COURT OF APPEALS OF NEW YORK

People v. Davis[1]
(decided June 11, 2009)

Wayne Davis was convicted of failing to comply with a park sign indicating the closing time of a New York City park.[2] The appellate term affirmed the conviction and the New York Court of Appeals granted Davis leave to appeal.[3] Davis claimed that his due process rights under both the United States Constitution[4] and the New York Constitution[5] were violated by not having a criminal court judge adjudicate his class B misdemeanor.[6] Consequently, the New York Court of Appeals addressed whether section 350.20 of the New York Criminal Procedure Law's ("CPL") reduction of calendar congestion by allowing Judicial Hearing Officers ("JHO") to adjudicate class B misdemeanors with the parties' consent impinged on a defendant's due process rights.[7] The New York Court of Appeals rejected Davis' claim and concluded that there was "no due process problem with CPL section 350.20 since it only allows for the adjudication of class B misdemeanors—a type of petty crime—upon the express consent of the parties."[8]

On December 15, 2005 at 2:06 a.m., Davis was found by a local police officer in Betsy Head Park in Brooklyn, which has a posted closing time of 9:00 p.m.[9] The prosecutor's information charged Davis with violating New York City Parks Department Rules section 1-03(c)(2), which prohibits individuals from remaining in New York

[1] 912 N.E.2d 1044 (N.Y. 2009).

[2] *Id.* at 1045.

[3] *Id.* at 1046.

[4] U.S. CONST. amend. XIV, § 1, states, in pertinent part: "[N]or shall any State deprive any person of life, liberty, or property, without due process of law."

[5] N.Y. CONST. art. I, § 6, states, in pertinent part: "No person shall be deprived of life, liberty or property without due process of law."

[6] *Davis*, 912 N.E.2d at 1047. *See also* N.Y. CRIM PROC. LAW § 350.20 (McKinney 2009).

[7] *Davis*, 912 N.E.2d at 1047.

[8] *Id.* at 1051.

[9] *Id.* at 1045.

City parks after their closing times.[10] The violation of section 1-03(c)(2) constitutes a class B misdemeanor for which the offender can serve up to ninety days in prison and be fined $1000.[11]

Davis was arraigned on this violation on February 16, 2006.[12] With counsel representing him, Davis pleaded not guilty.[13] The judge informed Davis that he would receive important "paperwork" since his case was moving forward to trial.[14] Included in this "paperwork" was a form entitled "CONSENT TO ADJUDICATION BEFORE A JUDICIAL HEARING OFFICER (JHO)."[15] This form indicated that although Davis' case was being referred to a JHO for trial, Davis had the right to have his case adjudicated before a criminal court judge if he wished.[16] The consent form also stated that the JHO's authority to adjudicate defendant's case came from CPL section 350.20.[17] Hence, the JHO was to " 'have the same powers as a [c]riminal [c]ourt judge and any action taken by the Judicial Hearing Officer shall be deemed the action of the [c]riminal [c]ourt.' "[18] Directly above the signature line, the form further clarified that by signing the document the defendant was consenting to have his case adjudicated by a JHO.[19]

Davis signed the consent form, thus agreeing to have his case adjudicated by a JHO.[20] Davis was represented by counsel and tried in front of a JHO where he was found guilty of violating section 1-03(c)(2) based on the testimony of the police officer who had observed Davis in the park.[21] Davis was sentenced to a seventy-five dollar fine or ten days in jail on April 17, 2006.[22] "Approximately nine months later, [Davis] was resentenced to time served."[23] The appellate term affirmed Davis' conviction concluding that Davis had

[10] *Id.* (citing N.Y. CITY R. & REGS. tit. 56, § 1-03(c)(2) (2008)).
[11] *Id.* (citing N.Y. CITY R. & REGS. tit. 56, § 1-07(a) (2008)).
[12] *Davis*, 912 N.E.2d at 1046.
[13] *Id.*
[14] *Id.*
[15] *Id.*
[16] *Id.*
[17] *Davis*, 912 N.E.2d at 1046. *See also* N.Y. CRIM PROC. LAW § 350.20.
[18] *Davis*, 912 N.E.2d at 1046 (referencing the consent form).
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Davis*, 912 N.E.2d at 1046.

consented to JHO adjudication since he signed the consent form.[24] Defense counsel's participation in Davis' trial without objection that it was in front of a JHO further supported the appellate term's decision in affirming Davis' conviction.[25]

After Davis was granted leave to appeal by the Court of Appeals of New York, he made two arguments regarding the constitutionality of CPL section 350.20.[26] Defendant's first theory was that the statute violated Article VI, section 15(a) of the New York Constitution, which establishes the New York City Criminal Court and identifies the requirements necessary for judges serving the court.[27] Davis' second argument was that CPL section 350.20 improperly interfered with his federal and state due process rights to have his class B misdemeanor case adjudicated by a criminal court judge.[28]

With respect to his first argument, Davis claimed that Article VI, section 15(a) bars the legislature from allowing a JHO to adjudicate a class B misdemeanor case even when all parties have consented to having the case resolved in this manner.[29] However, the New York Court of Appeals disagreed with Davis, pointing out that there is nothing in Article VI, section 15(a) to support this contention.[30] Since Davis did not use the New York Constitution as the basis for his argument, the New York Court of Appeals reasoned that he instead premised his argument on their opinion in *People v. Scalza*.[31]

Davis relied on statements from *Scalza*, such as the trial court's "nondelegable and exclusive authority to decide" a suppression motion that was referred to a JHO.[32] The *Scalza* court also recognized that the trial judge "holds the tether on the case" throughout the time period in which a case is referred to a JHO.[33] However, the New York Court of Appeals reasoned that these statements, as well as the comment made in *Scalza* that "CPL [section] 225.20(4) . . .

---

[24] *Id.*

[25] *Id.*

[26] *Id.* at 1047.

[27] *Id. See also* N.Y. CONST. art. VI, § 15(a).

[28] *Davis*, 912 N.E.2d at 1047.

[29] *Id.* at 1048.

[30] *Id.* at 1050.

[31] *Id.* at 1048 (citing People v. Scalza, 563 N.E.2d 705 (N.Y. 1990)). For further discussion of *Scalza*, *see infra* notes 97-107 and accompanying text.

[32] *Davis*, 912 N.E.2d at 1048 (citing *Scalza*, 563 N.E.2d at 707).

[33] *Scalza*, 563 N.E.2d at 707.

does not undermine or diminish the court's exclusive power to decide," were taken out of context and thus not applicable to the present case.[34] Significantly, the statute examined by the New York Court of Appeals in *Scalza* did not provide for JHOs to exercise concurrent jurisdiction with criminal court judges in situations where both parties agreed to have a JHO adjudicate the class B misdemeanor.[35]

The New York Court of Appeals also noted the importance of the Retired Judges Report in the legislative history of CPL section 350.20.[36] The Committee reasoned that by allowing retired judges to deal with more minor criminal matters, trial court judges would be able to deal with important matters in an efficient manner.[37] In addition, the Committee recommended that JHOs be given the power to adjudicate minor criminal matters not requiring a jury since this would prevent any constitutional problems.[38]

Finally, the New York Court of Appeals addressed Davis' right to a trial by jury before concluding that CPL section 350.20 did not violate Article VI, section 15(a).[39] In a case such as Davis', where the defendant is charged with a class B misdemeanor, no right to a jury trial attaches.[40] Consequently, even if a defendant does not consent to having his case adjudicated by a JHO, he would only be entitled to a bench trial before a criminal court judge.[41] Further, the requirement that both parties consent to JHO adjudication is in accordance with the way trials in New York have long been permitted to occur.[42] The New York Court of Appeals, therefore, found that since both parties' consent is necessary in order for JHO adjudication to take place, CPL section 350.20 does not violate Article VI, section 15(a) of the New York State Constitution.[43]

The Due Process Clause of the United States Constitution

---

[34] *Davis*, 912 N.E.2d at 1048 (citing *Scalza*, 563 N.E.2d at 707). *See also* N.Y. CRIM PROC. LAW § 225.20(4) (McKinney 2009).

[35] *Davis*, 912 N.E.2d at 1048.

[36] *Id.*

[37] *Id.* at 1048-49.

[38] *Id.* at 1049.

[39] *Id.*

[40] *Davis*, 912 N.E.2d at 1049.

[41] *Id.*

[42] *Id.* (citing Glass v. Thompson, 379 N.Y.S.2d 427, 434 (App. Div. 2d Dep't 1976); Motor Vehicle Mfrs. Ass'n of the U.S. v. State, 550 N.E.2d 919, 924 (N.Y. 1990)).

[43] *Davis*, 912 N.E.2d at 1050.

does not require that a defendant have her case heard before a judge.[44] Rather, it requires that an individual be entitled to "a fair trial in a fair tribunal."[45] What constitutes a fair tribunal depends on the severity of the offense.[46] In *Duncan v. Louisiana*, the defendant was convicted of simple battery, which, under Louisiana law, is a misdemeanor and carries a maximum sentence of two years in prison and a $300 fine.[47] Duncan requested a jury trial; however, the trial court judge denied the request since the Louisiana Constitution provided for jury trials only when the sentence to be imposed was capital punishment or hard labor imprisonment.[48] After being convicted, Duncan appealed to the Supreme Court of Louisiana arguing that his rights under the United States Constitution had been violated.[49] The Supreme Court of Louisiana disagreed with Duncan, finding no constitutional infirmities and accordingly denied him a writ of certiorari.[50]

Notwithstanding the state courts' decisions, the United States Supreme Court noted probable jurisdiction to resolve the question of when a defendant has the right to a jury trial.[51] The Supreme Court concluded that when a defendant is charged with a serious offense, the right to trial by jury always attaches.[52] However, when a defendant is charged with a crime that has a sentence of up to six months, it is usually considered a petty offense and there will be no right to a jury trial.[53] If the penalty associated with a crime which ordinarily would be considered a petty crime is severe enough, the Supreme Court declared in that case a defendant would be entitled to a trial by jury.[54]

The Supreme Court further explained why no right to a jury trial attaches for petty offenses. At common law, petty offenses in

[44] Palmore v. United States, 411 U.S. 389, 408-09 (1973).

[45] *In re* Murchison, 349 U.S. 133, 136 (1955).

[46] Duncan v. Louisiana, 391 U.S. 145, 159 (1968).

[47] *Id.* at 146.

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Duncan*, 391 U.S. at 147, *prob. juris. noted*, 389 U.S. 809 (1967).

[52] *Id.* at 157-58 ("[A] general grant of jury trial for serious offenses is a fundamental right, essential for preventing miscarriage of justice and for assuring that fair trials are provided for all defendants.").

[53] *Id.* at 159.

[54] *Id.*

both England and the United States were traditionally tried without juries.[55] Mainly, petty offenses did not require a jury trial because the benefits of efficient judicial administration afforded through non-jury trials far outweighed the potential consequences criminal defendants faced upon conviction of a petty offense.[56] In the case at bar, the Supreme Court held that Duncan was entitled to a jury trial since the potential sentence for simple battery in Louisiana was two years' imprisonment and a fine.[57]

Since due process affords a criminal defendant only the right to a fair tribunal and not the right to have his case adjudicated by a judge, a magistrate may preside over certain criminal matters.[58] The Supreme Court has recognized that the reason a magistrate may preside over certain criminal matters is that an individual who is accused of a petty offense, which is punishable by a maximum of six months imprisonment, has no constitutional right to have his case tried by a jury.[59] The question then becomes in what type of criminal proceedings and in what context may a magistrate hear and determine a case.

In *Gomez v. United States*, the Supreme Court addressed this question.[60] Petitioners Jose Gomez and Diego Chavez-Tesina were two of eleven defendants named on a twenty-one count indictment alleging many felonies including conspiracy and racketeering.[61] The district judge assigned the federal magistrate the job of selecting the jury for Petitioners' trial.[62] Defense counsel objected to this assignment and objected once again eight days later when they appeared before the district judge.[63] Although the district judge took note of defense counsel's objections, they were overruled and the case proceeded to trial.[64] The jury found petitioners guilty after a ten day trial.[65]

---

[55] *Id.* at 160.

[56] *Duncan*, 391 U.S. at 160.

[57] *Id.*

[58] Ludwig v. Massachusetts, 427 U.S. 618, 627 n.3 (1976) ("There is no question, of course, that a person who is accused of crime may receive a fair trial before a magistrate or judge.").

[59] *Id.*

[60] 490 U.S. 858 (1989).

[61] *Id.* at 860.

[62] *Id.*

[63] *Id.* at 860-61.

[64] *Id.* at 861.

[65] *Gomez*, 490 U.S. at 861.

Gomez and Chavez-Tesina appealed to the United States Court of Appeals for the Second Circuit arguing that the magistrate should not have been allowed to conduct voir dire and jury selection.[66] A divided panel rejected Petitioners' argument, concluding that Congress intended the additional duties clause of the Federal Magistrates Act to be construed broadly and therefore include jury selection.[67] Moreover, the majority thought that giving a magistrate the power to conduct jury selection did not violate the Due Process Clause of the United States Constitution.[68]

In fact, "[t]he Federal Magistrates Act provides that a 'magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States.' "[69] Magistrates themselves are attorneys who have been appointed by district judges for fixed terms.[70] Although magistrates were given the power to try "minor offenses," they needed both approval from the district court and a statement from the defendant in writing explicitly waiving his right to trial before a district judge.[71] In this instance, minor offenses are misdemeanors, for which the penalty is no more than one-year imprisonment or a fine of $1000 or both.[72]

Through the years, the Federal Magistrates Act has been expanded to more accurately express the duties a magistrate is authorized to perform.[73] Magistrates are now authorized to preside over jury trials when there is a civil dispute or a criminal misdemeanor before the court, though their power is "subject to special assignment, consent of the parties, and judicial review."[74] However, the Supreme Court disagreed with the Second Circuit, concluding that Congress did not intend jury selection in a felony trial to be an additional duty over which a magistrate may be assigned.[75] Accordingly, the court of appeals decision was reversed.[76]

---

66 *Id.*
67 *Id.* (citing United States v. Garcia, 848 F.2d 1324, 1329 (2d Cir. 1988)).
68 *Id.* (citing *Garcia*, 848 F.2d at 1331-32).
69 *Id.* at 863 (quoting 28 U.S.C. § 636(b)(3) (2005)).
70 *Gomez*, 490 U.S. at 865.
71 *Id.* at 866.
72 *Id.* at 866 n.12.
73 *Id.* at 871.
74 *Id.*
75 *Gomez*, 490 U.S. at 872.
76 *Id.* at 876.

In *Peretz v. United States*, the Supreme Court was again presented with the question of whether a federal magistrate was permitted to conduct jury selection.[77] Although the Supreme Court held in *Gomez* that a magistrate could not preside over jury selection in a felony trial, the Court examined whether a defendant's consent changed this result.[78] Peretz was "charged with importing four kilograms of heroin."[79] When the district judge asked Peretz and defense counsel if they objected to having jury selection presided over by a magistrate, defense counsel responded that "[he] would love the opportunity."[80] After conducting voir dire before the federal magistrate, Peretz proceeded to trial before the district judge.[81] At trial, the jury found Peretz guilty of importing the heroin.[82]

Despite never raising any objection to the magistrate conducting jury selection either before or during trial, Peretz argued on appeal that based on *Gomez*, the magistrate should not have been permitted to conduct jury selection.[83] The Second Circuit disagreed with Peretz and affirmed his conviction concluding that *Gomez* applied only when the defendant had not given his consent to the magistrate's actions.[84] The Supreme Court agreed with the Second Circuit's statement that *Gomez* "was carefully limited to the situation in which the parties had not acquiesced at trial to the magistrate's role."[85]

Significantly, the Supreme Court noted, "[g]iven the bloated dockets that district courts have now come to expect as ordinary, the role of the magistrate in today's federal judicial system is nothing less than indispensable."[86] Thus, it is evident that magistrates play an important role in the functioning of the federal justice system.[87] The Supreme Court clarified that what distinguished the present case from *Gomez* was that in addition to defense counsel not objecting to the

[77] 501 U.S. 923, 924-25 (1991).
[78] *Id.* at 925.
[79] *Id.*
[80] *Id.*
[81] *Id.*
[82] *Peretz*, 501 U.S. at 925.
[83] *Id.*
[84] *Id.* at 925, 926.
[85] *Id.* at 927-28.
[86] *Id.* at 928 (quoting Gov't of the Virgin Islands v. Williams, 892 F.2d 305, 308 (3d Cir. 1989)).
[87] *Peretz*, 501 U.S. at 929.

magistrate's role in Peretz's trial, he had openly consented to it.[88] When litigants consent to having a magistrate preside over voir dire, no constitutional problem exists.[89] Consequently, the Supreme Court held that a federal magistrate is permitted to conduct jury selection in a felony trial when there is no objection from the defendant.[90]

Just as was true under federal law, the New York Court of Appeals has also echoed the statement that "a fair trial in a fair tribunal is a basic requirement of due process."[91] Determining what process is due to a defendant requires a balancing of factors and depends on the circumstances of the case.[92] The New York Court of Appeals has stated:

> Identification of what process is due requires consideration of three distinct factors: (1) the private interest that will be affected by the official action, (2) the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and (3) the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[93]

Similar to federal law, a defendant is not entitled to a jury trial when he has been charged with a crime, for which the maximum penalty is six months imprisonment or less.[94] In New York, this includes all class B misdemeanors.[95] Due to the high volume of misdemeanor cases in New York City, effective judicial administration calls for all class B misdemeanors to be adjudicated in bench trials.[96]

---

[88] *Id.* at 932.

[89] *Id.* at 936.

[90] *Id.* at 940.

[91] Friedman v. State, 249 N.E.2d 369, 378 (N.Y. 1969) (quoting *In re* Murchison, 349 U.S. 133, 136 (1955) (internal quotations omitted)).

[92] People v. Ramos, 651 N.E.2d 895, 899 (N.Y. 1995) (citing Mathews v. Eldridge, 424 U.S. 319, 334 (1976)).

[93] *Id.* (citing *Mathews*, 424 U.S. at 335).

[94] People v. Urbaez, 886 N.E.2d 142, 144 (citing Baldwin v. New York, 399 U.S. 66, 69 (1970)).

[95] *Id.* (citing N.Y. CRIM. PROC. LAW § 340.40(2) (McKinney 2009)).

[96] *Id.*

In *Scalza*, the defendant was convicted of six counts of criminal possession of weapons and ammunition in Nassau County Court.[97] Before trial, the county court judge had referred Scalza's suppression matter to a JHO for the filing of a report as required by CPL section 225.20(4).[98] Though Scalza did not object to the referral either before or during trial, on appeal he contended that the county court's actions violated the New York Constitution.[99] The Appellate Division, Second Department, affirmed both Scalza's conviction as well as the constitutionality of the JHO referral statute.[100] On appeal to the New York Court of Appeals, Scalza claimed that his due process rights were violated, because the way his pretrial suppression motion was decided denied him the opportunity to have his entire case heard by a county court judge.[101]

The New York Court of Appeals held that although Scalza's case was not personally heard by a criminal court judge, the statute did allow the case to be heard before the court and Scalza was afforded the same protections as if he had been heard by a judge.[102] In fact, the JHO's findings were reviewed by the judge and it was the judge who made the final decision to deny Scalza's suppression motion.[103] As the court concluded, "defendant's opportunity to present evidence and testimony to a neutral fact finder selected by the judge who will decide the case and all its issues, coupled with the trial judge's de novo review powers and options, provide[d the] process that is due."[104]

Furthermore, the New York Court of Appeals once again stressed the importance of judicial efficiency and the state's interest in improving the administration of the criminal justice system as justification for having JHOs conduct minor criminal matters.[105] The state's interest in the functioning of the criminal justice system is tak-

[97] People v. Scalza, 563 N.E.2d 705, 705 (N.Y. 1990).

[98] *Id. See also* N.Y. CRIM. PROC. LAW § 255.20(4) (McKinney 2009).

[99] *Scalza*, 563 N.E.2d at 705-06.

[100] *Id.* at 706.

[101] *Id.*

[102] *Id.* at 708.

[103] *Id.*

[104] *Scalza*, 563 N.E.2d at 708.

[105] *Id.* ("The investigative and empirical record also manifest a substantial State interest in the objective of CPL 255.20(4) to lessen delay, a recognized evil to the fair administration of the criminal justice system.").

en into account when determining whether a defendant has received due process.[106] Since Scalza received the benefit of having a former judge—with many years of experience—hear his pretrial motion, the New York Court of Appeals easily concluded that CPL section 255.20(4) was constitutionally valid.[107]

In *People v. Thompson*, the New York Court of Appeals examined whether substituting a presiding judge during trial violated the defendant's right to due process under the New York Constitution.[108] On May 23, 1992, Thompson approached the complainant and after stabbing her in the thigh, forced her to go back to his apartment in Queens, New York.[109] The complainant was then raped, sodomized, and beaten by Thompson and his neighbor.[110] Thompson's trial started on January 14, 1993 in supreme court and the People gave their opening statement on January 25, 1993.[111]

Testimony continued over the next few days until the justice's law secretary notified both parties on February 1, 1993 that the justice had suddenly been hospitalized and would be unable to continue with the trial until April.[112] Thompson's case was reassigned to a different judge in order to proceed with trial.[113] Trial proceeded through February 9, 1993, at which point both sides rested.[114] Thompson was found guilty of "kidnapping in the first degree, five counts of rape in the first degree, four counts of sodomy in the first degree, assault in the second degree, and robbery in the third degree."[115]

Thompson appealed, claiming that his state due process rights were violated by having the presiding judge substituted in the middle of trial; the New York Court of Appeals noted that although the due process protections provided by the New York Constitution sometimes surpass those provided by the Federal Constitution, the State does not require that a trial must be heard by the same judge in its en-

106 *Id.*
107 *Id.*
108 687 N.E.2d 1304, 1305 (N.Y. 1997).
109 *Id.*
110 *Id.*
111 *Id.*
112 *Id.*
113 *Thompson*, 687 N.E.2d at 1305.
114 *Id.* at 1306.
115 *Id.*

tirety.[116] Yet again, the New York Court of Appeals mentioned the balancing of factors as a necessary step in determining whether there has been a violation of the New York Constitution.[117] Regardless, the court held that substitution of a presiding judge during trial did not amount to a constitutional violation.[118]

Given the relevant case law, it is not surprising that the New York Court of Appeals found that Davis' due process rights were not violated under either the State or Federal Constitution.[119] First, as the New York Court of Appeals has noted, determination of what due process entails requires a balancing of factors.[120] In *Davis*, the State's interest in conducting the criminal justice system in the most efficient manner is undoubtedly a relevant factor to take into account.[121] The New York City criminal courts are inundated with so many petty cases that without JHOs it is impossible to expect a criminal court judge to deal with every case in a timely manner.[122] Thus, the New York Court of Appeals correctly concluded that the government's interest in judicial efficiency outweighed Davis' supposed due process right to having his class B misdemeanor case adjudicated by a criminal court judge.[123]

Furthermore, a criminal defendant only has the right to a "fair trial in a fair tribunal" and does not have the right to have a class B misdemeanor heard before a criminal court judge.[124] There is no reason to assume that a defendant in Davis' position would not receive a fair trial before a JHO.[125] In order to be appointed as a JHO, potential candidates are carefully selected by the Chief Administrator of the Courts.[126] In addition to a rigorous screening of their physical and

[116] *Id.* at 1307.

[117] *Id.*

[118] *Thompson*, 687 N.E.2d at 1308 ("[W]e find nothing in the requirements of due process that indicates that the midtrial substitution of a Judge rises to the level of a per se constitutional violation.").

[119] People v. Davis, 912 N.E.2d 1044, 1051 (N.Y. 2009).

[120] People v. Ramos, 651 N.E.2d 895, 899 (N.Y. 1995) ("Determining whether additional process is due in any particular proceeding requires balancing the interests of the State against the individual interest sought to be protected.").

[121] *Davis*, 912 N.E.2d at 1051-52.

[122] *Id.* at 1052.

[123] *Id.*

[124] Friedman v. State, 249 N.E.2d 369, 378 (N.Y. 1969).

[125] *Davis*, 912 N.E.2d at 1051.

[126] *Id.*

mental condition, New York also requires JHOs to have previously served as a judge.[127] Given their years of experience on the bench, it is unreasonable to expect that JHOs would behave in a manner that is not fair and impartial. Accordingly, the New York Court of Appeals appropriately decided that having a JHO adjudicate Davis' case did not violate his due process rights under the State or Federal Constitution.[128]

Additionally, the fact that Davis consented to having his case adjudicated by a JHO lends further support to the New York Court of Appeals' conclusion that no due process violation occurred.[129] Davis signed a form which clearly indicated that he was consenting to have his case adjudicated by a JHO.[130] In fact, the New York Court of Appeals noted that CPL section 350.20 does not actually require that the defendant personally consent to JHO adjudication; all that is necessary is the parties' agreement.[131] If personal consent is not even a requisite to JHO adjudication of a misdemeanor case, Davis' signature on the consent form undoubtedly meets the less stringent requirement of both parties agreeing to this type of adjudication. Moreover, the fact that CPL section 350.20 requires the parties' consent in order for a JHO to preside over a misdemeanor trial is in accord with the federal standard set forth in *Gomez*, requiring the parties' consent for a magistrate to hear a misdemeanor case.[132]

Finally, defense counsel's participation in Davis' trial before the JHO without any objection further supports the New York Court of Appeals' decision that Davis' due process rights were not violated under either the Federal or State Constitutions.[133] The New York Court of Appeals stated that "the decision whether to agree to JHO adjudication of a petty criminal case represents the sort of 'tactical decision' best left to the determination of counsel."[134] Without any objection from defense counsel, Davis cannot successfully claim a due process violation since he was represented by counsel, and it was his attorney's decision whether or not to have the case heard by a

[127] N.Y. JUD. LAW § 850 (McKinney 2009).
[128] *Davis*, 912 N.E.2d at 1051.
[129] *Id.* at 1053.
[130] *Id.*
[131] *Id.* at 1052 (quoting N.Y. CRIM. PROC. LAW § 350.20 (McKinney 2009)).
[132] Gomez v. United States, 490 U.S. 858, 871 (1989).
[133] *Davis*, 912 N.E.2d at 1052.
[134] *Id.*

JHO.

Consequently, defendants in New York who have committed class B misdemeanors cannot expect to succeed in arguing their due process rights have been violated when they have expressed some form of consent to JHO adjudication. The State's high interest in managing the criminal justice system in an efficient manner will, in most cases, preclude a defendant from successfully arguing a due process violation just because a criminal court judge does not try his petty case. However, with CPL section 350.20's provision ensuring a defendant charged with a class B misdemeanor the right to have his case heard before a criminal court judge if he does not consent to JHO adjudication, it is hard to see how the statute violates a defendant's state or federal due process rights.

Melissa B. Schlactus