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THE IMPACT OF BALDASAR V. ILLINOIS ON UNCOUNSELED MISDEMEANOR CONVICTIONS IN NORTH CAROLINA

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Background. In Scott v. Illinois, 440 U.S. 367 (1979), the United States Supreme Court ruled that an indigent defendant has no constitutional right to counsel at a misdemeanor trial unless he is sentenced to prison upon conviction. This ruling requires a judge before trial to appoint counsel or obtain a waiver of counsel if he expects to imprison an indigent defendant upon conviction. The effect of the recent Supreme Court ruling in Baldasar v. Illinois, 27 Crim. L. Rep. 3084 (April 22, 1980), discussed in this memorandum, will be to increase a judge's responsibility to determine the need for counsel before trial when the case involves a misdemeanor that may later be used in an enhanced-penalty statute, such as DUI, even though the judge does not expect to imprison the defendant upon conviction of the present charge.

The Baldasar case. In Baldasar, the indigent defendant was convicted of misdemeanor theft in 1975. He was tried without counsel or waiver of counsel but was not imprisoned. The maximum penalty for the offense is one year in prison. The following year he was convicted again of misdemeanor theft. This time he had counsel. Illinois law provides that a second conviction of this offense is treated as a felony punishable by a maximum three years in prison. Baldasar was sentenced to 1-3 years in prison.

The Supreme Court ruled (5-4) that the punishment for the second conviction violated the principle set forth in

the Scott decision because the additional two years in prison to which the defendant was sentenced resulted solely from the use of the first uncounseled misdemeanor conviction to increase the punishment for the second conviction. (Only four of the five majority Justices reversed on this ground; Blackmun reversed on the basis of his dissenting opinion in Scott that counsel is constitutionally required when the authorized punishment is six or more months in prison.) The four dissenting Justices argued that the first uncounseled misdemeanor conviction should be valid for all purposes, including punishment enhancement.

North Carolina impact. Although the Baldasar decision may be relatively easy to apply in the context of the Illinois statute involved in the case, its application to DUI, North Carolina's most commonly used misdemeanor enhancement statute, may be difficult.

Baldasar's narrow holding is that a prior uncounseled misdemeanor conviction may not be used to enhance punishment for a second offense if the actual punishment for the second offense is a prison sentence that exceeds that maximum allowable for the first offense. To understand this holding in the context of our DUI laws, consider the following example:

Defendant Jones pleads guilty to DUI on January 7, 1980. He is indigent but he does not have counsel and does not waive counsel. On May 1, 1980, he has counsel and is on trial for DUI, second offense. Assuming that the defendant makes a timely objection to the introduction of the January conviction and satisfies his burden of proving [State v. Atkinson, 39 N.C. App. 575 (1979)] that it was invalid for enhancement purposes, the trial judge may still overrule the objection only if he is willing to: (1) limit his sentencing decision to a suspended sentence; or (2) limit any sentence of imprisonment to the maximum allowable for DUI, first offense, and state on the record that his sentencing decision was not affected by the possible mandatory prison sanction for DUI, second offense, or by the fact of the prior uncounseled DUI conviction.

To avoid the mental gymnastics and record-findings that the Baldasar decision would apparently require, a judge may want to always sustain a proper objection and proceed with the trial on the charge of DUI, first offense.

Prophylactic measures. A judge may avoid future Baldasar problems by always making a determination of indigency and the right of counsel for each defendant who

appears without counsel and is charged with DUI. And when the defendant has retained or appointed counsel or executes a waiver of counsel, the court clerk should indicate that fact in the case file.

Other collateral uses. The Supreme Court has previously ruled that a felony conviction is constitutionally invalid, whether or not a prison sentence is imposed, if an indigent defendant does not have counsel and does not waive his right to counsel. The conviction cannot be used collaterally (1) to increase punishment under an enhancement statute; (2) to impeach the defendant; or (3) at a sentencing hearing.

The dissenting opinion in Baldasar states that the majority opinion, by prohibiting the use of an otherwise valid uncounseled misdemeanor conviction in an enhancement statute, raises questions about the use of such a conviction at sentencing hearings or for impeachment purposes.

Until the Court answers these questions, a judge probably should not consider such a conviction in a sentencing hearing if he expects to impose an active prison sentence, since the decision's rationale would appear to preclude use of the conviction. The argument against its use would be that consideration of the uncounseled conviction resulted in a longer prison sentence than otherwise would have been imposed.

The use of an uncounseled misdemeanor conviction for impeachment purposes appears to be permissible because the conviction is admissible solely for attacking a witness's credibility and therefore affects only the issue of guilt or innocence, not punishment. However, when a judge allows its use for impeachment purposes, he should state on the record at the sentencing hearing that he did not consider it at that time.

Pending North Carolina case. After the Baldasar decision, the United States Supreme Court vacated the judgment in a North Carolina case [State v. Williams, 34 N.C. App. 502 (1977) (unpublished opinion), appeal dismissed, 294 N.C. 187 (1978)] and remanded it for further consideration in light of Baldasar. The Williams case is now pending in our Appellate Division.

The defendant in Williams was convicted of DUI, third offense, and was sentenced to one year in prison. He contended that his two prior uncounseled DUI convictions, which occurred when he was indigent, could not constitutionally be used for enhancement or impeachment purposes. The North Carolina Court of Appeals rejected his

contentions. However, the Baldasar case now raises serious questions concerning (1) the one-year prison sentence, which exceeds the maximum six-month penalty for DUI, first offense; and (2) the trial judge's denial of the defendant's motion in limine to prohibit the State from impeaching the defendant with the prior DUI convictions. The Williams case on remand should provide some guidance on the implementation of Baldasar in North Carolina.