rhode Island Supreme Court held that this detailed colloquy, though preferred was not constitutionally mandated.[37] Instead, the trial judge could take a totality of the circumstances[38] approach analyzing the following six factors:

> (1) the background, the experience, and the conduct of the defendant including his age, his education, and his physical and mental health; (2) the extent to which the defendant has had contact with lawyers before the hearing; (3) the defendant's knowledge of the nature of the proceeding and the sentence that may potentially be [] imposed; (4) the question of whether standby counsel has been appointed and the extent to which he or she has aided the defendant before or at the hearing; (5) the question of whether waiver of counsel was the result of mistreatment or coercion; and (6) the question of whether the defendant is trying to manipulate the events of the hearing.[39]

Reviewing those factors, the supreme court found that Thornton had extensive experience in the criminal justice system, had ample opportunity to discuss strategy with his three attorneys, clearly understood the charges against him, and utilized his appointed standby counsel.[40] The court, therefore, held that the waiver of counsel was knowing and intelligent.[41]

Thornton next asserted the trial court judge violated his constitutional right to self-representation.[42] In conducting an analy-

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33. *Id.*
34. *Id.* at 1025 (citing State v. Briggs, 787 A.2d 479, 486 (R.I. 2001) (citing State v. Chabot, 682 A.2d 1377, 1380 (R.I. 1996) (per curiam))).
35. *Id.* at 1025-26.
36. *Id.* at 1026.
37. *Id.* at 1026-27 (quoting State v. Spencer, 783 A.2d 413, 416-17 (R.I. 2001)).
38. *Id.* at 1027 (quoting *Spencer*, 783 A.2d at 416-17).
39. *Id.* at 1027 (quoting *Briggs*, 787 A.2d at 486 (quoting *Chabot*, 682 A.2d at 1380)).
40. *Id.* at 1028-30.
41. *Id.* at 1031.
42. *Id.*

sis of the trial judge's restrictions on the defendant, the supreme court looked at "whether the defendant had a fair chance to present his case in his own way."[43] Previous cases have held that the claim that standby counsel interfered with the defendant's right to represent himself will be eroded if the defendant requests standby counsel to participate in the proceedings.[44] The Sixth Amendment of the United States Constitution imposes two limitations on standby counsel participation: (1) the defendant must be able to preserve actual control and (2) standby counsel participation does not destroy the jury's perception that the defendant is acting pro se.[45]

In analyzing the defendant's control over his case, the supreme court noted that Thornton was able to present any part of his case that he chose to present to the jury.[46] The only limitation was a handcuff requirement for the side-bar conferences.[47] Thornton argued his appearance in handcuffs would prejudice the jury, therefore he had no meaningful choice regarding side-bar conferences.[48] The court disagreed, stating that a simple jury instruction would have alleviated this concern.[49] Continuing its analysis the court stated that the trial judge's main concern had to be the safety of all parties involved, as such he was given full discretion over the manner in which the trial proceeded.[50] The trial judge's restrictions on the defendant were reasonable in light of the violent nature of the offenses involved.[51] Therefore, the supreme court held that Thornton did not prove lack of control over his defense, when standby counsel represented him at side-bar and chambers conferences.[52]

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43. *Id.* (quoting McKaskle v. Wiggins, 465 U.S. 168, 177 (1984)).

44. *Id.* (citing *McKaskle*, 465 U.S. at 182-83).

45. *Id.* (citing *McKaskle*, 465 U.S. at 178-79)

46. *Id.* at 1033.

47. *Id.*

48. *Id.* at 1034. The dissent had a different view of the voir dire side-bars. Justice Flanders argued Thornton was prohibited from attending any side-bars during voir dire, but allowed to attend those during the trial if he wore handcuffs. *Id.* at 1054. (Flanders, J., dissenting).

49. *Id.* at 1034-35.

50. *Id.* at 1032.

51. *Id.* at 1033.

52. *Id.* at 1036, 1039. Thornton argued he was prohibited from approaching witnesses. *Id.* at 1039. The majority stated that the record did not contain any information to support this claim. *Id.*

In analyzing the jury's perception of self-representation, the court found that three facts would mandate the jury conclude Thornton had represented himself.[53] These were: the trial judge issued an instruction to the jury about the pro se representation, Thornton continually stated that he was representing himself, and the nature of Thornton's participation in the case.[54] The court concluded the jury would interpret the standby counsel's participation in these matters to be at Thornton's request, as Thornton had requested such participation in other areas.[55]

The Dissenting Opinion

The dissenting opinion in this case limited his focus to the court's holding on waiver of counsel and impairment of Thornton's right to self-representation.[56] In regards to the waiver, the dissent argued the failure to have a colloquy about the dangers of self-representation was a violation of Thornton's Sixth Amendment right to counsel.[57] Therefore, the dissent argued the error occurred when the motion justice ordered defendant to accept his second counsel or represent himself without a discussion on the dangers of self-representation.[58] It was necessary, in the dissent's view, to establish on the record the knowledge of the defendant before the waiver.[59]

In addressing the impairment to the defendant's right to self-representation, the dissent dissected the issue into two sub-issues: voir dire and substantive conferences.[60] The dissent argued that non-participation in voir dire was a direct violation of the right to self-representation.[61] Arguing that it was the right to be heard, and not the substance of the conferences that was protected, the dissent regarded almost all restrictions of movement as violative of

53. *Id.* at 1035.
54. *Id.*
55. *Id.*
56. *Id.* at 1045 (Flanders, J., dissenting).
57. *Id.* at 1046-48.
58. *Id.* at 1048-50. The dissent details that the *Spencer* court, relied on by the majority as not requiring a colloquy, did at least engage in a "pragmatic inquiry" into the defendant's knowledge of the dangers. *Id.* (citing State v. Spencer, 783 A.2d 413, 418 (R.I. 2001)).
59. *Id.* at 1050.
60. *Id.* at 1053-62.
61. *Id.* at 1059 (quoting McKaskle v. Wiggins, 465 U.S. 168, 174 (1984)).

the Sixth Amendment right to self-representation.[62] The dissent further stated that Sixth Amendment right to counsel violations cannot be subject to harmless-error analysis.[63] The dissent went on to argue that the choice of handcuffs or non-participation is not appropriate because other possible measures existed to ensure the safety of the court.[64]

In regards to the substantive conferences outside the jury's presence, the only limitation imposed by precedent was the defendant must retain actual control.[65] The dissent stated a court violates this limitation when the defendant is not allowed to participate openly in conferences, but is informed after the conference of the decisions that the court made.[66] Therefore, even though the substance of the conferences generally favored Thornton, the dissent argued Thornton's exclusion from them to be error.[67] The dissent would have vacated the superior court decision and remanded for a new trial.[68]

CONCLUSION

The Rhode Island Supreme Court held that an indigent criminal defendant waived his right to court-appointed counsel through unwarranted rejection of qualified attorneys. The court recommended, but did not require, a special dialogue between the trial judge and defendant to find a knowing and intelligent waiver of counsel. The judge was given broad discretion when he placed restrictions on movement of a pro se defendant for the purposes of safety of all participants in the trial. Therefore, such restrictions were not violations of the right to self-representation clause in the Sixth Amendment.

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62. *Id.* at 1056-57 (citing *McKaskle*, 465 U.S. at 179).
63. *Id.* at 1057.
64. *Id.* at 1059.
65. *Id.* at 1061.
66. *Id.* at 1061-62 (citing *McKaskle*, 465 U.S. at 179).
67. *Id.* at 1061.
68. *Id.* at 1063.