



When a criminal defendant intentionally refuses to participate in a trial and refuses to let his counsel do the same on his behalf, he may waive his constitutional right to effective assistance of counsel, the Court of Appeals recently held. Let's take a look at that opinion and what else has been going on in the New York appellate courts over the last week.

COURT OF APPEALS

CRIMINAL LAW, WAIVER OF RIGHT TO EFFECTIVE ASSISTANCE OF COUNSEL

People v Lewis, 2026 NY Slip Op 01588 (Ct App Mar. 19, 2026)

Issue: May a defendant, by his conduct, waive his constitutional right to effective assistance of counsel?

Facts: After being charged with four counts of unlawful possession of a weapon, based on two separate incidents, defendant appeared in court the day before his trial was scheduled to begin, argued that his privately retained attorney was ineffective, and sought to have new counsel appointed. The trial court denied the defendant's request, stating "that it was simply an attempt to delay the trial." The court advised that defendant's counsel would continue to represent him through the trial. The defendant reiterated his belief that his attorney was ineffective, stated that he would not be moving forward with the trial the next day, and refused to answer any of the court's other questions.

Following a recess during which the court gave the defendant a chance to change out of his prison uniform, the defendant again refused to return to the courtroom, to change his clothing, or to participate in the trial. The trial court asked defendant's counsel to speak with defendant again about the implications of refusing to participate in the trial, and counsel did so. Counsel reported back to the judge that defendant again refused to return, had reiterated that he did not want counsel to represent him, and that he would not participate in the trial. The court sent another warning that refusal to participate would be a waiver of his constitutional right to be present for the trial.

After another recess, defendant directed counsel to leave and not participate in the trial on his behalf. The trial court, however, again directed counsel to remain, but left it up to counsel whether to participate on defendant's behalf. The court then brought the defendant back into the courtroom and stated:

"[O]ne of the fundamental cornerstones of our constitution and our criminal justice system is that you're entitled to a jury trial, and that you're entitled to participate in that jury trial, and that you're entitled to participate in your defense. You're also entitled to take the stand if you so choose during the trial . . . Now, you and I have had some conversations on the record and you don't really want to be here. You've also apparently indicated to [defense counsel], because I've ordered him to come see you and have the conversation with you about the importance of you being here and participating in your defense, and he's indicated a couple things. Number one, you absolutely don't want to be here and, number two, you fired him and told him you don't want him to represent you. So I'm just going to ask you a couple questions . . .

[Y]ou have the opportunity to be here and be present during your trial. Would you like to be here and be present during your trial?"

Defendant responded: "Your Honor, I object to this whole thing and I fire [defense counsel] as my lawyer and I have no more things to say. Can I go back to the jail?" The court asked defendant if he was "waiving his right to be present during the trial." Defendant did not respond, refused to represent himself, and then left the courtroom.

At trial, the court attempted "to communicate with defendant about his rights and his decision not to participate" and the implications of that choice, but each question was met with defendant's silence and refusal to participate. Defendant was ultimately convicted, and sentenced to 10 years on each of four counts, running consecutively. The Appellate Division, Fourth Department "affirmed, with two Justices dissenting (see 228 AD3d 1226 [4th Dept 2024]). The dissenting Justices would have held that defendant did not waive the right to effective assistance of counsel, and that his attorney failed to provide meaningful representation by complying with defendant's instruction not to participate in the trial."

Holding: The Court of Appeals affirmed, holding that, "by his conduct, defendant waived the right to effective assistance of counsel." The Court explained, "a defendant's right to effective assistance of counsel may be waived. We have explained that an accused awaiting trial has only two choices regarding legal representation—proceed with counsel or waive the protection of the Sixth Amendment and

proceed pro se. Accordingly, when a defendant refuses self-representation and restricts the participation of counsel . . . they have voluntarily waived the right to the effective assistance of counsel.” While express waivers based upon an open colloquy with the court are preferred, a defendant may also waive the right to effective assistance by his conduct, including where the defendant refuses to answer questions regarding his representation and refuses to participate in the trial.

The Court explained, “[a] trial court must be cautious not to conflate waiver of the right to be present at trial with waiver of the right to effective assistance of counsel. These rights are separate, and a trial court has distinct duties to ensure the validity of a defendant’s waiver of each. However, in certain circumstances, as in this case, the same conduct may amount to a waiver of both rights. Here, defendant has never contested that he waived the right to be present and the record makes clear that he did so, including by continually absenting himself from the proceedings. In addition, the court repeatedly and unequivocally denied defendant’s requests for new counsel and explained that defendant would not be receiving substitute counsel. The court also continuously reminded defendant that he could choose to represent himself or authorize his attorney to participate in the proceedings at any time—options that defendant unequivocally repeatedly refused. The court likewise gave defendant numerous warnings—and attempted to provide several more—regarding the fundamental rights at stake, and made clear at least five times that it would not suffer defendant’s delay tactics and that his trial would proceed.

Faced with this situation, defendant directed his attorney not to participate in the proceedings and insisted 10 times, despite the court repeatedly advising him otherwise, that he had fired his attorney. In response, the court directly posed to defendant the choice between proceeding with his attorney or representing himself, and faced with this choice, in an apparent effort to obstruct the proceedings notwithstanding the court’s warning that the trial would continue, defendant chose to simply leave the courtroom, knowing that the trial would proceed without him. Defendant thus anticipated and desired that his trial would proceed just as it did—both outside his presence and without him or his lawyer mounting a defense.”

Thus, even though the trial court never asked defendant whether he intended to waive his right to effective assistance of counsel, separately from his right to be present at the trial, the Court held that he did so through his conduct.

THIRD DEPARTMENT

CRIMINAL LAW, KNOWING AND INTELLIGENT PLEA

People v Oldorff, 2026 NY Slip Op 02004 (3d Dept Apr. 2, 2026)

Issue: Did defendant, who was twice adjudged mentally unfit to stand trial before being deemed competent, validly enter a guilty plea to the charges against him, even though his intellectual and developmental disabilities rendered him incapable of understanding the proceedings?

Facts: After defendant shot and killed his father, he was charged with second-degree murder and manslaughter. Defendant was remanded to an adolescent psychiatric unit and evaluated for his competence to stand trial. Two psychiatrists diagnosed defendant with “a plethora of mental health conditions including fetal alcohol syndrome, Attention Deficit/Hyperactivity Disorder, pervasive developmental disorder, mood disorder, reactive attachment disorder, intermittent explosive disorder and moderate intellectual disability.” Based on those findings, defendant was adjudged unfit to stand trial and was committed. A year and a half later, defendant was evaluated again and again found unfit, because he was not capable of assisting in the preparation of a defense. After another year, defendant was eventually found fit to stand trial.

“In June 2022, defendant pleaded guilty in County Court to manslaughter in the first degree. Subsequently, Supreme Court granted defendant’s motion to vacate his plea. No additional competency examinations were requested or administered, and, in June 2023, defendant entered an *Alford* plea to manslaughter in the first degree. County Court accepted defendant’s plea, finding it knowing, voluntary and intelligent, and thereafter sentenced defendant to a prison term of 20 years, to be followed by five years of postrelease supervision.”

Holding: The Appellate Division, Third Department reversed defendant’s conviction because it was not clear that defendant knowingly and intelligently pled guilty. The court explained, “[p]eople with intellectual disabilities possess diminished capacities to understand and process information, to communicate, to abstract from mistakes and learn from experience, to engage in logical reasoning, to control impulses, and to understand the reactions of others. . . . These traits render people with intellectual disabilities uniquely vulnerable to injustice within criminal proceedings. . . . Therefore, a court must account for a defendant’s diminished mental capacity in ensuring that any waiver of constitutional rights is knowing, intelligent and voluntary.”

Although the third evaluation had found defendant competent, its findings cast doubt on that conclusion, the court held. In particular, the psychiatrist found that defendant was mildly intellectually disabled, and “was rather immature in his understanding of the severity of his charges and the chances that he could have significant consequences — such as jail time. More importantly, during the evaluation, defendant repeatedly alleged that his counsel had reassured him that he will not be going to jail and, in fact, expressed strongly held beliefs that he will not be sent to jail due to his personal circumstances of having a disability and being young when the offenses were allegedly committed.” Under these circumstances, the court held, a more exacting inquiry was required of the trial court “to ensure that defendant understood the constitutional rights he was waiving, given his significant intellectual disability.”

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