Florida Law Review

Volume 1 | Issue 3 Article 13

March 2021

# Constitutional Law: Duty of Trial Court to Appoint Defense Counsel in Non-Capital Case

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most of the juries of today indicates strongly that this system represents in reality nothing more than an effort to provide a trial by one's "peers" in the factually true sense that constitutes the only excuse for trial by jury.

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## CONSTITUTIONAL LAW: DUTY OF TRIAL COURT TO APPOINT DEFENSE COUNSEL IN NON-CAPITAL CASE

*Wade v. Mayo, 68 Sup. Ct. 1270 (1948)*

Petitioner, a minor of eighteen years, was brought to trial in the Criminal Court of Record of Palm Beach County, charged with breaking and entering. Claiming lack of funds to retain counsel, petitioner asked the trial judge to appoint a defense counsel. This request was refused. During the trial petitioner personally cross-examined witnesses and took the stand in his own defense. The jury found petitioner guilty, and he was sentenced to five years' imprisonment. Petitioner brought habeas corpus proceedings in the state courts, alleging deprivation of his liberty without due process of law, but he was denied this relief.[1] One year later petitioner brought habeas corpus proceedings in the federal courts, again alleging that his conviction was void as being a denial of due process of law. The district court ruled for the petitioner, and this decision was reversed by the circuit court of appeals.[2] On certiorari, HELD, petitioner's trial was so conducted as to deprive him of due process of law, and the district court properly entertained the petition for writ of habeas corpus. Judgment reversed, four justices dissenting on the ground that petitioner had not properly exhausted his remedies within the state courts.

The Constitution of Florida guarantees to an accused the right to be "heard by himself, or counsel, or both";[3] this has been construed to mean that, while accused may be heard by counsel, no duty is thereby placed upon the state to provide such counsel.[4] By statute, the duty of

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[1]Wade v. Kirk, 155 Fla. 906, 23 So.2d 163 (1945).

[2]Mayo v. Wade, 158 F.2d 614 (C. C. A. 5th 1946).

[3]FLA. CONST., DECL. OF RIGHTS §11.

[4]Johnson v. Mayo, 158 Fla. 264, 28 So.2d 585 (1946), *cert. denied,* 329 U. S. 804, 67 Sup. Ct. 492, 91 L. Ed. 687 (1947). In Betts v. Brady, 316 U. S. 455, 62

the state is extended to appoint counsel to indigent defendants accused of capital offenses,[5] but the Florida Supreme Court has held that there is no duty to appoint defense counsel in cases involving non-capital crimes such as larceny of an automobile,[6] manslaughter,[7] and adultery.[8]

The United States Constitution guarantees to persons accused of federal crimes the right to assistance of counsel,[9] and the Supreme Court has held that a positive duty is thereby placed upon the court in federal prosecutions to appoint counsel for indigent defendants who do not intelligently waive this right, whether the crime is capital or non-capital in nature.[10] The United States Constitution also provides that no state shall deprive a person of life, liberty, or property without due process of law;[11] therefore, in state prosecutions of capital crimes, an indigent defendant incapable of making his own defense must have counsel appointed in his behalf, and such appointment must be effective and not a mere sham.[12] In state prosecutions of non-capital crimes, the Supreme Court has held that the Fourteenth Amendment does not require that defense counsel be appointed in every case, but only when such appointment is necessary in order to preserve fundamental fairness in the trial.[13] Thus counsel must be appointed when the trial centers around such technical legal questions as the jurisdiction of the court,[14] the degrees

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Sup. Ct. 1252, 86 L. Ed. 1595 (1942), the Supreme Court admits that such construction of a state constitutional provision cannot be said to be wholly without reasonable basis.

[5]FLA. STAT. 1941, §909.21.

[6]Johnson v. Mayo, 158 Fla. 264, 28 So.2d 585 (1946), *cert. denied*, 329 U. S. 804, 67 Sup. Ct. 492, 91 L. Ed. 687 (1947).

[7]Johnson v. State, 148 Fla. 510, 4 So.2d 671 (1941).

[8]Watson v. State, 142 Fla. 218, 194 So. 640 (1940).

[9]U. S. CONST. AMEND. VI.

[10]Johnson v. Zerbst, 304 U. S. 458, 58 Sup. Ct. 1019, 82 L. Ed. 1461 (1938) .

[11]U. S. CONST. AMEND. XIV, §1.

[12]Powell v. Alabama, 287 U. S. 45, 53 Sup. Ct. 55, 77 L. Ed. 158 (1932). In no case does the United States Constitution guarantee the assistance of the most brilliant counsel. United States *ex rel.* Mitchell v. Thompson, 56 F. Supp. 683 (S. D. N. Y. 1944). Denial of a continuance between appointment and trial does not, standing alone, constitute a deprivation of the right to assistance of counsel, although this coupled with other factors could convert the appointment into a sham. Avery v. Alabama, 308 U. S. 444, 60 Sup. Ct. 321, 84 L. Ed. 377 (1940).

[13]Betts v. Brady, 316 U. S. 455, 62 Sup. Ct. 1252, 86 L. Ed. 1595 (1942); Wright v. Brady, 129 F.2d 109 (C. C. A. 4th 1942).

[14]Rice v. Olson, 324 U. S. 786, 65 Sup. Ct. 989, 89 L. Ed. 1367 (1945).

of robbery,[15] or the requisite elements of burglary.[16]

Appointment of counsel has also been held necessary when: accused was an ignorant nineteen-year-old Negro who was arraigned, tried, convicted, and sentenced on the same day;[17] defendant was a dope addict and chronic alcoholic;[18] accused was so ignorant of court procedure that he failed to realize that he himself was on trial as well as his co-defendant.[19] Failure to appoint counsel, however, was not a denial of due process when: accused took no steps to obtain counsel until date of trial and declined offer of the court to send for any attorney of defendant's choosing;[20] accused had benefit of state-appointed counsel at trial but not in preparation of appeal;[21] accused made no request for counsel nor made any showing of indigency or mental incapacity;[22] accused was a mature previous offender familiar with criminal trials.[23]

In the principal case petitioner, although a minor, appeared to be familiar with court procedure and by no means utterly incapable of defending himself. As the case illustrates, the entire state procedure in a non-capital case may be set aside by a finding of fact in a federal court that the accused was incapable of defending himself and that failure to appoint defense counsel resulted in fundamental unfairness and denial of due process. A strong case is thus made as to the advisability of directing state trial judges by statute to appoint counsel to assist indigent defendants accused of felonies, whether capital or not, whenever the assistance of such counsel is not expressly waived.

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[15]Williams v. Kaiser, 323 U. S. 471, 65 Sup. Ct. 363, 89 L. Ed. 398 (1945).

[16]Mitchell v. Youell, 130 F.2d 880 (C. C. A. 4th 1942).

[17]Coates v. State, 180 Md. 502, 25 A.2d 676, *cert. denied,* 317 U. S. 625, 63 Sup. Ct. 33, 87 L. Ed. 506 (1942).

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

[19]Williams v. Commonwealth, 33 Ky. L. 330, 110 S. W. 339 (1908).

[20]Wilson v. Lanagan, 99 F.2d 544 (C. C. A. 1st 1938), *cert. denied,* 306 U. S. 634, 59 Sup. Ct. 486, 83 L. Ed. 1035 (1939).

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

[22]Holland v. Commonwealth, 241 Ky. 813, 45 S. W.2d 476 (1932).

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