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Constitutional Law - Right of Defendant in Criminal Actions to Assistance of Counsel

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CASE NOTES

CONSTITUTIONAL LAW—RIGHT OF DEFENDANT IN CRIMINAL ACTIONS TO ASSISTANCE OF COUNSEL. "In all criminal prosecutions, the accused shall enjoy the right . . . to have the assistance of Counsel for his defense"—in such broad language speaks the Constitution of the United States, in its Sixth Amendment, in guaranteeing to the people of the United States their immunity against ever being forced into the undesirable position of standing alone before the bar, accused of committing an offense against the laws of the nation, without having at their side, if desired, a trained and competent officer of the court, one who has been initiated into the intricacies of court-room procedure, to assist and guide them in the preparation of their defense.

It is to the credit of the early American colonists, as well as to the Constitution makers who followed their lead, that they rejected the common law rule existant in England when they first set up their own constitutions, declarations of rights and statutes. This common law rule, as stated in *Powell v. Alabama*, 287 US 45, (1932) was that "a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel." See Holdsworth, *History of English Law*, Vol. III, p. 616, Vol. IX, p. 224. This rule was bitterly decried by notable leaders of the legal profession including Blackstone until England by statutes in 1688 and 1836 amended its law to extend the privileges of a full defense to cases involving treason and felonies respectively.

In at least twelve of the thirteen original colonies, the right of an accused to counsel in a trial of any criminal charge was fully recognized (*Powell v Alabama* (US) supra), although in one or two instances the right was, and still is conferred in capital cases only. Thus in *McDonald v. Com.* (1899) 173 Mass 322, 53 NE 874, (affirmed on other grounds in (1901) 180 US 311, 21 S Ct 389) it was stated by the court that the constitutional guaranty extended in Massachusetts only to Indictments for murder.

However, it is now generally the law in the United States, both under Federal and State Constitutions as supplemented by statutes, that an accused is guaranteed the right to have the assistance of counsel at his trial. 84 L Ed 384 (Annotation, *Federal Cases*).

Many states do not provide the sweeping guaranty of assistance of counsel to all defendants in criminal prosecutions that appears in the Sixth Amendment and thus secures the right in Federal Courts. And, as stated in *Betts v. Brady*, 316 US 455, (1941) the Sixth Amendment applies only to trials in Federal Courts, and, further, that the view that the Fourteenth Amendment made the Sixth applicable to the states has never been accepted by a majority of the court, although such has been the basis for many dissents. However, the Fourteenth Amendment does prohibit the conviction and incarceration of one whose trial is offensive to the common and fundamental ideas of fairness and right, and while want of counsel in a particular case may result in a conviction lacking in such fundamental fairness, we cannot say that the amendment embodies an inexorable command that no trial for any offense, or in any court, can be fairly conducted and justice accorded a defendant who is not represented by counsel. (*Betts v. Brady* (US supra)

The court, in the above cited case, refute the theory that the right of accused to assistance of counsel in criminal prosecutions was fundamental. That point was the basis of decision in *Powell v. Alabama*, supra, and is the foundation on which the dissenting opinion of Justice Black is built in *Betts v. Brady* (supra). Justices Douglas and Murphy joined in that dissent on the ground that if the Fourteenth Amendment did not make the Sixth

applicable to states, that then the right should be viewed as fundamental, one that cannot be vitiated by judicial decree.

Again in *Carter v. People of State of Illinois*, 67 S Ct 216, (1946) these three Justices, joined by Justice Rutledge, dissented from the decision of the majority of the court that the petitioner's constitutional rights had not been violated. In that action, the petitioner in 1945 sought his release from prison on a writ of error to the Supreme Court of Illinois, after having been sentenced to prison for 99 years for murder in 1928 upon his plea of guilty to the indictment therefor. His petition is based on the contravention of his constitutional right to assistance of counsel alleged to be guaranteed him under the Fourteenth Amendment. The Illinois Supreme Court affirmed the original conviction and the matter was brought before the Supreme Court of the United States on writ of certiorari granted in 382 US——, 66 S Ct 1009 (1946). The facts of the case, resulting in the conviction of murder, were as follows:

> Petitioner, a Negro, was 30 years of age at the time of the relevant events in 1928. He had no schooling, although he was able to read and write. He was of average mentality and had never before run afoul of the law. During the preceding eleven years he had worked as a cook and a mechanic. By reputation he was quiet and industrious.
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> While driving a car back from a fishing trip, petitioner became involved in a bitter dispute with the driver of a horse-drawn wagon over the right of way on a road. This driver, a white man, refused to give petitioner enough room to pass, whereupon a violent argument ensued; rocks and gravel were thrown at petitioner's car. Eventually, when the dispute was renewed after a short interval, the driver got off his wagon and advanced toward petitioner's car. Petitioner claimed that he thought the driver was reaching into his shirt for a gun, so he got out of his car and fired three times killing the driver.
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> Petitioner was taken into custody that same evening and was questioned far into the night. Twelve days later he was indicted, and three days after that, he was arraigned without the benefit of counsel, it being alleged by petitioner that he was held incommunicado from the time of his arrest. He was handed a copy of the five page indictment, under which he could have been convicted of first degree murder, lesser degrees of homicide, voluntary or involuntary manslaughter, assault with a deadly weapon, or lesser degrees of assault. Various considerations of defense, including self defense, were accordingly raised. Upon being asked how he pleaded, he expressed a desire to plead guilty as charged in the indictment. There is no affirmative evidence that petitioner understood the necessary consequences of his plea or that, fully appreciating all of his legal rights, he intelligently waived his right to counsel or to jury trial. All that appears is that he "persisted" in his desire to plead guilty and that the court convicted him of murder, the statutory punishment for which was death by electrocution or imprisonment for any period from fourteen years to life.

As stated by Justice Murphy in his separate dissent, these facts do not appear to add up to due process of law. It is to be noted that in this late case, no mention has been made of the applicability of the Sixth Amendment to state courts and state trials through the operation of the Fourteenth Amendment. Apparently this theory has been discarded by Justices Black, Douglas and Murphy, by reputation the protectors of the civil liberties of the individual under the Federal Constitution, after their lack of success with it in *Betts v Brady* (supra). In view of the widening scope of rights and privileges susceptible of protection under the due process clause of the Fourteenth Amendment in late years, it has perhaps been considered more pragmatic to base their contentions on such grounds rather than continuing the attempt to bring the Sixth Amendment into play regarding restrictions on State Governments, as others of the first eight amendments have been, through their construction in the light of the Fourteenth Amendment.

It should be pointed out that the majority of the court in the case based their affirming decision on the principal grounds that the Supreme Court of Illinois, in reviewing the original proceedings, were confined by statute governing appellate procedure to a review of what is in that jurisdiction referred to as the common law record—consisting of the indictment, the judgment on guilty plea, minute entry bearing on sentence and the sentence itself—and that the United States Supreme Court could review only the same record. However, the majority of the court did go further and state that it appearing from the judgment on guilty plea that defendant had been fully appraised of his rights and consciously chose to dispense with counsel, they could not consider that he had been deprived of due process of law. Petitioner was referred back to the appropriate state courts and remedies provided to appeal other possible grounds for error such as his racial handicap and mental capacity and his ability or inability to make an intelligent choice.

But, as urged by Justice Murphy, in his strong dissent, when other undisputed facts appeared in the record which were gathered from testimony taken at a hearing after conviction in mitigation of sentence and from information supplied the Illinois State Penitentiary by the State's Attorney, in a case such as this involving a man's life or liberty, these facts should not be disregarded when justice demands their use.

To any observer, it must appear that in reaching any intelligent decision, all facts available and competent as evidence should be taken into consideration and judgment rendered thereon. Excessive dependence on legal technicalities seem singularly out of place where a man's freedom is at issue—any means of insuring a thorough scanning of all the material facts available should be adopted in such cases. Particularly, here, where the majority ruling will remand the petitioner to his state courts to commence again the long and devious quest for his freedom, which might well call for an ultimate adjudication of his rights again by the United States Supreme Court.

In conclusion, looking to the effect of a waiver by the accused of his right to assistance of counsel in a criminal prosecution, there can be no doubt but that such defendant may choose to dispense with counsel or to plead guilty if he so desires. However, there is considerable merit in the suggestion of Justice Murphy in the dissenting opinion above referred to, that such election by an accused should be conditioned to the presence of affirmative evidence of an intelligent waiver before it can be valid. He proceeds, "It is no excuse that the individual is willing to forego certain basic rights unless we are certain that he has a full and intelligent comprehension of what he is doing. Otherwise we take from due process of law a substantial part of its content."

The attractiveness of the parcel is no guaranty of the worth of its contents. Similarly, the adherence to form displayed in the judicial record should not give rise to the presumption that the substantial rights of the parties to the action have been effectively preserved. And no sound reason is noted that might operate as a rebuttal of the virtues manifest in the test advanced by Justice Murphy for the termination of the validity of a waiver of the basic rights of an accused.

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PLEADING—JOINDER OF CAUSES OF ACTION—CAUSES OF ACTION ARISING OUT OF THE SAME TRANSACTION OR TRANSACTIONS CONNECTED WITH THE SAME SUBJECT OF ACTION.—Plaintiff while employed by defendant company suffered personal injuries as the proximate result of the defendant's negligence. Plaintiff recovered in some measure from his injuries and reported to defendants manager for "light work". Upon refusal of plaintiff to sign a release exonerating defendant from liability for said injuries, plaintiff was discharged. Thereupon plaintiff brought an action alleging as his first