83 S.Ct. 792, 93 A.L.R.2d 733, 9 L.Ed.2d 799, 23 O.O.2d 258

83 S.Ct. 792
Supreme Court of the United States

Clarence Earl GIDEON, Petitioner,
v.
Louie L. WAINWRIGHT, Director, Division of Corrections.

No. 155.
|
Argued Jan. 15, 1963.
|
Decided March 18, 1963.

Mr. Justice BLACK delivered the opinion of the Court.

Petitioner was charged in a Florida state court with having broken and entered a poolroom with intent to commit a misdemeanor. This offense is a felony under Florida law. Appearing in court without funds and without a lawyer, petitioner asked the court to appoint counsel for him, whereupon the following colloquy took place:

> 'The COURT: Mr. Gideon, I am sorry, but I cannot appoint Counsel to represent you in this case. Under the laws of the State of Florida, the only time the Court can appoint Counsel to represent a Defendant is when that person is charged with a capital offense. I am sorry, but I will have to deny your request to appoint Counsel to defend you in this case.
>
> 'The DEFENDANT: The United States Supreme Court says I am entitled to be represented by Counsel.'

Put to trial before a jury, Gideon conducted his defense about as well as could be expected from a layman. He made an opening statement to the jury, cross-examined the State's witnesses, presented witnesses in his own defense, declined to testify himself, and made a short argument 'emphasizing his innocence to the charge contained in the Information filed in this case.' The jury returned a verdict of guilty, and petitioner was sentenced to serve five years in the state prison. *** 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.[2] To give this problem another review here, we granted certiorari. Since Gideon was proceeding in forma pauperis, we appointed counsel to represent him and requested both sides to discuss in their briefs and oral arguments the following: 'Should this Court's holding in *Betts v. Brady* be reconsidered?'

I.

The facts upon which Betts claimed that he had been unconstitutionally denied the right to have counsel appointed to assist him are strikingly like the facts upon which Gideon here bases his federal constitutional claim. Betts was indicted for robbery in a Maryland state court. On arraignment, he told the trial judge of his lack of funds to hire a lawyer and asked the court to appoint one for him. Betts was advised that it was not the practice in that county to appoint counsel for indigent defendants except in murder and rape cases. He then pleaded not guilty, had witnesses summoned, cross-examined the State's witnesses, examined his own, and chose not to testify himself. He was found guilty by the judge, sitting without a jury, and sentenced to eight years in prison. Like Gideon, Betts sought release by habeas corpus, alleging that he had been denied the right to assistance of counsel in violation of the Fourteenth Amendment. Betts was denied any relief, and on review this Court affirmed. It was held that a refusal to appoint counsel for an indigent defendant charged with a felony did not necessarily violate the Due Process Clause of the Fourteenth Amendment, which for reasons given the Court deemed to be the only applicable federal constitutional provision. The Court said:

> 'Asserted denial (of due process) is to be tested by an appraisal of the totality of facts in a given case. That which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may, in other circumstances, and in the light of other considerations, fall short of such denial.'

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.

II.

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.[3] Betts argued that this right is extended to indigent defendants in state courts by the Fourteenth Amendment. In response the Court stated that, while the Sixth Amendment laid down 'no rule for the conduct of the states, the question recurs whether the constraint laid by the amendment upon the national courts expresses a rule so fundamental and essential to a fair trial, and so, to due process of law, that it is made obligatory upon the states by the Fourteenth Amendment.' In order to decide whether the Sixth Amendment's guarantee of counsel is of this fundamental nature, the Court in Betts set out and considered '(r)elevant data on the subject * * * afforded by constitutional and statutory provisions subsisting in the colonies and the states prior to the inclusion of the Bill of Rights in the national Constitution, and in the constitutional, legislative, and judicial history of the states to the present date.' On the basis of this historical data the Court concluded that 'appointment of counsel is not a fundamental right, essential to a fair trial.' It was for this reason the Betts Court refused to accept the contention that the Sixth Amendment's guarantee of counsel for indigent federal defendants was extended to or, in the words of that Court, 'made obligatory upon the states by the Fourteenth Amendment'. Plainly, had the Court concluded that appointment of counsel for an indigent criminal defendant was 'a fundamental right, essential to a fair trial,' it would have held that the Fourteenth Amendment requires appointment of counsel in a state court, just as the Sixth Amendment requires in a federal court.

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, 287 U.S. 45 (1932), a case upholding the right of counsel, where the Court held that despite sweeping language to the contrary in Hurtado v. California, 110 U.S. 516 (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.'

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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, 287 U.S. 45 (1932). While the Court at the close of its Powell opinion did by its language, as this Court frequently does, limit its holding to the particular facts and circumstances of that case, its conclusions about the fundamental nature of the right to counsel are unmistakable.

The fact is that in deciding as it did—that 'appointment of counsel is not a fundamental right, essential to a fair trial'—the Court in Betts v. Brady made an abrupt break with its own well-considered precedents. 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 wide—spread 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.

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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 DOUGLAS, concurring in the result.

[*Justice Douglas details the relationship between the Bill of Rights and the Fourteenth Amendment, concluding that, "rights protected against state invasion by the Due Process Clause of the Fourteenth Amendment are not watered-down versions of what the Bill of Rights guarantees."*]

Mr. Justice CLARK, concurring in the result.

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[T]he 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.

I agree that Betts v. Brady should be overruled, but consider it entitled to a more respectful burial than has been accorded, at least on the part of those of us who were not on the Court when that case was decided.

I cannot subscribe to the view that Betts v. Brady represented 'an abrupt break with its own well-considered precedents.' In 1932, in Powell v. Alabama, a capital case, this Court declared that under the particular facts there presented—'the ignorance and illiteracy of the defendants, their youth, the circumstances of public hostility * * * and above all that they stood in deadly peril of their lives'—the state court had a duty to assign counsel for the trial as a necessary requisite of due process of law. It is evident that these limiting facts were not added to the opinion as an after-thought; they were repeatedly emphasized and were clearly regarded as important to the result.

Thus when this Court, a decade later, decided Betts v. Brady, it did no more than to admit of the possible existence of special circumstances in noncapital as well as capital trials, while at the same time insisting that such circumstances be shown in order to establish a denial of due process. 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.

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The special circumstances rule has been formally abandoned in capital cases, and the time has now come when it should be similarly abandoned in noncapital cases, at least as to offenses which, as the one involved here, carry the possibility of a substantial prison sentence. (Whether the rule should extend to all criminal cases need not now be decided.) This indeed does no more than to make explicit something that has long since been foreshadowed in our decisions. ***

