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Reynolds Vs. Cochran

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Court : US Supreme Court

Decided On : Mar-20-1961

Appeal No. : 365 U.S. 525

Appellant : Reynolds

Respondent : Cochran

Judgement :

Reynolds v. Cochran - 365 U.S. 525 (1961)
U.S. Supreme Court Reynolds v. Cochran, 365 U.S. 525 (1961)

Reynolds v. Cochran

No. 115

Argued March 2, 1961

Decided March 20, 1961

365 U.S. 525

CERTIORARI TO THE SUPREME COURT OF FLORIDA

SYLLABUS

In his petition for habeas corpus, filed in a State Supreme Court, petitioner alleged that, after he had finished serving his terms for two separate felonies of which he had been convicted and after he had been released, he was arrested by state authorities, taken to another county, and there brought to trial two days after his arrest on a charge of being a "second offender" in violation of a state statute. He further alleged that he told the trial court that he had already retained counsel for his own defense, that his counsel was on the way and was due to arrive on the day of the trial, and that he asked that his trial be postponed until his counsel arrived, but that the court denied a continuance and proceeded to convict him on the record of his two previous convictions and his admission that he had been guilty of those offenses, and he was sentenced to imprisonment. The State Supreme Court dismissed his petition without a hearing.

Held: the judgment is reversed, and the cause is remanded for further proceedings. Pp. 365 U. S. 526 -533.

(a) Petitioner was entitled to an opportunity to prove his claim that he had been deprived of due process by the refusal of the trial judge to grant his motion for a continuance in order that he might have the assistance of the counsel he had retained in the proceedings against him. *Chandler v. Fretag,* 348 U. S. 3 . Pp. 365 U. S. 527 -531.

(b) If the trial court erred in denying petitioner's motion for a continuance, that error was not harmless under the facts of this case. Pp. 365 U. S. 531 -533.

Reversed and remanded.

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MR. JUSTICE BLACK delivered the opinion of the Court.

In 1956, petitioner was convicted of grand larceny in the Criminal Court of Polk County, Florida, and sentenced to serve two years in prison. In December, 1957, with time for good behavior, petitioner was released from prison and discharged from custody as an absolutely free man. Some two months after his release and

discharge, the Polk County prosecutor filed an information against petitioner charging that he "has been convicted of two (2) felonies under the laws of the State of Florida, contrary to Section 775.09, Florida Statutes, 1957 (F.S.A.) [Footnote 1] . . . and against the peace and dignity of the State of Florida." The two convictions referred to were the 1956 conviction for grand larceny and a 1934 conviction for robbery for which petitioner had also completely served his sentence. Upon the filing of this information, petitioner was promptly arrested, arraigned and, according to the judgment of the trial court, "did then and there freely and voluntarily plead guilty to the Information filed." The court then proceeded to find petitioner "guilty of the offense of Second Offender" and ordered that for "said offense, [he] be confined in the State Prison of Florida at hard labor for a term of Ten (10) Years." [Footnote 2] Petitioner later brought this

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original petition for habeas corpus in the Supreme Court of Florida challenging his confinement under this judgment on the ground that it was not authorized by the Florida second offender statute and that it violated both the State and the Federal Constitutions in several different respects. Despite the fact that none of the charges made by petitioner were denied by the State, the Florida court dismissed his petition without a hearing. [Footnote 3] We granted certiorari to consider the correctness of this peremptory denial of the petition in view of the serious nature of the charges made. [Footnote 4]

Since it is conceded by the State that the federal questions presented here were properly raised and passed on below, and since it is clear that, for the purposes of this proceeding, the facts set forth by petitioner must be accepted as true, [Footnote 5] we go directly to the charges made in

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the petition. Those charges were clearly stated by petitioner himself in the following excerpt from his rather crudely drawn application for habeas corpus:

"Your petitioner would show this Honorable Court that, at the time of his arrest, he was living in Volusia County, DeLand, Florida, that he was arrested without a warrant, that he was arrested on strength of a pick up order from Sheriff Office, Bartow, Polk County, Florida, that the arresting officer, a deputy sheriff of Volusia County, did not know why he was arresting your petitioner and did not have a warrant to make a legal arrest, further, that your petitioner was taken against his will across five (5) county lines, he said county lines being Volusia, Seminole, Orange, Osceala, into Polk County all of State of Florida, without his knowing why he was arrested or the arresting officer knowing why or what charge he was making arrest for; your petitioner was taken across the aforesaid counties by the arresting officer, a deputy sheriff of Volusia County, Florida."

"Your petitioner contends that once he was in the clutches of the Criminal Court of Record in and for Polk County Florida; he was a convicted person before he was ever tried."

"To support the above statement, your petitioner would show that he was forced to go before the court against his will; that once before the court, your petitioner informed the court that he then had legal counsel on the way to represent him in whatever charge may be; a better description of aforesaid known by Mrs. Sadie M. Bradley, 317 West Minncasata Avenue, DeLand, Volusia County, Florida, and, D.C. Laird, attorney at Law, Lakeland, Polk, Florida. That petitioner had been arrested on the 18th day of February, 1958, in Valusia County, and

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his attorney was to arrive this morning, this date being the 20th day day of February, 1958; that, after being so informed, the trial court so stated to your petitioner 'you do not need counsel in this case.' Counsel would not be of any assistance you your petitioner, 'No point in calling a Doctor to a man already dead.'"

"The trial court then proceeded to read off two (2) convictions from your petitioners record and then asked, You are guilty of these two convictions, are you not?

Petitioner saying yes your Honor, but the court, I find, you guilty of being a 'second offender' and sentence you Stephen Franklin Reynolds to ten (10) years in State Prison. . . ."

On the basis of these facts, petitioner contends, among other things, that his confinement is not authorized by the Florida second offender statute because he had already served the sentences imposed upon each of his prior convictions, [Footnote 6] and that such confinement violates the state and federal constitutional prohibitions against *ex post facto* laws and against double jeopardy. It would, of course, be entirely inappropriate under the circumstances of this case for this Court to consider the

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questions posed under state law. Nor do we find it necessary to consider these particular questions raised under the Federal Constitution beyond the observation that they certainly cannot fairly be characterized as frivolous. [Footnote 7] For we think it clear that this case must be reversed for a hearing in order to afford petitioner an opportunity to prove his allegations with regard to another constitutional claim -- that he was deprived of due process by the refusal of the trial judge to grant his motion for a continuance in order that he might have the assistance of the counsel he had retained in the proceeding against him. [Footnote 8]

In *Chandler v. Fretag,* [Footnote 9] we made it emphatically clear that a person proceeded against as a multiple offender has a constitutional right to the assistance of his own counsel in that proceeding. Under the facts of this case, as alleged in the petition filed before the Florida Supreme Court, the decision in *Chandler* is squarely in point and controlling. Under those facts, the statement of this Court in *Powell v. State of Alabama,* [Footnote 10] which provided the basis of our holding in *Chandler,* [Footnote 11] is wholly applicable:

"If, in any case, civil or criminal, a state or federal court were arbitrarily to refuse to hear a party by counsel, employed by and appearing for him, it reasonably may

not be

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doubted that such a refusal would be a denial of a hearing, and, therefore, of due process in the constitutional sense."

The State seeks to avoid the application of the holding in *Chandler* on the basis of a contention that, even if it was error for the trial judge to deny petitioner's motion for a continuance, that error was harmless under the facts of this case. The argument offered in support of this contention is that, since petitioner admitted the only fact at issue in the proceeding -- that he had been convicted of a previous felony in 1934 as charged in the information -- a lawyer would have been of no use to him. We find this argument totally inadequate to meet the decision in *Chandler.* Even assuming, which we do not, that the deprivation to an accused of the assistance of counsel when that counsel has been privately employed could ever be termed "harmless error," [Footnote 12] it is clear that such deprivation was not harmless under the facts as presented in this case. In the first place, petitioner asked for a continuance to enable him to consult with counsel before he admitted the truth of the charge of prior felony conviction. Thus, if petitioner had been allowed the assistance of his counsel when he first asked for it, we cannot know that counsel could not have found defects in the 1934 conviction that would have precluded its admission in a multiple offender proceeding. [Footnote 13]

Secondly, and perhaps even more importantly, the State's contention that this factual issue was the only

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issue in the proceeding seems to constitute an oversimplification of the matter. For, in addition to the constitutional issues mentioned above, able counsel appointed to represent petitioner in this Court has also pointed out that the proceeding involved a difficult question of statutory construction under Florida law. Counsel has pointed out, for example, that the Florida Supreme Court has never had occasion to pass upon the question whether the second offender statute may

be applied to reimprison a person who has completely satisfied the sentence imposed upon his second conviction and has been discharged from custody. In one case in which that question was argued, the Florida court found that it was not properly presented by the facts of the case before, it and then went on to say:

"On this question, there is a difference of opinion among the members of the Court, but, as it is not ripe for determination under the record here, no useful purpose could be served by discussing it. [Footnote 14]"

Moreover, another decision of that court has indicated that the statute permitting the filing of an information against a second offender "at any time" [Footnote 15] would not necessarily be interpreted so mechanically as to allow the second offender statute to hang over a defendant's head to the end of his natural life. [Footnote 16]

We, of course, express no opinion as to how his question of statutory construction should eventually be decided by the Florida courts. But its mere existence dramatically illustrates that, even in the most routine-appearing proceedings, the assistance of able counsel may be of

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inestimable value. Plainly, such assistance might have been of great value to petitioner here. The allegations of his petition for habeas corpus indicated, if true, that he had been denied the assistance of counsel he had retained. He is entitled to a hearing to establish the truth of those allegations. The case must therefore be, and is, reversed and remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

[Footnote 1]

"A person who, after having been convicted within this state of a felony or an attempt to commit a felony, or under the laws of any other state, government or country, of a crime which, if committed within this state would be a felony, commits

any felony within this state is punishable upon conviction of such second offense as follows: if the subsequent felony is such that, upon a first conviction, the offender would be punishable by imprisonment for any term less than his natural life, then such person must be sentenced to imprisonment for a term no less than the longest term nor more than twice the longest term prescribed upon a first conviction. . . ."

Fla.Stat., 1957, 775.09

[Footnote 2]

The theory used by the State in its proceedings against petitioner, as disclosed by the quoted recitals of the information and judgment, seems to be completely at variance with that upon which multiple offender proceedings are normally based. For normally the punishment provided for in a multiple offender statute is viewed as increased punishment for the last offense in the sequence. Here, on the other hand, the theory seems to have been that petitioner, by virtue of his convictions for two previous offenses, has committed a third and entirely separate offense -- to quote the judgment, "the offense of Second Offender." Because of the disposition we make of this case on other grounds, however, we need not reach the questions posed as to the constitutionality of confinement based upon such a theory. In any event, prior opinions of the Supreme Court of Florida indicate that there might be room for considerable doubt whether 775.09 authorizes confinement on such a theory. *See Cross v. State,* 96 Fla. 768, 119 So. 380; *Washington v. Mayo,* 91 So.2d 621.

[Footnote 3]

The Supreme Court of Florida issued no opinion, the case being disposed of with the following order:

"The above-named petitioner has filed a petition for writ of habeas corpus to be issued to the respondent in the above entitled cause, and, upon consideration thereof, it is ordered that said petition be, and the same is, hereby denied."

[Footnote 4]

363 U.S. 801.

[Footnote 5]

Cash v. Culver, 358 U. S. 633 , 358 U. S. 634 ; *Hawk v. Olson,* 326 U. S. 271 , 326 U. S. 273 .

[Footnote 6]

Section 775.09, set forth in n 1, *supra,* is supplemented by a provision which, on its face, at least, appears to condone imposition of second offender penalties even at such a late date:

"If *at any time* after sentence or conviction, it shall appear that a person convicted of a felony has previously been convicted of crimes as set forth either in 775.09 or 775.10, the prosecuting attorney of the county in which such conviction was had shall file an information accusing said person of such previous convictions, whereupon the court in which such conviction was had shall cause said person, *whether confined in prison or otherwise,* to be brought before it and shall inform him of the allegations contained in such information and of his right to be tried as to the truth thereof, according to law, and shall require such offender to say whether he is the same person as charged in such information or not."

Fla.Stat.1957, 775.11, F.S.A. (Emphasis supplied.)

[Footnote 7]

The problem presented by these questions is rather dramatically stated by petitioner himself in his petition for habeas corpus:

"In the instant case, how can your petitioner know when in his life he is no longer subject to have his liberty translated to imprisonment, even after expiration of the present sentence, can be again be imprisoned without committing another crime as in the instant case? Surely this Honorable Court will not condone this practice. .

. ."

[Footnote 8]

As in *Chandler v. Fretag,* note 9 *infra,* the petitioner here also alleged a denial of due process in that he was not given pretrial notice of the charge against him. But, as in *Chandler,* we find it unnecessary to pass upon this contention. *See* 348 U.S. 348 U. S. 3 , 348 U. S. 5 -6, note 4.

[Footnote 9]

348 U. S. 348 U.S. 3.

[Footnote 10]

287 U. S. 287 U.S. 45, 287 U. S. 69 .

[Footnote 11]

348 U.S. at 348 U. S. 9 -10.

[Footnote 12]

It is significant that, in *Chandler,* we did not require any showing that the defendant there would have derived any particular benefit from the assistance of counsel.

[Footnote 13]

The proof of prior convictions in a second offender proceeding may raise difficult evidentiary problems. *See, e.g., Shargaa v. State,* 102 So.2d 809. Moreover, it can be presumed that, if an accused second offender were able to make a successful collateral attack upon his first conviction, 775.09 would not be applied. *Cf. Fields v. State,* 85 So.2d 609.

[Footnote 14]

Milan v. State, 102 So.2d 595, 596.

[Footnote 15]

See note 6 *supra.*

[Footnote 16]

In *Ard v. State,* 91 So.2d 166, the Florida Supreme Court held that the second offender statute did not apply to a person who had concededly committed two felonies but who had been on probation for five years between the date of his conviction of the second felony and the filing of the second offender information.

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