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Is a Trial Before a Non-Attorney Judge Constitutional? *Young v. Konz*, 88 Wash. 2d 276, 558 P.2d 791 (1977)

Elaine G. Rollins
University of Nebraska College of Law

Note

Is a Trial Before a Non-Attorney Judge Constitutional?

Young v. Konz, 88 Wash. 2d 276, 558 P.2d 791 (1977).

I. INTRODUCTION

Courts of limited jurisdiction or courts which are presided over by justices of the peace originated in England in the fourteenth century.[1] In Washington, as in a great number of other states, this lay system of justice still exists, with non-attorney judges or justices of the peace presiding over the courtroom proceedings. Some state legislatures have recently abolished the system[2] and other states prohibit a non-attorney judge from hearing a case where a prison sentence could be imposed.[3] This note will examine the constitutionality of the Washington State system.

In Washington, there is a basic constitutional and statutory framework which sets out the requirements to be met in order to become a justice of the peace. Article IV[4] of the state constitution deals with the judicial power of the state and expressly provides that justice courts may be provided for by the legislature.[5] Section

1. Gordon v. Justice Court, 12 Cal. 3d 323, 327, 525 P.2d 72, 74, 115 Cal. Rptr. 632, 634 (1974).
2. The Kentucky and Utah legislatures recently abolished the justice of the peace judicial system even though their respective systems were found to be constitutional in North v. Russell, 427 U.S. 328 (1976) and Shelmidine v. Jones, 550 P.2d 207 (Utah 1976).
3. *See generally* 47 AM. JUR. 2d *Justices of the Peace* § 49 (1969); Annot., 71 A.L.R.3d 498 (1976); Annot., 71 A.L.R.3d 562 (1976).
4. "The judicial power of the state shall be vested in a supreme court, superior courts, justices of the peace, and such inferior courts as the legislature may provide." WASH. CONST. art. IV, § 1.
5. The legislature shall determine the number of justices of the peace to be elected in incorporated cities or towns and in precincts, and shall prescribe by law the powers, duties and jurisdiction of justices of the peace; Provided, that such jurisdiction granted by the legislature shall not trench upon the jurisdiction of superior or other courts of record, except that justices of the peace may be made police justices of incorporated cities and towns. In incorporated cities or towns having more than five thousand inhabitants the justices of the peace shall receive such salary as may be provided by law, and shall re-

17 of Article IV[6] specifically states that superior and supreme court judges must be members of the bar, but the constitution is silent regarding the qualifications of lay justices. It has been inferred from this silence that they need not be members of the state bar.

Aside from the state constitutional basis of this system, the legislature has set forth a statutory scheme outlining the lay system of justice. In cities with a population greater than 5,000, the judges in courts of limited jurisdiction must be attorneys.[7] However, if the population is less than 5,000, the judge is not required to be an attorney.[8] In districts with a population of less than 10,000, a non-attorney may become a judge if he passes an examination,[9] although this examination is usually not taken by non-lawyer district judges.[10] The statutory scheme also provides for an appeal from a justice court to a superior court which has an attorney judge. This appeal is in the form of de novo review.[11]

Young v. Konz,[12] was a consolidation of two cases, both of which were misdemeanor trials heard before non-attorney judges. The non-attorney judges were granted the authority to hand down prison sentences, and the appellants contended that this power deprived them of due process.[13] The central issue in *Young* was, therefore, whether due process is denied when a case is heard before a non-attorney judge who has the power to hand down a prison sentence, in view of the fact that an appeal de novo to a superior court is an automatic right. An equal protection issue was also raised as a result of the fact that the statutes provided for non-attorney judges solely on the basis of the population of the city or the district.[14]

II. THE COURT'S OPINION

A. The Majority

The statutory framework in Washington differs from that in

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ceive no fees for their own use.
WASH. CONST. art. IV, § 10.

6. "No person shall be eligible to the office of judge of the supreme court, or judge of a superior court, unless he shall have been admitted to practice in the courts of record of this state, or of the Territory of Washington." WASH. CONST. art. IV, § 17.
7. WASH. REV. CODE § 3.12.071 (1961).
8. WASH. REV. CODE § 3.50.040 (Supp. 1976).
9. *Id.* § 3.34.060.
10. Young v. Konz, 88 Wash. 2d 276, 285-86, 558 P.2d 791, 796 (1977) (Utter, J., dissenting).
11. WASH. REV. CODE § 3.50.410 (Supp. 1976).
12. 88 Wash. 2d 276, 558 P.2d 791 (1977).
13. *Id.* at 279-80, 558 P.2d at 792.
14. *Id.* at 283, 558 P.2d at 794.

other states, where a de novo trial is allowed on appeal whether or not the defendant pleaded guilty in the lower court. The question in *Young* was whether this difference in statutes was crucial enough to result in a denial of due process to defendants whose cases were heard in Washington justice courts. The Washington Supreme Court held that it was not.[15]

Although there have been a great number of cases concerning the constitutionality of justice of the peace courts, the court in *Young* focused on three of the major opinions in this area and used them as the basis for its opinion. The first case that the court focused on was *Gordon v. Justice Court*[16] where the California Supreme Court found that proceedings before a non-attorney judge were a denial of due process. The Washington Supreme Court put very little emphasis on *Gordon* and it was dismissed as having little importance in light of the fact that the United States Supreme Court had subsequently ruled on the question with regard to a similar Kentucky statute.[17]

After the discussion of *Gordon*, the court in *Young* focused on *Shelmidine v. Jones*,[18] where the Utah Supreme Court upheld a lay system of justice. The court in *Young* did not discuss whether the Utah and Washington statutes were similar; instead, the court emphasized the language in the Utah opinion which indicated that it was the province of the legislature and not the courts to make such sweeping changes concerning the courts of limited jurisdiction.[19] This appeared to be one of the major reasons why the court refused to act. The court should have made a detailed comparison of the statutes and the systems involved; but the court felt that a strong element of separation of powers was present, and therefore left the decision to the legislature.

The third major case the majority dealt with was *North v. Russell*,[20] a case in which the United States Supreme Court upheld the lay system of justice in Kentucky. The Washington Supreme Court stated that because of *North*, *Gordon* was no longer persuasive authority.[21]

North was therefore used as the controlling authority. The court in *Young* noted that *North* held that the right to an attorney[22]

15. *Id.*
16. 12 Cal. 3d 323, 525 P.2d 72, 115 Cal. Rptr. 632 (1974), *cert. denied*, 420 U.S. 938 (1975).
17. North v. Russell, 427 U.S. 328 (1976).
18. 550 P.2d 207 (Utah 1976).
19. 88 Wash. 2d at 281-82, 558 P.2d at 793.
20. 427 U.S. 328 (1976).
21. 88 Wash. 2d at 280, 558 P.2d at 793.
22. *See* Argersinger v. Hamlin, 407 U.S. 25 (1972).

was not violated merely because the case was heard before a lay judge. In its discussion of *North*, the Washington Supreme Court mentioned that the Kentucky system provided for a trial de novo after a plea of guilty or not guilty, whereas in Washington, a trial de novo is only available after a plea of not guilty.[23] The court said that this difference was not important enough for *Young* to be distinguished from *North*. When a defendant pleads guilty, he automatically waives his right to appeal,[24] except if collateral issues are also raised.[25] In this way, the defendant is protected from making an unknowing or involuntary plea. His due process rights are not violated just because he does not receive an automatic de novo trial.

After its brief discussion of these other cases concerning the constitutionality of justice courts, the Washington court concluded that due process is not violated when a defendant is tried before a non-attorney judge.[26] This was found to be true even though a plea of guilty will not result in a de novo trial.

B. The Dissent

The dissent began with a practical view of the system and noted that "many defendants charged with traffic or other offenses heard in the courts here at issue cannot afford either the time or money to avail themselves of a de novo appeal."[27] Although this system is supposed to have a built-in check, in the form of a de novo trial on any errors the justice court judge may have made, in reality this check may not be available. This practical objection was viewed from a constitutional perspective in *Ward v. Village of Monroeville*[28] where the United States Supreme Court recognized that "the State's trial court procedure [cannot] be deemed constitutionally acceptable simply because the State eventually offers a defendant an impartial adjudication."[29] The dissent in *Young* argued that a lay judge is not impartial, cannot understand the intricacies of the law, and therefore the case should have been heard before an attorney judge in the first instance. Having a de novo trial available on appeal does not erase the fact that the defendant was denied due process in the lower court.

23. *See* WASH. REV. CODE § 3.50.370, 3.50.410 (Supp. 1976).
24. State v. Eckert, 123 Wash. 403, 212 P. 551 (1923).
25. If the defendant questions the validity of the statute, the court's jurisdiction or the circumstances under which he made the plea, he can appeal from a plea of guilty. *See* Fisher v. Bowman, 57 Wash. 2d 535, 358 P.2d 316 (1961).
26. 88 Wash. 2d at 283, 558 P.2d at 794.
27. *Id.* at 284, 558 P.2d at 795 (Utter, J., dissenting).
28. 409 U.S. 57 (1972).
29. *Id.* at 61.

The dissent in *Young* also relied on *North*, but read it differently than did the majority. "Under the Kentucky system . . . a defendant can have an initial trial before an attorney judge by pleading guilty in the police court, thus bypassing that court and seeking a de novo trial, 'erasing . . . any consequence that would otherwise follow from tendering the [guilty] plea.' "[30] The majority felt that the fact that the Kentucky statute provided for a de novo trial on appeal after a plea of guilty was insignificant. The dissent felt that this difference was crucial and that *North* should not have been followed simply because the facts were similar. With a different reading of *North*, the dissent's analysis of the constitutionality of non-attorney judges was arguably better and reached a preferred result.

III. THE COURT'S ANALYSIS

A. Precedents

The analysis and reasoning of the court in *Young* was incomplete. The court should have compared the other statutory systems in other states to see if they were comparable and could be used as a basis for the decision. A great number of state courts which have considered the question have found the fact that a judge has not been trained to be an attorney does not violate due process.[31]

A closer analysis of the cases considered and rejected by the Washington Supreme Court demonstrates that the reasoning did not mandate the outcome in *Young*. The important factor in *Young* was that the court considered it to be the province of the legislature to abolish courts with non-attorney judges. This was evident from the court's extensive quotation from the Utah case, *Shelmidine v. Jones*.[32] In Utah, as in Washington, a justice of the peace may impose jail sentences, and the court in *Shelmidine* indicated that non-attorney judges serve a useful purpose in sparsely populated rural areas.[33] The difficulty in comparing the two state systems, however, is that in Utah a person who is charged with an offense which could result in a jail sentence has the right to request that the proceeding be presided over by an attorney judge. This alternative

30. North v. Russell, 427 U.S. at 337.
31. *See* State v. Lynch, 107 Ariz. 463, 489 P.2d 697 (1971); City of Decatur v. Kushmer, 43 Ill. 2d 334, 253 N.E.2d 425 (1969); State v. Lindgren, 235 N.W.2d 379 (Minn. 1975); *In re* Application of Hewith, 81 Misc. 2d 202, 365 N.Y.S.2d 760 (1975); Thomas v. Justice Court, 538 P.2d 42 (Wyo. 1975); Crouch v. Justice of Peace Court, 7 Ariz. App. 460, 440 P.2d 1000 (1968).
32. 550 P.2d 207 (Utah 1976).
33. *Id.* at 211.

is not present in the Washington system. Therefore, the court in *Young* was mistaken in relying on *Shelmidine* as an authority for upholding the lay system of justice in Washington. This was a distinct difference which the court chose to ignore. The importance of *Shelmidine* was that the Utah Supreme Court felt that the legislature should abolish the lay courts; its value as a precedent was not because of the fact that there was a similarity between the two systems.

Although an equal protection argument was raised in *Young*, it was summarily disposed of by citing *North*, where the United States Supreme Court upheld the state's right to establish different court systems for different areas classified by population. In coming to this conclusion, *North* relied on an 1879 case, *Missouri v. Lewis*.[34] If the court in *Young* had looked at the reasoning behind the holding in *North*, it could have arrived at the conclusion that justice systems which are classified according to population may no longer be reasonable in view of the fact that there are now greater numbers of attorneys available in rural areas. The classification may have been valid in the past when attorneys were scarce, but the court should have looked at the present situation to determine if a reasonable basis for the classification actually exists.

In considering *North*, the Washington Supreme Court minimized the difference which existed between the Washington statutes and those of Kentucky. A de novo trial after a plea of guilty or not guilty is provided for in Kentucky,[35] but a de novo trial is available to the defendant in Washington only if he pleads not guilty in the justice court.[36] This difference was cited as being of no significance, and *North* was therefore cited as controlling. This logic could have been used if the court had been consistent in its comparisons but it was not used when comparing the California system. California does not provide for a de novo trial after an initial trial in the justice court;[37] the only remedy is an appeal. This is true after either a plea of guilty or not guilty. In *Gordon*,[38] the California Supreme Court said that if the defendant waived his right to an attorney judge, it would be permissible for a non-attorney judge to hear the case. The differences in the Washington and California appeals systems are quite clear.

As was stated earlier, in Kentucky there is a trial de novo

34. 101 U.S. 22 (1879).
35. 88 Wash. 2d at 283, 558 P.2d at 794.
36. *Id.*
37. Gordon v. Justice Court, 12 Cal. 3d at 331, 525 P.2d at 77, 115 Cal. Rptr. at 637.
38. *Id.*

whether or not the defendant pleads guilty.[39] In California, there is a right of appeal[40] and in Washington, a trial de novo may only be had after a plea of not guilty.[41] In comparing these three systems, the court in *Young* found the difference between the Washington and Kentucky systems to be inconsequential. However, the court could have reasoned that there were similarities between the Washington and California systems and reached a completely different result. An analysis of the reasoning or a comparison to the California system would have made the opinion clearer and better reasoned.

The court in *Young* could have included this analysis in its discussion of the Washington system, which, as stated earlier, provides for a trial de novo only after the defendant has entered a plea of not guilty in the justice court.[42] The trial de novo is designed to protect against any possible due process violations. In a trial de novo, the case is tried as if there were no trial in the justice court[43] and the defendant is therefore really being given two trials.[44] Although the defendant is protected against due process violations in the justice court when he pleads not guilty, the due process problem arises when he pleads guilty. A guilty plea can be withdrawn only on a clear showing of abuse, or to correct a manifest injustice.[45] Once a plea of guilty is entered, an appeal is precluded[46] except if collateral questions are also raised.[47] In circumstances where the guilty plea should not have been accepted, a new trial can be had by the defendant. The court in *Young* considered the appeals system sufficient to protect the defendant from due process violations, and concluded that the lack of a de novo trial after a plea of guilty was constitutional.[48]

One factor which should insure that a guilty plea was voluntarily given is the right to an attorney. The United States Supreme

39. 88 Wash. 2d at 283, 558 P.2d at 794.
40. Gordon v. Justice Court, 12 Cal. 3d at 331, 525 P.2d at 77, 115 Cal. Rptr. at 637.
41. 88 Wash. 2d at 283, 558 P.2d at 794.
42. WASH. REV. CODE § 3.50.410 (Supp. 1976).
43. State v. Hagimori, 57 Wash. 623, 107 P. 855 (1910); Stone v. Miracle, 196 Okla. 42, 162 P.2d 534 (1945).
44. George v. Day, 69 Wash. 2d 836, 420 P.2d 677 (1966).
45. State v. Taylor, 83 Wash. 2d 594, 521 P.2d 699 (1974); State v. Olmstead, 70 Wash. 2d 116, 422 P.2d 312 (1966); State v. Armstead, 13 Wash. App. 59, 533 P.2d 147 (1975).
46. State v. Haddon, 179 Wash. 669, 38 P.2d 227 (1934); State v. Alberg, 156 Wash. 397, 287 P. 13 (1930); State v. Eckert, 123 Wash. 403, 212 P. 551 (1923).
47. Colten v. Kentucky, 407 U.S. 104, 119 (1962).
48. 88 Wash. 2d at 283, 558 P.2d at 794.

Court has established that a defendant has the right to an attorney in misdemeanor trials[49] and the justice court judges do have a duty to inform the defendant of this right. In Washington, a defendant has the right to an attorney in all cases where there is a possibility that a loss of liberty will result.[50] The fact that an attorney will counsel the defendant helps to insure that a guilty plea is voluntarily and knowingly given. It is only when the right to an attorney is waived that there is a possibility of abuse. Following this line of reasoning the appeal from a guilty plea was seen to be a sufficient protection by the Washington Supreme Court.[51]

It has been argued that the right to an attorney is meaningless without the right to an attorney judge, who can understand and properly rule on the attorney's motions and arguments.[52] *North, Young,* and other courts have rejected this argument on the basis that "the judge is not one of the accused's adversaries and is not there to defend or prosecute him. So the fact that the accused needs a lawyer does not mean he needs to be tried before a lawyer."[53] The dissent in *North* contended that when an attorney argues before a non-attorney judge, the judge will turn to the prosecutor for advice in ruling on a difficult question.[54] Even though the courts have held that the right to an attorney does not include the right to an attorney judge, the fact remains that the judge may not be competent to rule on complex questions of law. It would appear that this outcome would be a violation of due process.

The court in *Young* was concerned with several major issues and decided that due process is not violated when a non-attorney judge hears a case. The court concluded that an appeal from a guilty plea was sufficient to protect the defendant; however, the court should have scrutinized the other cases more closely to examine the reasoning behind the holdings.

IV. DUE PROCESS CONSIDERATIONS

A. Fundamental Fairness

One of the major objections to a non-attorney judge is that he

49. Argersinger v. Hamlin, 407 U.S. 25 (1972).
50. McInturf v. Horton, 85 Wash. 2d 704, 538 P.2d 499 (1975).
51. 88 Wash. 2d at 283, 558 P.2d at 794.
52. Note, *Limiting Judicial Incompetence: The Due Process Right to a Legally Learned Judge in State Minor Court Criminal Proceedings,* 61 VA. L. REV. 1454, 1457 (1975).
53. Ditty v. Hampton, 490 S.W.2d 772, 775 (Ky. 1972), *appeal dismissed,* 414 U.S. 885 (1973).
54. North v. Russell, 427 U.S. at 344 (Stewart, J., dissenting).

will not afford the defendant a fair trial. The issue, when considering due process, is not whether the defendant was actually prejudiced but whether there is a reasonable likelihood that a particular procedure will result in prejudice to the defendant.[55] In looking at the procedures of the justice and superior courts, it is to be noted that non-attorney judges did not convict more defendants, impose higher fines or were reversed more on appeal than attorney judges.[56]

Another requirement of due process is that the defendant be granted a fair and impartial trial.[57] Whether a fair and impartial trial is given in a justice court depends on whether the question is analyzed from a legal perspective or from a layman's standpoint. If fairness means only that the judge must be impartial and should not be predisposed with the outcome of the case, then there is no reason to find lay judges any more or less fair than attorney judges. The fourteenth amendment does not guarantee a trial free from error, but if the error borders on arbitrary action, then due process is violated.[58] There was no actual bias alleged on the part of the judge in *Young*. If this perspective is used, then the defendant did receive a fair trial before the non-attorney judge and due process was not violated.

If, however, fairness is based on the judge's legal knowledge and on the rulings he makes, then it is possible that due process will be violated when a case is heard before a non-attorney judge. The dissent in *North*[59] pointed out that a judge must accept guilty pleas, rule on questions of search and seizure, advise the defendant of his rights, and make certain that a confession is voluntary. "A judge ignorant of the law is simply incapable of performing these functions."[60] If the judge cannot understand the finer legal points needed to make a decision, then some of his decisions will be arbitrary when viewed within the framework of the legal system. As seen from this perspective, a lay judge is not capable of safeguarding a defendant's rights, and a fair trial cannot be had by a defendant. Although the analysis of fairness as viewed from the perspective of the legal system is preferable, the courts have looked at fairness by focusing on the impartiality of the judge, and in the

55. Estes v. Texas, 381 U.S. 532 (1965).
56. Brief for Appellant at 14-15, Young v. Konz, 88 Wash. 2d 276, 558 P.2d 791 (1977).
57. *See In re* Murchison, 349 U.S. 133 (1955).
58. Roberts v. New York City, 295 U.S. 264 (1935); Beck v. Washington, 369 U.S. 541 (1962).
59. 427 U.S. at 343-45 (Stewart, J., dissenting).
60. *Id.* at 344.

absence of prejudice, it has been found that due process was not violated.

B. Due Process and the State Constitution

The wording of the United States Constitution and the Washington State Constitution is similar but not identical.[61] In construing the state due process clause, the state court has basically three options: (1) it can follow the rule as set down by the United States Supreme Court; (2) it can use a presumption that the United States Supreme Court decisions construing the constitution will be followed; or (3) it can look at the state claim independently.[62] State courts generally tend to follow the United States Supreme Court decisions, but at times look to the state constitution as a basis for providing more protection for the individual.[63] The state court does not have the power to interpret the federal constitution more strictly than the Supreme Court will allow, but the state court can impose greater restrictions on police activity or procedures than those which would be required to uphold the federal standards.[64] The federal guarantees are the minimums which must be followed by the states. The Supreme Court acknowledged this position when in referring to the New York special jury system it said:

> Beyond requiring conformity to standards of fundamental fairness that have won legal recognition, this Court always has been careful not so to interpret this Amendment as to impose uniform procedures . . . .
>
> We adhere to this policy of self-restraint and will not use this great centralizing Amendment to standardize the administration of justice and stagnate local variations in practice.[65]

This type of state constitutional analysis might have been applied in the *Young* situation, but was not. The court followed the Supreme Court's holding in *North*, when an actual review of the state constitutional situation would have been preferable. Under this approach, the court could have held that the minimum requirements to be adhered to would include the allowance of non-attorney justices of the peace if a de novo trial is allowed after a plea

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61. "No person shall be deprived of life, liberty, or property, without due process of law." WASH. CONST. art. I, § 3. "[N]or shall any state deprive any person of life, liberty, or property, without due process of law." U.S. CONST. amend. XIV, § 1.
62. Howard, *State Courts and Constitutional Rights in the Day of the Burger Court*, 62 VA. L. REV. 873, 905-06 (1976).
63. *Id.* at 895. *See also* People v. Brisendine, 13 Cal. 3d 528, 531 P.2d 1099, 119 Cal. Rptr. 315 (1975); People v. Anderson, 6 Cal. 3d 628, 493 P.2d 880, 100 Cal. Rptr. 152 (1972).
64. *See* Oregon v. Hass, 420 U.S. 714 (1975).
65. Fay v. New York, 332 U.S. 261, 294-95 (1947).

of either guilty or not guilty. The more protective restrictions which could be applied by a state court would allow the justice courts to be abolished.

It could be argued that the Washington system does not meet the federal minimum requirements because there is no provision for a de novo trial after a plea of guilty. Although the court in *Young* said the defendant is protected by his right to appeal, this may be insufficient. He should have a right to a trial de novo, and therefore, the justice system in Washington would appear to violate a defendant's right to due process. If the court had used this analysis, the justice courts could have been abolished; the legislative authority would not have been impinged upon because the justice courts were in violation of the state constitution's due process clause.

V. CONCLUSION

The Washington Supreme Court in *Young* held that a case heard by a non-attorney judge did not violate due process even though there was no provision for a trial de novo after the defendant had entered a plea of guilty in the justice court. The court did not take the opportunity to analyze the situation in terms of state constitutional grounds. The court indicated that it did think it would be preferable to have all cases heard before attorney judges. As a result of the court's inaction, change will have to come, if at all, from the legislature.

Elaine G. Rollins '78