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Constitutional Law - Right to Counsel in Non-Capital Cases

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municipalities of less than 500,000 who are similarly situated as those in a city with more, and that the indemnity to policemen does not promise to remedy the situation sought to be improved, the doubtful reasonableness of the classification and the resulting discrimination are such as would seem to justify a striking of the statute in question.

CONSTITUTIONAL LAW—RIGHT TO COUNSEL IN NON-CAPITAL CASES

Petitioner, a minor eighteen years of age, pleaded guilty upon arraignment to three indictments of armed robbery and larceny. Plaintiff was neither offered nor did he receive advice of counsel. A petition for a writ of habeas corpus was filed on grounds that permitting plaintiff to plead guilty without advice of counsel is so unfair that it violates the due process clause of the Fourteenth Amendment.[1] In denying the petition, the Supreme Court of New Hampshire held that there is always a presumption that the court exercised its proper discretion when it allowed a defendant over seventeen years of age to plead guilty without aid of counsel, and that this presumption was not overcome. The court concluded that the fair conduct of these matters must depend upon the wisdom and understanding of the trial judge. *Fitzgibbons v. Hancock*, 82 A. 2d 769 (N.H., 1951).

Under the Sixth Amendment[2] the right to the appointment of counsel in any federal criminal case is absolute where the benefit of counsel has not been waived.[3] However, the rule's counterpart, the right ot counsel in state cases, has remained uncertain. Earlier cases attempted to make a distinction between capital and non-capital state crimes, but the severity of punishment in non-capital cases and the lack of a definite rule even as to capital cases caused this distinction to suffer harsh criticism.[4] The first semblance of any concrete rule for the states was presented in the case of *Betts v. Brady*.[5] The petitioner in that case, forty-three years of age and of average intelligence, was convicted of robbery after his request for counsel was denied. A petition for habeas corpus was denied on the grounds that the Sixth Amendment guarantee was good only in federal cases.

The *Betts* case established the fundamental rule for determining whether

[1] U.S. Const. Amend. 14.

[2] U.S. Const. Amend. 6.

[3] Johnson v. Zerbst, 304 U.S. 458 (1938).

[4] Tompkins v. Missouri, 323 U.S. 485 (1945); Williams v. Kaiser, 323 U.S. 471 (1945); Odom v. State, 205 Miss. 572, 37 So. 2d 300 (1948); State v. Hedgebeth, 228 N.C. 259, 45 S.E. 2d 563 (1947); Johnson v. State, 148 Fla. 510, 4 So. 2d 671 (1941); Watson v. State, 142 Fla. 218, 194 So. 640 (1940).

[5] 316 U.S. 455 (1942).

or not denial of counsel in a state criminal case will constitute violation of a defendant's rights under the due process clause. The *Betts* rule required counsel for all persons charged with serious crimes, when necessary for their adequate defense. This standard was said to depend upon the individual case and the particular person accused.[6] However, this standard was not definite enough to stand up entirely in a later decision which demanded the appointment of counsel "only where the prisoner has sustained that burden of proving that for want of benefit of counsel an ingredient of unfairness actively operated in the process that resulted in confinement."[7]

Four factors have been set down as major considerations for granting counsel under the *Betts* rule. These are: (1) the gravity of the crime; (2) the age and education of the accused; (3) the conduct of the court; and (4) the complicated nature of the case.[8] Under this rule counsel was found necessary where an ignorant negro was tried and convicted on the same day,[9] and where the accused was a dope addict and drunkard.[10] Counsel was not found necessary where the accused declined the court's offer to appoint money for a counsel,[11] where the accused had benefit of state's counsel in the case but not for the preparation of the appeal,[12] and where the accused was a mature offender.[13] Under the modification of the *Betts* rule, counsel was found necessary where the accused was tried, convicted, and sentenced on the same day,[14] but was not found necessary where the accused had the benefit of counsel for a later charge of burglary,[15] and where the accused was informed of his rights and the degree of proof necessary for conviction.[16]

Today, a more liberal and growing view may be seen with the result that counsel has been allowed in non-capital cases, depending on the special circumstances of prejudice or unfairness of the case.[17] This new standard requires that, "where serious offenses are charged, failure of the court to offer counsel in state criminal cases deprives the accused of

[6] Ibid., at 473.

[7] Foster v. Illinois, 332 U.S. 134, 137 (1946).

[8] Note, 22 Southern California Law Review 268, 269 (1948-49).

[9] Coates v. State, 180 Md. 502, 25 A. 2d 676 (1942), cert. denied 317 U.S. 652 (1942).

[10] Williams v. State, 163 Ark. 623, 260 S.W. 721 (1924).

[11] Wilson v. Lanagan, 99 F. 2d 544 (C.A. 1st, 1938), cert. denied 306 U.S. 634 (1938).

[12] Kelly v. Ragen, 129 F. 2d 811 (C.A. 7th, 1942).

[13] Smith v. State, 180 Md. 529, 25 A. 2d 681 (1942).

[14] De Meerleer v. Michigan, 329 U.S. 663 (1946).

[15] Gayes v. New York, 332 U.S. 145 (1946).

[16] Carter v. Illinois, 329 U.S. 173 (1946).

[17] Bute v. Illinois, 332 U.S. 640, 677-79 (1948).

his rights under the Fourteenth Amendment."[18] In comparison with the *Betts* case, it is apparent that the requirement that counsel be necessary for defendant's adequate defense has been dropped.

In *Ex parte Carter*,[19] an eighteen year old boy of subnormal intelligence, who could not read, entered pleas of non-vault to charges of entering and breaking and larceny. This was held to be a denial of due process. The instant case presents an almost identical set of facts, yet these two cases which were decided within months of each other, reached opposite results. Each reached their decisions by the application of the reasoning first presented under *Betts v. Brady*.[20] The latter case admitted that previous decisions can be of little help, since each case must depend on its own facts. Such inconsistencies tend to show that the standards now in existence are wholly inadequate to determine the right to counsel in state cases. Courts themselves cannot reach any definite solution, even as to the matter of which standard to apply.

[18] Uveges v. Pennsylvania, 335 U.S. 437, 440 (1948).

[19] 14 N.H. Super. 591, 82 A. 2d 642 (1951).

[20] 316 U.S. 455 (1942). Recent cases in which this rule was used are: Gibbs v. Burke, 337 U.S. 773 (1949); Townsend v. Burke, 334 U.S. 736 (1948); Gholsom v. Commonwealth, 308 Ky. 82, 212 S.W. 2d 537 (1948).