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### Summary of Young v. State, 120 Nev. Adv. Rep. 98

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*Nevada Law Journal*

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*Young v. State*, 120 Nev. Adv. Rep. 98 (December 23, 2004)<sup>1</sup>

## CONSTITUTIONAL LAW - CRIMINAL LAW - SUBSTITUTION & WITHDRAWAL OF COUNSEL

### Summary

Defendant Young appealed his criminal conviction, specifically the district court's decision to deny his motion to dismiss and appoint new counsel. Young maintained that the lower court did not properly inquire into the facts surrounding his motion.

### Disposition/Outcome

The court concluded the lower court abused its discretion when it denied Young's motion. The court enumerated three factors that are relevant when reviewing a district court's denial of a motion for substitution of counsel: (1) the extent of the conflict between defendant and counsel, (2) the adequacy of the court's inquiry into defendant's complaint, and (3) the timeliness of the motion and the extent of any inconvenience or delay.

### Factual and Procedural History

Defendant Young was charged and convicted of a variety of criminal counts that included four counts of murder with a deadly weapon.<sup>2</sup> He was sentenced to multiple prison terms that included life without the possibility of parole.

On October 6, 1998, the court appointed attorneys Lew Wolfbrandt and Mary Hastings to represent Young.<sup>3</sup> Young first filed a motion to dismiss his counsel on May 12, 1999, complaining of counsel's failure to communicate with him, failure to file a motion for bail, refusal to talk with his family and friends, and failure to file the appropriate discovery requests.

The district court heard the motion on June 9, 1999, and Young indicated that Wolfbrandt had not been to see him in detention during the previous eight months, and there was a general lack of communication between them. Wolfbrandt responded that he had accepted Young's calls, he was investigating the case, and Hastings visited Young in detention several times. The court denied his motion, but indicated that if he was still concerned at the calendar call he could talk about it then.

On June 23, 1999, Young again complained about communication with Wolfbrandt.<sup>4</sup> Young did not feel that Wolfbrandt was "fighting for [his] life."<sup>5</sup> Because Young further

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<sup>1</sup> By Kristen T. Gallagher

<sup>2</sup> In addition to the four murder counts, Young was charge with one count of burglary while in possession of a firearm, one count of conspiracy to commit robbery and/or kidnapping and/or murder, four counts of robbery with use of a deadly weapon, and four counts of first-degree kidnapping with use of a deadly weapon.

<sup>3</sup> The public defender's office represented Young's co-defendant and could not represent him due to the conflict.

<sup>4</sup> This hearing was for another matter in the case.

reported Wolfbrandt had only visited him once in jail, the district court judge ordered the attorney to see Young at least once a week until August 30, 1999.<sup>6</sup>

Young then filed another motion to dismiss his attorneys and appoint new counsel, complaining that Wolfbrandt had failed to communicate with him and prepare him and the case for trial.<sup>7</sup> Further, Young indicated that Wolfbrandt violated the judge's order because in the previous ten weeks he failed to visit Young more than once. Wolfbrandt responded that although he had not visited Young frequently, he was still was diligently working on his case and he was ready for trial.

At a subsequent calendar call on August 26, 1999, Young again indicated his displeasure with his counsel's effectiveness; however, the district court judge told Young the motion would be passed until the first day of trial. On August 30, 1999, Young was permitted to argue his motion to dismiss counsel. The substance was substantially the same, but Young charged the court would not dismiss counsel because Wolfbrandt was formerly the judge's law clerk. Wolfbrandt responded that, *inter alia*, he filed all the appropriate motions, obtained information he needed during his few visits to Young, had some conversations with Young's family and friends, accepted calls from Young when he was available in the office, and was ready for trial.

## **Discussion**

### **1. Request for Substitution of Counsel**

Review of a district courts denial of a motion for substitution of counsel is reviewed for abuse of discretion. A defendant is not allowed to reject court-appointed counsel unless there is a showing of adequate cause. However, a court is responsible for adequately inquiring into the circumstances surrounding defendant's motion. *United States v. Moore*<sup>8</sup> set forth three factors: (1) the extent of the conflict, (2) the adequacy of the inquiry, and (3) the timeliness of the motion. Importantly, the failure to substitute counsel when there is a collapse of the attorney-client relationship violates a person's Sixth Amendment rights.<sup>9</sup>

#### **a. Extent of Conflict**

Based on the number and consistency of the complaints by Young, the court determined there was a substantial breakdown of the relationship between client and attorney. Wolfbrandt failed to contact his client while he was in jail, and disregarded the lower court's order mandating he visit Young weekly. As a result, the court found there was evidence of an unresolvable conflict.

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<sup>5</sup> Young v. State, 120 Nev. Adv. Rep. 98, 5 (2004).

<sup>6</sup> The tentative trial date.

<sup>7</sup> Young argued the merits of the motion on August 17, 1999.

<sup>8</sup> 159 F.3d 1154, 1158-59 (9th Cir. 1998).

<sup>9</sup> *Id.* at 1158.

## **b. Timeliness of Motion**

In considering the timeliness aspect, a court must balance a defendant's constitutional right to counsel with the inconvenience and delay resulting from a substitution of counsel. The court analogized the circumstances in this case with the outcome in *Moore*.<sup>10</sup> There, the defendant made a motion for substitution over a one month prior to the start of trial. The court determined Young met this requirement by making multiple motions for substituting counsel, with the first request being made over three and one half months prior to the trial.

## **c. Adequacy of Inquiry**

The district court failed to make an adequate inquiry into Young's allegations in his motion for substitution of counsel.<sup>11</sup> The lower court failed to make an in-depth investigation as to the seriousness of Young's allegations. The court had five separate occasions in which to make this in-depth inquiry, but failed to do so.

## **2. Miscellaneous Claim of Error**

Typically, a party must object to an error at the time of its occurrence in order to preserve the right to appeal. Young made a claim, but failed to object at the time of its occurrence, that the prosecutor inappropriately referred to a passage from the Bible that inferred the death penalty must be imposed upon a finding of murder.<sup>12</sup>

Although Young did not properly object at the time, under NRS 178.602,<sup>13</sup> the court can review a claim if it is plain error that substantially affected his rights. While Biblical passages can be appropriate, there was concern because this particular passage occurred during the penalty phase. However, the court determined this circumstance did not rise to the level of plain error.

## **Conclusion**

The court enumerated three factors that are relevant when reviewing a district court's denial of a motion for substitution of counsel: (1) the extent of the conflict between defendant and counsel, (2) the adequacy of the court's inquiry into defendant's complaint, and (3) the timeliness of the motion and the extent of any inconvenience or delay.

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<sup>10</sup> *Moore*, 159 F.3d at 1161.

<sup>11</sup> The Ninth Circuit, in *United States v. D'Amore*, 56 F.3d 1202 (9th Cir. 1995), used four factors to determine the adequacy of a court's inquiry: (1) whether the trial judge considered the length of continuance needed for a new attorney to prepare, (2) the degree of inconvenience the delay would cause, (3) the degree of animosity between the attorney and client prevented preparation for trial, and (4) why the motion to substitute counsel was not made earlier.

<sup>12</sup> The passage from the Book of Proverbs states, "for there shall be no rewards to evil man. The candle of the wicked shall be put out."

<sup>13</sup> NRS 178.602 states, "plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."