

Silber Vs. United States

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Court : US Supreme Court

Decided On : Jun-25-1962

Appeal No. : 370 U.S. 717

Appellant : Silber

Respondent : United States

Judgement :

Silber v. United States - 370 U.S. 717 (1962)

U.S. Supreme Court Silber v. United States, 370 U.S. 717 (1962)

Silber v. United States

No. 454

Argued April 19, 1962

Decided June 25, 1962

370 U.S. 717

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

SYLLABUS

Petitioner's indictment for violating 2 U.S.C. 192 was identical to those held defective in *Russell v. United States*, [369 U. S. 749](#) ; the District Court erroneously denied a timely motion to dismiss it; and petitioner was convicted. The issue raised by the motion to dismiss apparently was not presented to the Court of Appeals, and it was not briefed or argued in this Court.

Held: this Court, at its option, may notice a plain error not presented, and the judgment sustaining the conviction is reversed on the authority of *Russell v. United States*. Pp. [370 U. S. 717](#) -718.

111 U.S.App.D.C. 331. 296 F.2d 588 reversed.

PER CURIAM.

The judgment is reversed. *Russell v. United States*, [369 U. S. 749](#) . The indictment upon which the petitioner was tried was identical to those held defective in *Russell*. The petitioner's timely motion to dismiss the indictment, made in accord with Fed.Rules Crim.Proc. 12(b)(2), was erroneously denied by the District Court.

Although the trial court squarely considered and decided the issue raised by the motion to dismiss, it was apparently not presented to the Court of Appeals, and was not briefed or argued in this Court. While ordinarily we do not take note of errors not called to the attention of the Court of Appeals nor properly raised here, that rule

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is not without exception. The Court has "the power to notice a "plain error" though it is not assigned or specified," *United Brotherhood of Carpenters v. United States*, [330 U. S. 395](#) , [330 U. S. 412](#) . *

"In exceptional circumstances, especially in criminal cases, appellate courts, in the public interest, may, of their own motion, notice errors to which no exception has been taken if the errors are obvious, or if they otherwise seriously affect the

fairness, integrity, or public reputation of judicial proceedings."

United States v. Atkinson, [297 U. S. 157](#) , [297 U. S. 160](#) . Our own rules provide that "the court, at its option, may notice a plain error not presented." Revised Rules of the Supreme Court of the United States, Rule 40(1)(d)(2). See also Fed.Rules Crim.Proc. 52(b).

Reversed.

MR. JUSTICE FRANKFURTER took no part in the consideration or decision of this case.

MR. JUSTICE WHITE took no part in the decision of this case.

MR. JUSTICE CLARK and MR. JUSTICE HARLAN dissent for the reasons stated in their dissenting opinions in *Russell v. United States*, [369 U. S. 749](#) , [369 U. S. 779](#) , [369 U. S. 781](#) .

* See *Brasfield v. United States*, [272 U. S. 448](#) , [272 U. S. 450](#) ; *Mahler v. Eby*, [264 U. S. 32](#) , [264 U. S. 45](#) ; *Weems v. United States*, [217 U. S. 349](#) , [217 U. S. 362](#) . See also *Kessler v. Strecker*, [307 U. S. 22](#) , [307 U. S. 34](#) .

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