GIDEON v. WAINWRIGHT (1963)

372 U.S. 335

FIFTH AMENDMENT

In all criminal prosecutions, the accused shall…have the Assistance of Counsel for his defense.

FOURTEENTH AMENDMENT

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

FACTS: Between midnight and 8am on June 3, 1961, someone broke into Bay Harbor Pool Room in Panama City, Florida. The burglar broke a door, smashed a cigarette machine and a record player and stole money from the cash register. A witness reported to the police that he had see Clarence Earl Gideon in the poolroom at around 5:30am. He also reported that he saw a wine bottle and money in Gideon's pockets. With only this information, the police arrested Gideon.

Gideon was charged with the felony of breaking and entering with intent to commit petty larceny, or theft. Gideon arrived at his court hearing without an attorney, as he could not afford one. The Court told Gideon that they could not appoint him an attorney as the laws of Florida only authorize appointed counsel when a defendant is charged with a capital offense. Gideon insisted that, according to the United States Supreme Court, he was entitled to counsel.

Gideon represented himself, emphasizing his innocence as to the charges against him. The jury found Gideon guilty and he was sentenced to five years in state prison. Using the prison library, a pencil and prison stationary, Gideon drafted and applied to the State Supreme Court for a writ of habeas corpus, a request to bring a prisoner before the court to determine if the person's imprisonment is lawful, on the grounds that his conviction and imprisonment violated his rights under the U.S. Constitution. The Florida Supreme Court denied Gideon's request.

Gideon then appealed to the U.S. Supreme Court in a lawsuit against the Secretary of the Florida Department of Corrections, who, at the time of the trial, was Louie L. Wainwright. Gideon was The Supreme Court appointed Abe Fortas, prominent Washington D.C. attorney and future Supreme Court justice, to represent Gideon.

ISSUE: Does the Sixth Amendment's right to counsel in criminal cases extend to defendants charged with felonies in state courts?

HELD: Yes, by a 9-0 vote of the court, the assistance of counsel is a fundamental right essential to a fair trial.

REASONING: MR. JUSTICE BLACK delivered the opinion of the Court.

Since 1942, when *Betts v. Brady*, was decided by a divided Court, the problem of a defendant's federal constitutional right to counsel in a state court has been a continuing source of controversy and litigation in both state and federal courts. To give this problem another review here, we granted certiorari.

Treating due process as "a concept less rigid and more fluid than those envisaged in other specific and particular provisions of the Bill of Rights," the Court held that refusal to appoint counsel under the particular facts and circumstances in the Betts case was not so "offensive to the common and fundamental ideas of fairness" as to amount to a denial of due process. Since the facts and circumstances of the two cases are so nearly indistinguishable, we think the *Betts v. Brady* holding if left standing would require us to reject Gideon's claim that the Constitution guarantees him the assistance of counsel. Upon full reconsideration we conclude that *Betts v. Brady* should be overruled.

The Sixth Amendment provides, "In all criminal prosecutions, the accused shall enjoy the right . . . to have the Assistance of Counsel for his defence." We have construed this to mean that in federal courts counsel must be provided for defendants unable to employ counsel unless the right is competently and intelligently waived.

We think the Court in *Betts* had ample precedent for acknowledging that those guarantees of the Bill of Rights which are fundamental safeguards of liberty immune from federal abridgment are equally protected against state invasion by the Due Process Clause of the Fourteenth Amendment. This same principle was recognized, explained, and applied in *Powell v. Alabama* (1932), a case upholding the right of counsel, where the Court held that despite sweeping language to the contrary in *Hurtado v. California* (1884), the Fourteenth Amendment "embraced" those "`fundamental principles of liberty and justice which lie at the base of all our civil and political institutions,'" even though they had been "specifically dealt with in another part of the federal Constitution."

Explicitly recognized to be of this "fundamental nature" and therefore made immune from state invasion by the Fourteenth, or some part of it, are the First Amendment's freedoms of speech, press, religion, assembly, association, and petition for redress of grievances. For the same reason, though not always in precisely the same terminology, the Court has made obligatory on the States the Fifth Amendment's command that private property shall not be taken for public use without just compensation, the Fourth Amendment's prohibition of unreasonable searches and seizures, and the Eighth's ban on cruel and unusual punishment.

We accept *Betts v. Brady*'s assumption, based as it was on our prior cases, that a provision of the Bill of Rights which is "fundamental and essential to a fair trial" is made obligatory upon the States by the Fourteenth Amendment. We think the Court in *Betts* was wrong, however, in concluding that the Sixth Amendment's guarantee of counsel is not one of these fundamental rights. Ten years before *Betts v. Brady*, this Court, after full consideration of all

the historical data examined in Betts, had unequivocally declared that "the right to the aid of counsel is of this fundamental character." *Powell v. Alabama*(1932).

In 1938 this Court said:

> "[The assistance of counsel] is one of the safeguards of the Sixth Amendment deemed necessary to insure fundamental human rights of life and liberty. . . . The Sixth Amendment stands as a constant admonition that if the constitutional safeguards it provides be lost, justice will not `still be done.'" *Johnson v. Zerbst* (1938)

In returning to these old precedents, sounder we believe than the new, we but restore constitutional principles established to achieve a fair system of justice. Not only these precedents but also reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

A defendant's need for a lawyer is nowhere better stated than in the moving words of Mr. Justice Sutherland in *Powell v. Alabama*:

> "The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small and sometimes no skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence."

The Court in *Betts v. Brady* departed from the sound wisdom upon which the Court's holding in *Powell v. Alabama* rested. Florida, supported by two other States, has asked that *Betts v. Brady* be left intact. Twenty-two States, as friends of the Court, argue that *Betts* was "an anachronism when handed down" and that it should now be overruled. We agree. The judgment is reversed and the cause is remanded to the Supreme Court of Florida for further action not inconsistent with this opinion.

Reversed.

MR. JUSTICE CLARK, concurring in the result.

In *Bute v. Illinois* (1948), this Court found no special circumstances requiring the appointment of counsel but stated that "if these charges had been capital charges, the court would have been required, both by the state statute and the decisions of this Court interpreting the Fourteenth Amendment, to take some such steps." Prior to that case I find no language in any cases in this Court indicating that appointment of counsel in all capital cases was required by the Fourteenth Amendment. That the Sixth Amendment requires appointment of counsel in "all criminal prosecutions" is clear, both from the language of the Amendment and from this Court's interpretation.

The Constitution makes no distinction between capital and noncapital cases. The Fourteenth Amendment requires due process of law for the deprival of "liberty" just as for deprival of "life," and there cannot constitutionally be a difference in the quality of the process based merely upon a supposed difference in the sanction involved. How can the Fourteenth Amendment tolerate a procedure which it condemns in capital cases on the ground that deprival of liberty may be less onerous than deprival of life - a value judgment not universally accepted - or that only the latter deprival is irrevocable? I can find no acceptable rationalization for such a result, and I therefore concur in the judgment of the Court.

MR. JUSTICE HARLAN, concurring.

The right to appointed counsel had been recognized as being considerably broader in federal prosecutions but to have imposed these requirements on the States would indeed have been "an abrupt break" with the almost immediate past. The declaration that the right to appointed counsel in state prosecutions, as established in *Powell v. Alabama*, was not limited to capital cases was in truth not a departure from, but an extension of, existing precedent. The Court has come to recognize, in other words, that the mere existence of a serious criminal charge constituted in itself special circumstances requiring the services of counsel at trial.

In agreeing with the Court that the right to counsel in a case such as this should now be expressly recognized as a fundamental right embraced in the Fourteenth Amendment, I wish to make a further observation. When we hold a right or immunity, valid against the Federal Government, to be "implicit in the concept of ordered liberty" and thus valid against the States, I do not read our past decisions to suggest that by so holding, we automatically carry over an entire body of federal law and apply it in full sweep to the

States. Any such concept would disregard the frequently wide disparity between the legitimate interests of the States and of the Federal Government, the divergent problems that they face, and the significantly different consequences of their actions.

On these premises I join in the judgment of the Court.