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Constitutional Law—Due Process—Right to Counsel in State Felony Proceedings

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CONSTITUTIONAL LAW—DUE PROCESS—RIGHT TO COUNSEL IN STATE FELONY PROCEEDINGS

Petitioner, under a life sentence imposed by a state court, brought a writ of habeas corpus alleging violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution in that while he was of unsound mind and unassisted by counsel, he was tried and convicted of a charge carrying a mandatory life sentence. The lower court dismissed the writ without a hearing. *Held*: reversed, a hearing on the issue of insanity was required. If the allegations were true, the failure to assign counsel violated the Fourteenth Amendment since a trial which left the defense to a man who was insane and who by reason of his mental condition was unable to raise the insanity issue was unfair.[1]

The accused in a federal felony proceeding is assured the right to counsel under the Sixth Amendment.[2] In state felony proceedings, however, the Sixth Amendment is held inapplicable; instead the Due Process Clause of the Fourteenth Amendment controls.[3] In interpreting the Due Process Clause, the Supreme Court has required counsel only where the absence of counsel was prejudicial to fundamental rights of the accused.[4] In an attempt to define this vague standard, the nine members of the Court have frequently disagreed on what constitutes a prejudicial situation. The majority, following a case-by-case method of definition, has established certain catagories of situations which are considered prejudicial if counsel is absent, e.g., where there is (1) a young and inexperienced defendant;[5] (2) a mentally deficient defendant;[6] (3) a possibility of a death sentence;[7] (4) a defend-

[1] Massey v. Moore, 99 Sup. Ct. 117 (1955).

[2] U.S. Const. Amend. VI; Johnson v. Zerbst, 304 U.S. 458 (1938).

[3] U.S. Const. Amend. XIV, § 1; Powell v. Alabama, 287 U.S. 45 (1932) as limited by Betts v. Brady, 316 U.S. 455 (1942). (Mr. Justice Black dissented, Mr. Justice Douglas, and Mr. Justice Murphy concurring, on the grounds that the Bill of Rights was incorporated into the Fourteenth Amendment).

[4] Ibid.

[5] Uveges v. Pennsylvania, 335 U.S. 437 (1948); Wade v. Mayo, 334 U.S. 672 (1948); De Meerleer v. Michigan, 329 U.S. 663 (1947). The following cases involve factors of prejudice other than youth and inexperience: Palmer v. Ashe, 342 U.S. 134 (1951) (age and mental deficiency); Marino v. Ragen, 332 U.S. 561 (1947) (age and nationality); see Powell v. Alabama, 287 U.S. 45, 71 (1932) (age and possibility of death sentence).

[6] Palmer v. Ashe, 342 U.S. 134 (1951); see Powell v. Alabama, 287 U.S. 45, 71 (1932).

[7] Hawk v. Olson, 326 U.S. 271 (1945) (by implication); Tomkins v.

ant who is a stranger to our language and our courts;[8] (5) deception by the prosecution;[9] (6) a biased or careless judge;[10] or (7) complexity of issues.[11] A minority of the Court has constantly argued that the lack of counsel in any felony proceeding is prejudicial to the fundamental rights of the accused.[12] The instant case adheres to the majority's rationale and establishes yet another situation in which the lack of counsel creates a potential danger to the fundamental rights of the accused; viz, the possibility of an insane defendant.[13]

The vague standard of "prejudice" has resulted in such fine legal distinctions as (1) prejudice being found to exist where a defendant is faced with the possibility of a death sentence but is actually sentenced to life imprisonment,[14] but not being found to exist where the defendant faces and is sentenced to life imprisonment;[15] (2) prejudice being found where there is a mentally deficient defendant,[16] but not being found to exist where there is an uneducated defendant;[17] or (3) prejudice being found to exist where the trial judge misreads the accused's record of convictions,[18] but not being found to exist where a trial judge erroneously interprets life imprisonment statutes.[19]

These fine legal distinctions can be viewed as a conflict between the desire of the Court to insure uniformity in principles

Missouri, 323 U.S. 485 (1945); Williams v. Kaiser, 323 U.S. 471 (1945) (by implication); Powell v. Alabama, 287 U.S. 45 (1932).

[8] Marino v. Ragen, 332 U.S. 561 (1947).

[9] Smith v. O'Grady, 312 U.S. 329 (1941) (Nebraska case).

[10] Gibbs v. Burke, 337 U.S. 773 (1949); Townsend v. Burke, 334 U.S. 736 (1948).

[11] Rice v. Olson, 324 U.S. 786 (1945) (Nebraska case); see De Meerleer v. Michigan, 329 U.S. 663, 665 (1947). But see Gayes v. New York, 332 U. S. 145, 148 (1947).

[12] See Gibbs v. Burke, 337 U.S. 773, 782 (1949) (concurring opinion); Bute v. Illinois, 333 U.S. 640, 677-679 (1948) (dissenting opinion); Foster v. Illinois, 332 U.S. 134, 139-145 (1947) (dissenting opinion); Carter v. Illinois, 329 U.S. 173, 180-187 (1946) (dissenting opinion).

[13] Massey v. Moore, 99 Sup. Ct. 117 (1955).

[14] Tomkins v. Missouri, 323 U.S. 485 (1945).

[15] Gryger v. Burke, 334 U.S. 728 (1948) (life sentence as a fourth offender).

[16] Palmer v. Ashe, 342 U.S. 134 (1951).

[17] Hedgebeth v. North Carolina, 334 U.S. 806 (1948) (the Court affirmed 228 N.C. 259, 45 S.E.2d 563 in which lack of education was not considered prejudicial).

[18] Townsend v. Burke, 334 U.S. 736 (1948).

[19] Gryger v. Burke, 334 U.S. 728 (1948).

of liberty and justice[20] and yet refrain from interfering with state judicial proceedings.[21] However, vagueness of definition has invited appeal, and thus the state and federal courts have been burdened with the administration of these appeals.[22]

The contention that counsel should be required in every state felony proceeding has much merit. The confusion of a mentally ill individual which was present in the instant case and which was held to require the presence of counsel seems little different from the confusion of a layman when faced with the complexities of procedural issues. Nor does the difficulty inherent in federal jurisdictional questions, where counsel has been required,[23] seem to differ from the difficulties encountered in other procedural problems; viz, (1) determining the validity of the indictment;[24] (2) interpreting statutory and common law in order that the appropriate defense may be selected;[25] (3) determining the relevancy or competency of evidence;[26] (4) preserving the record for appeal; (5) determining whether continuances are necessary; and (6) using cross-examination to refute the phenomena of a witness' selected memory. Since these possibilities do not always appear in the record of the trial, in many instances it is impossible for a reviewing court to determine whether the accused would have fared better had there been counsel to point out the various possible divergent procedural paths.[27]

It is submitted that while the Court in the instant case reached the correct result, the decision should have been placed on the ground that the absence of counsel in any state felony case is always prejudicial to the fundamental rights of the accused.

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[20] Hebert v. Louisiana, 272 U.S. 312, 316-317 (1926).

[21] Foster v. Illinois, 332 U.S. 134, 139 (1947).

[22] Goodman, Use and Abuse of the Writ of Habeas Corpus, 7 F.R.D. 313 (1948).

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

[24] Powell v. Alabama, 287 U.S. 45, 69 (1932).

[25] See Williams v. Kaiser, 323 U.S. 471, 475 (1945); cf. Glasser v. United States, 315 U.S. 60, 75-76 (1942).

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

[27] This is expressed well in Glasser v. United States, 315 U.S. 60, 76 (1942), "The right to have the assistance of counsel is too fundamental and absolute to allow the courts to indulge in nice calculations as to the amount of prejudice arising from its denial."