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Constitutional Law - Supreme Court Reaffirms Position that Denial of Counsel in Non-capital Case May Constitute Deprivation of Due Process - Hudson v. North Carolina, 363 U.S. 697 (1960)

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CONSTITUTIONAL LAW–SUPREME COURT REAFFIRMS POSITION THAT DENIAL OF COUNSEL IN NON-CAPITAL CASE MAY CONSTITUTE DEPRIVATION OF DUE PROCESS

Petitioner, an eighteen year old defendant who had had only a sixth grade education was, with his two co-defendants, indicted and charged with robbery. Before trial, petitioner requested the court to appoint an attorney for him since he was financially unable to retain counsel. The court denied the motion and stated: "[T]he Court will try to see that your rights are protected throughout the case."[1] All co-defendants thereupon pleaded not guilty, and the case proceeded to trial. During the examination of the first witness, the counsel who was representing one of the defendants offered to represent all defendants as long as their interests did not conflict. At the conclusion of the state's evidence, counsel moved to have the case dismissed and upon denial of this motion, tendered on behalf of his original client and in the presence of the jury, a plea of guilty to petit larceny. This plea was accepted and the trial proceeded. Petitioner was convicted of robbery from the person, and the sentence imposed was from three to five years in the penitentiary. One co-defendant was sentenced to a jail term of from eighteen months to two years, and the co-defendant for whom the plea of guilty had been entered was given a six months' suspended sentence. Petitioner filed a petition for writ of certiorari in the Superior Court of Cumberland County. The petition was treated as an application for relief under the North Carolina Post-Conviction Hearing Act.[2] At the hearing, the evidence presented and a transcript of the trial proceedings were considered. The court found that no special circumstances were shown to indicate that the failure to appoint trial counsel denied petitioner due process of law. Petitioner then filed a petition for writ of certiorari to the Supreme Court of North Carolina. The Supreme Court of North Carolina dismissed the petition without opinion. The Supreme Court of the United States granted certiorari and reversed the trial court judgment. *Hudson v. North Carolina*, 363 U.S. 697 (1960).

In *Betts v. Brady*,[3] the Court established the standards for determining whether the denial of counsel to an indigent defendant in a non-capital case is a denial of due process of law guaranteed by the fourteenth amendment.[4] The Court stated:

[1] Hudson v. North Carolina, 363 U.S. 697, 698 (1960).

[2] N. C. GEN. STAT. ch. 15, art. 22 §§ 15-217–15-222 (Supp. 1959).

[3] 316 U.S. 455 (1942).

[4] U.S. CONST. amend. XIV, § 1.

The due process clause of the Fourteenth Amendment does not incorporate, as such, the specific guarantees found in the Sixth Amendment, although a denial by a State of rights or privileges specifically embodied in that and others of the first eight amendments may, in certain circumstances, or in connection with other elements, operate, in a given case, to deprive a litigant of due process of law in violation of the Fourteenth.[5]

Since that decision the Court has set forth in its opinions various circumstances and elements which may determine whether there has been a denial of due process of law in state criminal proceedings.[6]

The age, education, and knowledge of legal proceedings possessed by the defendant are some of the criteria considered by the Court in determining whether an indigent defendant who has not had the benefit of trial counsel has been denied due process of law.[7] In *De Meerleer v. Michigan*,[8] the Court found that a seventeen year old who was unfamiliar with trial proceedings was denied due process of law when, without the benefit of counsel, he was arraigned, convicted and sentenced to life imprisonment on the same day. Likewise, in *Moore v. Michigan*,[9] the Court determined that a seventeen year old with a seventh grade education could not be deemed to have intelligently and to have understandingly waived his right to counsel, and therefore, his lack of legal assistance deprived him of due process. However, youthfulness and lack of formal education are not construed to be the conclusive criteria by which it can be decided that the defendant requires legal assistance at his trial. In *Wade v. Mayo*,[10] the Court held that it is the responsibility of the trial court, based upon personal observation of the defendant, to determine whether petitioner is capable of representing himself. Further, in *Gibbs v. Burke*[11] the Court ruled that the trial judge is to determine whether the accused requires counsel at arraignment and during trial.

Still other criteria by which it can be shown that defendant is denied

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

[6] Spano v. New York, 360 U.S. 315 (1959); Cash v. Culver, 358 U.S. 633 (1959); Moore v. Michigan, 335 U.S. 155 (1957); Pennsylvania v. Claudy, 350 U.S. 116 (1956); Massey v. Moore, 348 U.S. 105 (1954); Palmer v. Ashe, 342 U.S. 134 (1951); Quicksall v. Michigan, 339 U.S. 660 (1950); Gibbs v. Burke, 337 U.S. 773 (1949); Uveges v. Pennsylvania, 335 U.S. 437 (1948); Townsend v. Burke, 334 U.S. 736 (1948); Gryger v. Burke, 334 U.S. 728 (1948); Bute v. Illinois, 333 U.S. 640 (1948); Wade v. Mayo, 334 U.S. 672 (1948); Gayes v. New York, 332 U.S. 145 (1947); Foster v. Illinois, 332 U.S. 134 (1947); De Meerleer v. Michigan, 329 U.S. 663 (1947); Canizio v. New York, 327 U.S. 82 (1946); Rice v. Olson, 324 U.S. 786 (1945).

[7] Canizio v. New York, *supra* note 6; De Meerleer v. Michigan, *supra* note 6; Wade v. Mayo, supra note 6; Uveges v. Pennsylvania *supra* note 6; Pennsylvania v. Claudy, *supra* note 6; Moore v. Michigan, *supra* note 6.

[8] 329 U.S. 663 (1947).

[9] 335 U.S. 155 (1957).

[10] 334 U.S. 672 (1948).

[11] 337 U.S. 773 (1949).

due process of law by not having the assistance of counsel are the complexity of the charge brought against defendant and the legal intricacy of the possible defenses thereto.[12] Although defendant may be a person of maturity and intelligence and have experience in criminal proceedings, there may still be a denial of due process if there is lack of counsel where the charge is too complex or a skilled knowledge is needed to effectively defend the case. This test has been enumerated by the Court in several cases since 1942.[13]

A third concept employed by the Court in holding the denial of due process is by means of examination by the Court itself of the trial court's conduct and/or the prosecuting officials' behavior. This was specifically stated in *Townsend v. Burke*[14] where the Court held that defendant was denied due process of law when the lack of counsel resulted in the defendant being prejudiced by the state's unwarranted conduct. Likewise, in the *Gibbs* case where considerable hearsay evidence and incompetent evidence was admitted, and a witness for the prosecution was recalled as a defense witness to the detriment of defendant, the Court stated:

> The questionable issues allowed to pass unnoticed as to procedure, evidence, privilege, and instructions detailed in the first part of this opinion demonstrate to us that petitioner did not have a trial that measures up to the test of fairness prescribed by the Fourteenth Amendment.[15]

In *Palmer v. Ashe*,[16] defendant was allegedly told that he was being indicted for breaking and entering when in reality the indictment was for armed robbery. In reversing and remanding this case, the Court ruled that if defendant could prove such charges, he had been the victim of deception by officers and as a result had been denied due process of law.

In applying the above enumerated tests, the Court has stated that in non-capital cases wherein an indigent defendant has not received the benefit of counsel, a determination of whether the defendant has received a fair trial as guaranteed by the fourteenth amendment must be made by considering all facts involved in the case.[17] In *Uveges v. Pennsylvania*[18]

[12] Rice v. Olson, 324 U.S. 786 (1945).

[13] Pennsylvania v. Claudy, 350 U.S. 116 (1956); Gibbs v. Burke, 337 U.S. 773 (1949); Uveges v. Pennsylvania, 335 U.S. 437 (1948); De Meerleer v. Michigan, 329 U.S. 663 (1947).

[14] 334 U.S. 736 (1948).

[15] Gibbs v. Burke, 337 U.S. 773, 782 (1949).

[16] 342 U.S. 134 (1951).

[17] Quicksall v. Michigan, 339 U.S. 660 (1950); Gibbs v. Burke, 337 U.S. 773 (1949); Foster v. Illinois, 332 U.S. 134 (1947); Rice v. Olson, 324 U.S. 786 (1945); Betts v. Brady, 316 U.S. 455 (1942).

[18] 335 U.S. 437 (1948).

the Court found that the trial court had made no attempt to advise defendant of the consequences of his plea when he pleaded guilty to four indictments carrying a maximum sentence of eighty years. Similarly, in *Moore v. Michigan*,[19] the Court found the facts indicated a basic unfairness when a seventeen year old Negro waived his right to counsel because he feared the threat of mob violence and thus wanted to be removed from his place of custody as soon as possible.[20] Again, in *Pennsylvania v. Claudy*,[21] it was held that due process of law was denied defendant, a twenty-one year old of limited education, because he had pleaded guilty to numerous charges of burglary, larceny, forgery and false pretenses without advice of counsel. The Court felt that no layman could have understood the accusations. But in *Foster v. Illinois*,[22] although it appeared in the record that defendant had pleaded guilty and did not have the aid of counsel, the Court did not feel that defendant had been denied due process of law in light of the other circumstances in the case. And in *Bute v. Illinois*[23] the Court found that the indictment was drawn in simple language, the consequences of a guilty plea were explained and the defendant was capable of intelligently pleading guilty to the charge without an attorney to advise him. In *Gryger v. Burke*,[24] defendant alleged deprivation of due process since he was not advised of his right to counsel. Denying, as in the latter two cases, that there was a deprivation, the Court stated: "It rather overstrains our credulity to believe that one who had been a defendant eight times and for whom counsel had twice waged defenses, albeit unsuccessful ones, did not know of his right to counsel."[25] The test, then, in determining whether an indigent defendant has been denied due process of law through lack of counsel is an examination of all the facts in the case to find whether special circumstances exist that indicate a basic unfairness of trial that results in a violation of the guarantees contained in the fourteenth amendment.

In examining the decision in *Hudson v. North Carolina*,[26] in light of the above, it can be seen that the Court considered the various categories of special circumstances enumerated since the *Betts* case. In referring to the age, education, and familiarity of defendant with trial proceedings, the Court found that a determination was made in the post-conviction hearing that petitioner, although only eighteen years old and possessing only a sixth grade education, was "[I]ntelligent, well-informed, and was familiar with and experienced in Court procedure and criminal

[19] 335 U.S. 155 (1957).
[20] *Id.* at 162.
[21] 350 U.S. 116 (1956).
[22] 332 U.S. 134 (1947).
[23] 333 U.S. 640 (1948).
[24] 334 U.S. 728 (1948).
[25] *Id.* at 730.
[26] 363 U.S. 697 (1960).

trials. . . ."[27] The Supreme Court sustained this finding on the basis of their holding in *Wade v. Mayo*,[28] wherein they state that such a finding is the peculiar province of the lower court. The Court further found that the detailed findings of the post-conviction hearing showed that the trial judge had not acted in an overreaching manner and "advised the petitioner of his right to challenge when the jury was selected and advised the petitioner of his right to cross examine witnesses and to argue the case to the jury";[29] that "during the trial the Court properly excluded evidence which was inadmissible, and the petitioner cross examined the witnesses against him and at his request testified in his own behalf."[30] After holding that the first two tests were inapplicable, the Court found from an examination of the record that during the trial petitioner had been put in a position that required professional knowledge and experience beyond his scope.[31] This decision was based on the plea of guilty to petit larceny by petitioner's co-defendant. The Court stated that the potential prejudice that resulted to petitioner from this plea and the subsequent failure of the trial judge to inform the jury that the co-defendant's plea was not to be considered in determining petitioner's guilt, worked a denial of due process.[32] The *Hudson* case, then, as decided by the Court, was placed in the category where the defense to the charge against petitioner is so intricate as to require professional knowledge, and where to deny petitioner counsel operates to cause a constitutionally unfair trial.

As mentioned previously, an examination of all facts involved in the case is made to determine whether special circumstances exist that operate to deprive petitioner of due process of law. The dissent of Justices Clark and Whittaker to this decision sheds light on the record that was used in the *Hudson* case. In questioning the prejudicial quality of the plea to the jury, the dissent points out that although petitioner, from the trial court proceeding forward, had been represented by counsel in each hearing, the co-defendant's plea to the jury had never been raised by either side of the controversy as being prejudicial to petitioner.[33] In addition, petitioner's counsel before this Court only mentioned the plea to the jury but did not argue that this was prejudicial to petitioner. Further, in discussing whether the plea to the jury was of such a prejudicial [E]ven the North Carolina cases[34] cited by the Court do not support . . .

[27] *Id.* at 701.

[28] 334 U.S. 672 (1948).

[29] Hudson v. North Carolina, 363 U.S. at 700.

[30] *Id.* at 701.

[31] *Id.* at 704.

[32] *Id.* at 703.

[33] *Id.* at 704.

nature as to cause a basic unfairness of trial, the dissent stated: ". . . reversal. All they indicate, as the Court frankly points out, is that care must be exercised to avoid 'undue prejudice.' "[35] Dwelling further upon the co-defendant's plea to the jury, Justices Clark and Whittaker point out that although the trial court's instruction to the jury indicated the presence of violence, intimidation and putting the victim in fear, the jury did not find petitioner guilty of the common-law offense of robbery but found him guilty of a lesser offense.[36] As stated by the dissent: "As I apraise the jury's verdict, it would be much more realistic to say that [co-defendant's] plea of guilty influenced the jury not to find petitioner guilty of the greater offense."[37]

The facts in the *Hudson* case seem to indicate that there is little to support the view that the denial of counsel to petitioner operated to cause a basic unfairness of trial. This seems particularly true in light of the fact that the Court based its decision solely upon the potential prejudice that might have accrued against petitioner as a result of his co-defendant's plea to the jury. However, in rendering their decision in the *Hudson* case, the Supreme Court cites their holding in *Spano v. New York*[38] wherein it stated; "Because of the delicate nature of the constitutional determination which we must make, we cannot escape the responsibility of making *our own* examination of the record."[39] The decision in the *Hudson* case appears to point out what the Court considers to be its responsibility and may be the harbinger of a relaxation of the "special circumstances" test.

[34] State v. Kerley, 246 N.C. 157, 97 S.E.2d 876 (1957); State v. Bryant, 236 N.C. 745, 73 S.E.2d 791 (1953); State v. Hunter, 94 N.C. 829 (1886).

[35] Hudson v. North Carolina, 363 U.S. 705, 706 (1960).

[36] *Id.* at 705.

[37] *Ibid.*

[38] 360 U.S. 315 (1959).

[39] *Id.* at 316. (Emphasis added.)

CONTRACTS–ARBITRATION AGREEMENT HELD ENFORCEABLE

The plaintiff, doing business as A-1 Plumbing Supply Co., entered into a contract with the defendant union. The contract provided, in essence, that if the parties could not agree voluntarily to extend an agreement as to hours, wages, working conditions, or any other contingency that might arise, the dispute would be submitted to an arbitration board composed of representatives formerly agreed upon. A dispute did arise and the defendant, without first presenting its grievance to the arbitration board, called a strike. The plaintiff brought action for damages for breach of contract, but the defendant contended that the arbitration agreement