Court of Appeals of New York.
The People of the State of New York, Respondent,
v.
Julio Marrero, Appellant.
April 2, 1987.

BELLACOSA, JUDGE. ***

[Julio Marrero, a guard at a federal prison in Danbury, Connecticut, was arrested in a New York social club in possession of an unlicensed loaded .38 caliber automatic pistol, in alleged violation of New York Penal Law § 265.02.

Prior to trial, Marrero moved to dismiss his indictment on the ground that, under New York Penal Law § 265.20(a)(1), peace officers were exempt from criminal liability under the firearm possession statute. The term "peace officer," as defined in Criminal Procedure Law (CPL) §§ 1.20 and 2.10, included any official or guard "of any state prison or of any penal correctional institution." Marrero argued that as a guard in a Connecticut federal prison, he was a "peace officer" by virtue of the statutory language, "any penal correctional institution."

The trial judge agreed with Marrero's interpretation of the law and granted the motion to dismiss the indictment. The State appealed, and, by a 3-2 vote, an appellate court reversed the trial court's ruling and reinstated the indictment. Consequently, at trial, Marrero could not argue that he was exempt from criminal liability. Marrero was convicted of violation of Penal Law § 265.02, from which this appeal followed.]

On the trial of the case, the court rejected the defendant's argument that his personal misunderstanding of the statutory definition of a peace officer is enough to excuse him from criminal liability under New York's mistake of law statute (Penal Law § 15.20). The court refused to charge the jury on this issue and defendant was convicted of criminal possession of a weapon in the third degree. We affirm the Appellate Division order upholding the conviction. ***

The starting point for our analysis is the New York mistake statute as an outgrowth of the dogmatic common-law maxim that ignorance of the law is no excuse. The central issue is whether defendant's personal misreading or misunderstanding of a statute may excuse criminal conduct in the circumstances of this case.

The common-law rule on mistake of law was clearly articulated in *Gardner v. People*, (62 N.Y. 299). In *Gardner*, the defendants misread a statute and mistakenly believed that their conduct was legal. The court insisted, however, that the "mistake of law" did not relieve the defendants of criminal liability.

*** This is to be contrasted with *People v. Weiss*, 276 N.Y. 384, 12 N.E.2d 514 where, in a kidnapping case, the trial court precluded testimony that the defendants acted with the honest belief that seizing and confining the child was done with "authority of law." We held it was error to exclude such testimony since a good-faith belief in the legality of the conduct would

negate an express and necessary element of the crime of kidnapping, i.e., intent, without authority of law, to confine or imprison another. Subject to the mistake statute, the instant case, of course, falls within the *Gardner* rationale because the weapons possession statute violated by this defendant imposes liability irrespective of one's intent.

The desirability of the *Gardner*-type outcome, which was to encourage the societal benefit of individuals' knowledge of and respect for the law, is underscored by Justice Holmes' statement: "It is no doubt true that there are many cases in which the criminal could not have known that he was breaking the law, but to admit the excuse at all would be to encourage ignorance where the law-maker has determined to make men know and obey, and justice to the individual is rightly outweighed by the larger interests on the other side of the scales" (Holmes, The Common Law, at 48 [1881]).

The revisors of New York's Penal Law intended no fundamental departure from this common-law rule in Penal Law § 15.20, which provides in pertinent part:

> "§ 15.20. *Effect of ignorance or mistake upon liability.* ***
>
> "2. A person is not relieved of criminal liability for conduct because he engages in such conduct under a mistaken belief that it does not, as a matter of law, constitute an offense, unless such mistaken belief is founded upon an official statement of the law contained in (a) a statute or other enactment *** (d) an interpretation of the statute or law relating to the offense, officially made or issued by a public servant, agency, or body legally charged or empowered with the responsibility or privilege of administering, enforcing or interpreting such statute or law." ***

The defendant claims as a first prong of his defense that he is entitled to raise the defense of mistake of law under section 15.20(2)(a) because his mistaken belief that his conduct was legal was founded upon an official statement of the law contained in the statute itself. Defendant argues that his mistaken interpretation of the statute was reasonable in view of the alleged ambiguous wording of the peace officer exemption statute, and that his "reasonable" interpretation of an "official statement" is enough to satisfy the requirements of subdivision (2)(a). ***

The prosecution *** counters defendant's argument by asserting that one cannot claim the protection of mistake of law under section 15.20(2)(a) simply by misconstruing the meaning of a statute but must instead establish that the statute relied on actually permitted the conduct in question and was only later found to be erroneous. To buttress that argument, the People analogize New York's official statement defense to the approach taken by the Model Penal Code (MPC). Section 2.04 of the MPC provides:

> "Section 2.04. *Ignorance or Mistake.* ***
>
> "(3) A belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense based upon such conduct when *** (b) he acts in reasonable reliance upon an official statement of the law, *afterward determined to be invalid or*

erroneous, contained in (i) a statute or other enactment" (emphasis added).

Although the drafters of the New York statute did not adopt the precise language of the Model Penal Code provision with the emphasized clause, it is evident and has long been believed that the Legislature intended the New York statute to be similarly construed. In fact, the legislative history of section 15.20 is replete with references to the influence of the Model Penal Code provision. ***

It was early recognized that the "official statement" mistake of law defense was a statutory protection against prosecution based on reliance of a statute that did *in fact* authorize certain conduct. "It seems obvious that society must rely on some statement of the law, and that conduct which *is in fact* 'authorized' *** should not be subsequently condemned. The threat of punishment under these circumstances can have no deterrent effect unless the actor doubts the validity of the official pronouncement—*a questioning of authority that is itself undesirable* " (Note, *Proposed Penal Law of New York*, 64 Colum.L.Rev. 1469, 1486 [emphasis added]). While providing a narrow escape hatch, the idea was simultaneously to encourage the public to read and rely on official statements of the law, not to have individuals conveniently and personally question the validity and interpretation of the law and act on that basis. If later the statute was invalidated, one who mistakenly acted in reliance on the authorizing statute would be relieved of criminal liability. That makes sense and is fair. To go further does not make sense and would create a legal chaos based on individual selectivity.

In the case before us, the underlying statute never *in fact authorized* the defendant's conduct; the defendant only thought that the statutory exemptions permitted his conduct when, in fact, the primary statute clearly forbade his conduct. ***

We recognize that some legal scholars urge that the mistake of law defense should be available more broadly where a defendant misinterprets a potentially ambiguous statute not previously clarified by judicial decision and reasonably believes in good faith that the acts were legal. ***

We conclude that the better and correctly construed view is that the defense should not be recognized, except where specific intent is an element of the offense or where the misrelied-upon law has later been properly adjudicated as wrong. Any broader view fosters lawlessness. ***

*** If defendant's argument were accepted, the exception would swallow the rule. Mistakes about the law would be encouraged, rather than respect for and adherence to law. There would be an infinite number of mistake of law defenses which could be devised from a good-faith, perhaps reasonable but mistaken, interpretation of criminal statutes, many of which are concededly complex. Even more troublesome are the opportunities for wrongminded individuals to contrive in bad faith solely to get an exculpatory notion before the jury. These are not in terrorem arguments disrespectful of appropriate adjudicative procedures; rather, they are the realistic and practical consequences were the dissenters' views to prevail. Our holding comports with a statutory scheme which was not designed to allow false and diversionary stratagems to be provided for many more cases than the statutes contemplated. This would not serve the ends of justice but rather would serve game playing and evasion from properly imposed

criminal responsibility.

Accordingly, the order of the Appellate Division should be affirmed.

[WACHTLER, CHIEF JUSTICE, and SIMONS and TITONE, JJ., concurred.]

HANCOCK, JUDGE (dissenting). ***

The basic difference which divides the court may be simply put. Suppose the case of a man who has committed an act which is criminal not because it is inherently wrong or immoral but solely because it violates a criminal statute. He has committed the act in complete good faith under the mistaken but entirely reasonable assumption that the act does not constitute an offense because it is permitted by the wording of the statute. Does the law require that this man be punished? The majority says that it does and holds that (1) Penal Law § 15. 20(2)(a) must be construed so that the man is precluded from offering a defense based on his mistake of law and (2) such construction is compelled by prevailing considerations of public policy and criminal jurisprudence. We take issue with the majority on both propositions.

There can be no question that under the view that the purpose of the criminal justice system is to punish blameworthiness or "choosing freely to do wrong," our supposed man who has acted innocently and without any intent to do wrong should not be punished. *** Since he has not knowingly committed a wrong there can be no reason for society to exact retribution. Because the man is law-abiding and would not have acted but for his mistaken assumption as to the law, there is no need for punishment to deter him from further unlawful conduct. Traditionally, however, under the ancient rule of Anglo-American common law that ignorance or mistake of law is no excuse, our supposed man would be punished.

The maxim *"ignorantia legis neminem excusat"* finds its roots in Medieval law when the "actor's intent was irrelevant since the law punished the *act itself*" *** Although the common law has gradually evolved from its origins in Anglo-Germanic tribal law (adding the element of intent *[mens rea]* and recognizing defenses based on the actor's mental state ***) the dogmatic rule that ignorance or mistake of law is no excuse has remained unaltered. Various justifications have been offered for the rule, but all are frankly pragmatic and utilitarian-preferring the interests of society (e.g., in deterring criminal conduct, fostering orderly judicial administration, and preserving the primacy of the rule of law) to the interest of the individual in being free from punishment except for intentionally engaging in conduct which he knows is criminal.

Today there is widespread criticism of the common-law rule mandating categorical preclusion of the mistake of law defense. The utilitarian arguments for retaining the rule have been drawn into serious question; but the fundamental objection is that it is simply wrong to punish someone who, in good-faith reliance on the wording of a statute, believed that what he was doing was lawful. It is contrary to "the notion that punishment should be conditioned on a showing of subjective moral blameworthiness." This basic objection to the maxim *"ignorantia legis neminem excusat"* may have had less force in ancient times when most crimes consisted of acts which by their very nature were recognized as evil *(malum in se*). In modern times, however, with the profusion of legislation making otherwise lawful conduct criminal *(malum*

prohibitum), the "common law fiction that every man is presumed to know the law has become indefensible in fact or logic."

With this background we proceed to a discussion of our disagreement with the majority's construction of Penal Law § 15.20(2)(a) and the policy and jurisprudential arguments made in support of that construction. ***

It is difficult to imagine a case more squarely within the wording of Penal Law § 15.20(2)(a) or one more fitted to what appears clearly to be the intended purpose of the statute than the one before us. ***

Defendant's mistaken belief that, as a Federal corrections officer, he could legally carry a loaded weapon without a license was based on the express exemption from criminal liability under Penal Law § 265.02 accorded *** to "peace officers" as defined in the Criminal Procedure Law and on his reading of the statutory definition for "peace officer" *** as meaning a correction officer "of *any* penal correctional institution" (emphasis added), including an institution not operated by New York State. Thus, he concluded erroneously that, as a corrections officer in a Federal prison, he was a "peace officer" and, as such, exempt by the express terms of Penal Law § 265.20(a)(1)(a). This mistaken belief, based in good faith on the statute defining "peace officer" is, defendant contends, the precise sort of "mistaken belief *** founded upon an official statement of the law contained in *** a statute or other enactment" which gives rise to a mistake of law defense under Penal Law § 15.20(2)(a). He points out, of course, that when he acted in reliance on his belief he had no way of foreseeing that a court would eventually resolve the question of the statute's meaning against him and rule that his belief had been mistaken, as three of the five-member panel at the Appellate Division ultimately did in the first appeal.

The majority, however, has accepted the People's argument that to have a defense under Penal Law § 15.20(2)(a) "a defendant must show that the statute *permitted his conduct,* not merely that he believed it did." ***

Nothing in the statutory language suggests the interpretation urged by the People and adopted by the majority: that Penal Law § 15.20(2)(a) is available to a defendant *not* when he has mistakenly read a statute *but only* when he has correctly read and relied on a statute which is later invalidated. Such a construction contravenes the general rule that penal statutes should be construed against the State and in favor of the accused. ***

More importantly, the construction leads to an anomaly: only a defendant who is *not mistaken* about the law when he acts has a mistake of law defense. In other words, a defendant can assert a defense. *** Such construction is obviously illogical; it strips the statute of the very effect intended by the Legislature in adopting the mistake of law defense. The statute is of no benefit to a defendant who has proceeded in good faith on an erroneous but concededly reasonable interpretation of a statute, as defendant presumably has. ***

*** It is self-evident that in enacting Penal Law § 15.20(2) as part of the revision and modernization of the Penal Law the Legislature intended to effect a needed reform by abolishing

what had long been considered the unjust archaic common-law rule totally prohibiting mistake of law as a defense. ***

The majority construes the statute, however, so as to rule out *any* defense based on mistake of law. In so doing, it defeats the only possible purpose for the statute's enactment and resurrects the very rule which the Legislature rejected in enacting Penal Law § 15.20(2)(a) as part of its modernization and reform of the Penal Law. ***

Instead, the majority bases its decision on an analogous provision in the Model Penal Code and concludes that despite its totally different wording and meaning Penal Law § 15.20(2)(a) should be read as if it were Model Penal Code § 2.04(3)(b)(i). But New York in revising the Penal Law did not adopt the Model Penal Code. *** New York followed parts of the Model Penal Code provisions and rejected others. ***

While Penal Law § 15.20(2) and Model Penal Code § 2.04 are alike in their rejection of the strict common-law rule, they are not alike in wording and differ significantly in substance. ***

Thus, the precise phrase in the Model Penal Code limiting the defense under section 2.04(3)(b)(i) to reliance on a statute "afterward determined to be invalid or erroneous" which, if present, would support the majority's narrow construction of the New York statute, is omitted from Penal Law § 15.20(2)(a). How the Legislature can be assumed to have enacted the very language which it has specifically rejected is not explained. ***

Any fair reading of the majority opinion, we submit, demonstrates that the decision to reject a mistake of law defense is based on considerations of public policy and on the conviction that such a defense would be bad, rather than on an analysis of CPL 15.20(2)(a) under the usual principles of statutory construction. ***

These *** are the very considerations which have been consistently offered as justifications for the maxim "*ignorantia legis.*" That these justifications are unabashedly utilitarian cannot be questioned. *** [T]he fact remains that the Legislature in abandoning the strict *"ignorantia legis"* maxim must be deemed to have rejected them.

*** [A] statute which recognizes a defense based on a man's good-faith mistaken belief founded on a well-grounded interpretation of an official statement of the law contained in a statute is a just law. The law embodies the ideal of contemporary criminal jurisprudence "that punishment should be conditioned on a showing of subjective moral blameworthiness." ***

If defendant's offer of proof is true, his is not the case of a "free agent confronted with a choice between doing right and doing wrong and choosing freely to do wrong." He carried the gun in the good-faith belief that, as a Federal corrections officer, it was lawful for him to do so under the words of the statute. ***

We do not believe that permitting a defense in this case will produce the grievous consequences the majority predicts. The unusual facts of this case seem unlikely to be repeated. Indeed, although the majority foresees "an infinite number of mistake of law defenses," New

Jersey, which adopted a more liberal mistake of law statute in 1978,[i] has apparently experienced no such adversity (no case construing that law is mentioned in the most recent annotation of the statute). Nor is there any reason to believe that courts will have more difficulty separating valid claims from "diversionary stratagem[s]" in making preliminary legal determinations as to the validity of the mistake of law defense than of justification or any other defense. ***

There should be a reversal and defendant should have a new trial in which he is permitted to assert a defense of mistake of law under Penal Law § 15.20(2)(a).

[KAYE and ALEXANDER, JJ., concurred in the dissent.]

N.B.: This edited version of *People v. Marrero* appears in JOSHUA DRESSLER, CASES AND MATERIALS ON CRIMINAL LAW 196-202 (4th ed. 2007).

[i] The New Jersey statute provides that a "belief that conduct does not legally constitute an offense is a defense to a prosecution for that offense *** when *** [t]he actor otherwise diligently pursues all means available to ascertain the meaning and application of the offense to his conduct and honestly and in good faith concludes his conduct is not an offense in circumstances in which a law-abiding and prudent person would also so conclude." N.J.S.A. 2C:2-4(c)(3).