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Constitutional Law - Right to Counsel in All State Criminal Proceedings - Gideon v. Wainwright, 83 S. Ct. 792 (1963)

DePaul College of Law

CASE NOTES

CONSTITUTIONAL LAW–RIGHT TO COUNSEL IN ALL STATE CRIMINAL PROCEEDINGS

Petitioner was charged with breaking and entering a poolroom with the intent to commit a misdemeanor which crime is a non-capital felony under Florida law. At the beginning of the state proceedings Gideon requested the court to appoint counsel in that he was an indigent defendant. His request was denied by the trial court and he thereupon pleaded not guilty, was convicted, and in turn was sentenced to five years in the state prison. The Supreme Court of Florida affirmed the conviction. Thereafter, Gideon petitioned *in forma pauperis* on writ of *certiorari* for review by the United States Supreme Court. The Court granted *certiorari*[1] for the express purpose of reconsideration of the problem of an indigent defendant's right to counsel in all state criminal proceedings. On March 18, 1963, the Court reversed the conviction stating that the denial of right to counsel to indigent defendants in any criminal prosecution in state courts is a denial of due process as guaranteed by the fourteenth amendment of the national Constitution. *Gideon v. Wainwright*, 83 S. Ct. 792 (1963).[2]

An analysis of the right of one accused of a crime to the aid of counsel has been presented in volume 12, page 115 of the *De Paul Law Review*.[3] That article, in tracing the development of the right to counsel, suggested that the Supreme Court would soon decide that in *all* criminal cases arising in both the federal and state courts, the accused would have a constitutional right to the aid of counsel.[4] This case note shall serve as an addendum to that comment and in turn will show that the prognostication therein stated did occur.

Prior to the decision in *Gideon*, the right to counsel in state criminal offenses was subject to the limitation of the six to three decision in *Betts v. Brady*[5] which has been controlling precedent for twenty-one years. In that case Betts was indicted in Maryland for robbery, a non-capital offense. He pleaded to the court that he did not have sufficient funds to hire counsel and asked that the court appoint an attorney to represent him. The court refused his motion explaining that they had no obligation "to ap-

1 370 U.S. 908 (*cert. granted*, No. 155, October Term, 1962).

2 March 19, 1963.

3 Comment, 12 DE PAUL L. REV. 115 (1962).

4 Comment, 12 DE PAUL L. REV. 115, 119 (1962).

5 Betts v. Brady, 316 U.S. 455 (1942).

point counsel for indigent defendants, save in prosecution for murder and rape."[6]

In affirming the conviction, the United States Supreme Court stated that there is no right to counsel in every case in the state courts and that the test is whether the "trial is offensive to the common and fundamental ideas of fairness and right. . . ."[7] Thus, while the constitution guarantees the right to counsel in all federal criminal proceedings,[8] as set forth in the sixth amendment, this right, when claimed in state criminal matters, has been granted only in certain cases, *viz.*, capital offenses, and then solely on the weight of the due process clause of the fourteenth amendment.[9] "The Sixth Amendment of the national Constitution applies only to trials in federal courts. The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment. . . ."[10]

The holding in *Betts* that the right to counsel is not a fundamental right in state criminal proceedings and thus is not a violation of the due process clause of the fourteenth amendment is specifically overruled in the *Gideon* case.

> We think the Court in *Betts* was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights.[11]

It is valid to conclude that the *Gideon* opinion does away with the limitations on the due process right to counsel as imposed first by *Powell v. Alabama*[12] requiring that the accused be charged with a capital offense, and secondly, by *Betts v. Brady*[13] which said that the right to counsel is not a fundamental right in *every* capital offense, but only in those which if denied would result in a miscarriage of justice.

One can surmise that the main import of *Gideon v. Wainwright* will be to the effect of expanding the meaning of the due process clause of the fourteenth amendment to include the fundamental propriety of the right to counsel.

Therefore, the fourteenth amendment now guarantees to the defendants

[6] Betts v. Brady, 316 U.S. 455, 457 (1942).

[7] Betts v. Brady, 316 U.S. 455, 473 (1942).

[8] Glasser v. United States, 315 U.S. 60 (1941); Johnson v. Zerbst, 304 U.S. 458 (1938).

[9] Betts v. Brady, 316 U.S. 455 (1942).

[10] Betts v. Brady, 316 U.S. 455, 461 (1942).

[11] Gideon v. Wainwright, 23 U.S. Sup. Ct. Bulletin, No. 17, p. 1163, 1169 (March 19, 1963).

[12] Powell v. Alabama, 287 U.S. 45 (1932).

[13] Betts v. Brady, 316 U.S. 455 (1942).

in state criminal proceedings the identical and fundamental justice of the right to counsel which the sixth amendment has always guaranteed in federal prosecutions and in neither case will there be a distinction made between capital and non-capital offenses.

CONSTITUTIONAL LAW–WAIVER OF RIGHT TO CLAIM DENIAL OF DUE PROCESS IN CASES INVOLVING PERJURED TESTIMONY

Robert Lueck, Fred Dittmer, Jr. and DeKoven S. Crowley were charged in the Criminal Court of Cook County with the crimes of conspiring to commit larceny and conspiring to receive stolen property. Dittmer and Crowley each pleaded guilty. The prosecutor, in asking the court to delay the sentencing of these two defendants until such time as the court would dispose of the case involving Lueck, made certain statements in the presence of Littmer, Lueck, and Lueck's counsel. Among other things, the prosecutor related that the State had agreed and made representations to Dittmer and Crowley that, in the event they testify on behalf of the State against the defendant Lueck, the State would recommend that both be placed on probation for a term of two years. Two weeks later, at Lueck's trial, Dittmer testified that the State's Attorney had not offered him any inducement for testifyng as a witness. Lueck was subsequently found gulity. In his writ of error to the Supreme Court of Illinois, Lueck alleged that he was denied due process of law when the prosecution knowingly used perjured testimony to secure his conviction. The Court ruled that the failure of the prosecution to correct the testimony, which it knew to be false, denied Lueck due process of law in violation of the due process clauses of both the Federal and Illinois constitutions.[1] *People v. Lueck*, 4 Ill. 2d 554, 182 N.E. 2d 733(1962).

Due process of law in criminal cases requires that the accused (1) know the nature of the charge against him; (2) have such charge specifically and definitely set before him; and (3) be granted an opportunity to be heard and introduce evidence in his own defense.[2] However, these requirements are not satisfied by mere notice and hearing if the state has contrived a conviction through the presentation and use of testimony which is known to the prosecution to be perjured. Such contrivance in securing the conviction and imprisonment of a defendant is as inconsistent with the basic demands of justice as is the procuring of a like result

[1] U.S. CONST. amend. XIV, § 1; ILL. CONST. art. II, § 2.

[2] People v. Sherwin, 353 Ill. 525, 187 N.E. 441 (1933).