

United States Vs. Wilson

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Appeal No. : 32 U.S. 150

Appellant : United States

Respondent : Wilson

Judgement :

United States v. Wilson - 32 U.S. 150 (1833)

U.S. Supreme Court United States v. Wilson, 32 U.S. 7 Pet. 150 150 (1833)

United States v. Wilson

32 U.S. (7 Pet.) 150

*ON CERTIFICATE OF DIVISION OF OPINION FROM THE JUDGES OF THE
CIRCUIT*

*COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF
PENNSYLVANIA*

SYLLABUS

The defendant was indicted for robbing the mail of the United States, and putting the life of the driver in jeopardy, and the conviction and judgment pronounced upon it extended to both offenses. After this judgment no prosecution could be maintained for the same offense, or for any part of it, provided the former conviction was pleaded.

The power of pardon in criminal cases had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance. We adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it. A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court.

It is a constituent part of the judicial system that the judge sees only with judicial eyes, and knows nothing respecting any particular case of which he is not informed judicially. A private deed not communicated to him, whatever may be its character, whether a pardon or release, is totally unknown and cannot

be acted upon. The looseness which would be introduced into judicial proceedings would prove fatal to the great principles of justice if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles and would overturn those rules which have been settled by the wisdom of ages.

There is nothing peculiar in a pardon which ought to distinguish it in this respect from other facts; no legal principle known to the court will sustain such a distinction. A pardon is a deed to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered, and if it be rejected, we have discovered no power in a

court to force it on him.

It may be supposed that no being condemned to death would reject a pardon, but the rule must be the same in capital cases and in misdemeanors. A pardon may be conditional, and the condition may be more objectionable than the punishment inflicted by the judgment.

The pardon may possibly apply to a different person or a different crime. It may be absolute or conditional. It may be controverted by the prosecutor, and must be expounded by the court. These circumstances

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combine to show that this, like any other deed, ought to be brought "judicially before the court, by plea, motion or otherwise."

The reason why a court must, *ex officio*, take notice of a pardon by act of Parliament is that it is considered as a public law, having the same effect on the case as if the general law punishing the offense had been repealed or annulled.

At the April sessions, 1830, of the Circuit Court of the United States for the Eastern District of Pennsylvania, six indictments were presented to and found by the grand jury against James Porter and George Wilson, one for obstructing the mail of the United States from Philadelphia to Kimberton on 26 November, 1829; one for obstructing the mail from Philadelphia to Reading, on 6 December, 1829; one for the robbery of the Kimberton mail and putting the life of the carrier in jeopardy on the same day in November, 1829; one for robbery of the Reading mail and putting the life of the carrier in jeopardy on the same 6 December, 1829; one for robbery of the Kimberton mail, also on 26 November, 1829; and one for robbery of the Reading mail, also on 6 December, 1829. At the same sessions, two other indictments were presented to the grand jury against the same defendants in which they were severally charged with robbery of the Reading and Kimberton mail and wounding the carrier, which were returned to the court as "true bills, except as to wounding the carrier." Upon the indictment for robbery of the Kimberton mail and putting the life of the carrier in jeopardy, and also in the two

last-mentioned indictments, a *nolle prosequi* was afterwards entered by the district attorney of the United States. On 26 April, 1830, the defendants, James Porter and George Wilson, pleaded not guilty to the several bills upon which they were arraigned, and on 1 May a verdict of guilty was rendered against them upon the indictment for robbery of the Reading mail and putting the life of the carrier in jeopardy. The circuit court, on 27 May, 1830, sentenced the defendants to suffer death, on 2 July following, and James Porter was executed in pursuance of this sentence.

Upon the 27th of May 1830, George Wilson withdrew the

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pleas of not guilty to all the indictments against him except those on which a *nolle prosequi* was afterwards entered, and pleaded guilty to the same.

The indictment for robbery of the Reading mail and putting the life of the driver in jeopardy, upon which James Porter and George Wilson were tried and convicted, was in the following terms:

"Eastern District of Pennsylvania, to-wit:"

"The grand inquest of the United States of America, inquiring for the Eastern District of Pennsylvania, upon their oaths and affirmations, respectively, do present that James Porter, otherwise called James May, late of the Eastern District aforesaid, yeoman, and George Wilson, late of the Eastern District aforesaid, yeoman on 6 December in the year of our Lord 1829, at the Eastern District aforesaid and within the jurisdiction of this Court, with force and arms, in and upon one Samuel McCrea, in the peace of God and of the United States of America then and there being, and then and there being a carrier of the mail of the United States, and then and there entrusted therewith, and then and there proceeding with the said mail, from the City of Philadelphia to the Borough of Reading, feloniously did make an assault, and him the said Samuel McCrea in bodily fear and danger, then and there, feloniously did put, and the said mail of the United States from him the said Samuel McCrea, then and there, feloniously,

violently, and against his will, did steal, take, and carry away, contrary to the form of the act of Congress in such case made and provided and against the peace and dignity of the United States of America."

"And the inquest aforesaid, upon their oaths and affirmations aforesaid, do further present that the said James Porter, otherwise called James May, and the said George Wilson, afterwards, to-wit, on the same day and year aforesaid, at the Eastern District aforesaid and within the jurisdiction of this Court, with force and arms in and upon the said Samuel McCrea, then and there being a carrier of the mail of the United States and then and there entrusted therewith, feloniously did make an assault, and him, the said carrier of the said mail, then and there, feloniously, violently, and against his will, did rob, contrary to the form of the act of Congress in such case

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made and provided, and against the peace and dignity of the United States of America."

On 14 June, 1830, the President of the United States granted the following pardon to George Wilson:

"Andrew Jackson, President of the United States, to all who shall see these presents, greeting:"

"Whereas a certain George Wilson has been convicted before the Circuit Court of the United States for the Eastern District of Pennsylvania of the crime of robbing the mail of the United States, and has been sentenced by the said court to suffer the penalty of death on 2 July next, and whereas the said George Wilson has been recommended as a fit subject for the exercise of executive clemency by a numerous and respectable body of petitioners, praying for him a remission of the sentence of death, inasmuch as, in such a case, sentence of imprisonment for twenty years may yet be pronounced against him on the indictments to which he has pleaded guilty in the circuit court of the United States for the said district, and a still more severe imprisonment may be awarded him for the same acts in the

criminal courts of Pennsylvania, now therefore, I, Andrew Jackson, President of the United States of America, in consideration of the premises, divers other good and sufficient reasons me thereunto moving, have pardoned and do hereby pardon the said George Wilson the crime for which he has been sentenced to suffer death, remitting the penalty aforesaid, with this express stipulation, that this pardon shall not extend to any judgment which may be had or obtained against him in any other case or cases now pending before said court for other offenses wherewith he may stand charged."

"In testimony whereof I have hereunto set my hand and caused the seal of the United States to be affixed to these presents. Given at the City of Washington this 14 June, A.D. 1830, and of the independence of the United States the fifty-fourth."

"[L.S.] ANDREW JACKSON"

"By the President: M. VAN BUREN, Secretary of State "

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The record, as certified from the circuit court, proceeded to state:

"And now, to-wit, this 20 October, A.D. 1830, the district attorney of the United States moves the court for sentence upon the defendant, George Wilson; but the court suggesting the propriety of inquiring as to the effect of a certain pardon, understood to have been granted by the President of the United States to the defendant since the conviction on this indictment, although alleged to relate to a conviction on another indictment, the case postponed till 21 October, 1830. And now, to-wit, this 21 October, 1830, the counsel for the defendant, George Wilson, appear before the court and on behalf of the said defendant, waive and decline any advantage or protection which might be supposed to arise from the pardon referred to, and thereupon the following questions or points were argued by the district attorney of the United States upon which the opinions of the judges of the said circuit court were opposed:"

"1. That the pardon referred to (prout the same) is expressly restricted to the sentence of death passed upon the defendant, under another conviction, and as expressly reserves from its operation the conviction now before the court."

"2. That the prisoner can, under this conviction, derive no advantage from the pardon without bringing the same judicially before the court by plea, motion, or otherwise."

"And now, to-wit, this 21 October, 1830, the defendant, George Wilson, being in person before the court, was asked by the court whether he had anything to say why sentence should not be pronounced for the crime whereof he stands convicted in this particular case, and whether he wished in any manner to avail himself of the pardon referred to, and the said defendant answered in person that he had nothing to say and that he did not wish in any manner to avail himself, in order to avoid sentence in this particular case, of the pardon referred to. And the said judges being so opposed in opinion upon the points or questions above stated, the same were then and there, at the request of the district attorney of the United States,

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stated, under the direction of the judges, and ordered by the court to be certified, under the seal of the court, to the Supreme Court at its next session thereafter, to be finally decided by the said Supreme Court. And the court being further of opinion that other proceedings could not be had in the said case without prejudice to its merits, did order the same to be continued over to the next sessions of the court."

"HENRY BALDWIN"

"JOS. HOPKINSON"

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MR. CHIEF JUSTICE MARSHALL delivered the opinion of the Court.

In this case, the grand jury had found an indictment against the prisoner for robbing the mail, to which he had pleaded not guilty. Afterwards he withdrew this plea and pleaded guilty. On a motion by the district attorney at a subsequent day for judgment, the court suggested the propriety of inquiring as to the effect of a certain pardon, understood to have been granted by the President of the United States to the defendant since the conviction on this indictment, alleged to relate to a conviction on another indictment, and that motion was adjourned until the next day. On the succeeding day, the counsel for the prisoner appeared in court and on his behalf waived and declined any advantage or protection which might be supposed to arise from the pardon referred to, and thereupon the following points were made by the district attorney:

1. That the pardon referred to, is expressly restricted to the sentence of death passed upon the defendant under another conviction, and as expressly reserves from its operation the conviction now before the court.
2. That the prisoner can, under this conviction, derive no advantage from the pardon without bringing the same judicially before the court.

The prisoner being asked by the court whether he had anything to say, why sentence should not be pronounced for the crime whereof he stood convicted in this particular case and whether he wished in any manner to avail himself of the

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pardon referred to, answered, that he had nothing to say and that he did not wish in any manner to avail himself, in order to avoid the sentence in this particular case, of the pardon referred to. The judges were thereupon, divided in opinion on both points made by the district attorney, and ordered them to be certified to this Court.

A certiorari was afterwards awarded to bring up the record of the case in which judgment of death had been pronounced against the prisoner. The indictment

charges a robbery of the mail and putting the life of the driver in jeopardy. The robbery charged in each indictment is on the same day, at the same place, and on the same carrier. We do not think that this record is admissible, since no direct reference is made to it in the points adjourned by the circuit court, and without its aid, we can readily comprehend the questions submitted to us.

If this difficulty be removed, another is presented by the terms in which the first point is stated on the record. The attorney argued first that the pardon referred to is expressly restricted to the sentence of death passed upon the defendant under another conviction, and as expressly reserves from its operation the conviction now before the court. Upon this point, the judges were opposed in opinion. Whether they were opposed on the fact or on the inference drawn from it by the attorney, and what that inference was, the record does not explicitly inform us. If the question on which the judges doubted was whether such a pardon ought to restrain the court from pronouncing judgment in the case before it, which was expressly excluded from it, the first inquiry is whether the robbery charged in the one indictment is the same with that charged in the other. This is neither expressly affirmed nor denied. If the convictions be for different robberies, no question of law can arise on the effect which the pardon of the one may have on the proceedings for the others.

If the statement on the record be sufficient to inform this Court judicially that the robberies are the same, we are not told on what point of law the judges were divided. The only inference we can draw from the statement is that it was

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doubted whether the terms of the pardon could restrain the court from pronouncing the judgment of law on the conviction before it. The prisoner was convicted of robbing the mail and putting the life of the carrier in jeopardy, for which the punishment is death. He had also been convicted on an indictment for the same robbery, as we now suppose, without putting life in jeopardy, for which the punishment is fine and imprisonment, and the question supposed to be submitted is whether a pardon of the greater offense, excluding the less, necessarily

comprehends the less against its own express terms. We should not feel much difficulty on this statement of the question, but it is unnecessary to discuss or decide it. Whether the pardon reached the less offense or not, the first indictment comprehended both the robbery and the putting life in jeopardy, and the conviction and judgment pronounced upon it extended to both. After the judgment, no subsequent prosecution could be maintained for the same offense nor for any part of it, provided the former conviction was pleaded. Whether it could avail without being pleaded or in any manner relied on by the prisoner is substantially the same question with that presented in the second point, which is

"that the prisoner can, under this conviction, derive no advantage from the pardon without bringing the same judicially before the court by plea, motion, or otherwise."

The Constitution gives to the President, in general terms, "the power to grant reprieves and pardons for offenses against the United States." As this power had been exercised from time immemorial by the executive of that nation whose language is our language, and to whose judicial institutions ours bear a close resemblance, we adopt their principles respecting the operation and effect of a pardon, and look into their books for the rules prescribing the manner in which it is to be used by the person who would avail himself of it.

A pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual on whom it is bestowed from the punishment the law inflicts for a crime he has committed. It is the private, though official, act of the executive magistrate, delivered to the

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individual for whose benefit it is intended, and not communicated officially to the court. It is a constituent part of the judicial system that the judge sees only with judicial eyes, and knows nothing respecting any particular case of which he is not informed judicially. A private deed, not communicated to him, whatever may be its character, whether a pardon or release, is totally unknown and cannot be acted on. The looseness which would be introduced into judicial proceedings would

prove fatal to the great principles of justice if the judge might notice and act upon facts not brought regularly into the cause. Such a proceeding, in ordinary cases, would subvert the best established principles and overturn those rules which have been settled by the wisdom of ages.

Is there anything peculiar in a pardon which ought to distinguish it in this respect from other facts? We know of no legal principle which will sustain such a distinction. A pardon is a deed, to the validity of which delivery is essential, and delivery is not complete without acceptance. It may then be rejected by the person to whom it is tendered, and if it be rejected, we have discovered no power in a court to force it on him. It may be supposed that no being condemned to death would reject a pardon, but the rule must be the same in capital cases and in misdemeanors. A pardon may be conditional, and the condition may be more objectionable than the punishment inflicted by the judgment. The pardon may possibly apply to a different person or a different crime. It may be absolute or conditional. It may be controverted by the prosecutor, and must be expounded by the court. These circumstances combine to show that this, like any other deed, ought to be brought "judicially before the court by plea, motion, or otherwise." The decisions on this point conform to these principles. Hawkins, b. 2, ch. 37, § 59, says,

"but it is certain that a man may waive the benefit of a pardon under the great seal, as where one who hath such a pardon doth not plead it, but takes the general issue, after which he shall not resort to the

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pardon."

In § 67, he says "an exception is made of a pardon after plea." Notwithstanding this general assertion, a court would undoubtedly at this day permit a pardon to be used after the general issue. Still, where the benefit is to be obtained through the agency of the court, it must be brought regularly to the notice of that tribunal.

Hawkins says, § 64, "it will be error to allow a man the benefit of such a pardon unless it be pleaded." In § 65 he says

"He who pleads such a pardon must produce it *sub pede sigilli*, though it be a plea in bar, because it is presumed to be in his custody, and the property of it belongs to him."

Comyn, in his Digest, tit. Pardon, H, says, "if a man has a charter of pardon from the King, he ought to plead it in bar of the indictment, and if he pleads not guilty, he waives his pardon." The same law is laid down in Bacon's Abridgment title Pardon, and is confirmed by the cases these authors quote.

We have met with only one case which might seem to question it. Jenkins, page 169, case 62, says

"If the King pardons a felon and it is shown to the court, and yet the felon pleads guilty and waives the pardon, he shall not be hanged, for it is the King's will that he shall not, and the King has an interest in the life of his subject. The books to the contrary are to be understood where the charter of pardon is not shown to the court."

This vague *dictum* supposes the pardon to be shown to the court. The waiver spoken of is probably that implied waiver which arises from pleading the general issue, and the case may be considered as determining nothing more than that the prisoner may avail himself of the pardon, by showing it to the court, even after waiving it, by pleading the general issue. If this be, and it most probably is, the fair and sound construction of this case, it is reconciled with all the other decisions so far as respects the present inquiry.

Blackstone, in his 4th vol., p. 337, says, "a pardon may be pleaded in bar." In 376, he says "it may also be pleaded in arrest of judgment." In p. 401, he says,

"A pardon by act

of Parliament is more beneficial than by the King's charter, for a man is not bound to plead it, but the court must, *ex officio*, take notice of it; neither can he lose the benefit of it by his own laches or negligence, as he may of the King's charter of pardon. The King's charter of pardon must be specially pleaded, and that at a proper time, for if a man is indicted and has a pardon in his pocket and afterwards puts himself upon his trial by pleading the general issue, he has waived the benefit of such pardon. But if a man avails himself thereof, as by course of law he may, a pardon may either be pleaded on arraignment or in arrest of judgment or, in the present stage of proceedings, in bar of execution."

The reason why a court must *ex officio* take notice of pardon by act of Parliament is that it is considered as a public law, having the same effect on the case as if the general law punishing the offense had been repealed or annulled.

This Court is of opinion that the pardon in the proceedings mentioned, not having been brought judicially before the court by plea, motion, or otherwise, cannot be noticed by the judges.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Third Circuit and Eastern District of Pennsylvania and on the question on which the judges of that court were divided in opinion, and was argued by the Attorney General on the part of the United States, on consideration whereof this Court is of opinion that the pardon alluded to in the proceedings, not having been brought judicially before the court by plea, motion, or otherwise, ought not to be noticed by the judges, or in any manner to affect the judgment of the law. All which is directed and adjudged to be certified to the judges of the said Circuit Court of the United States for the Eastern District of Pennsylvania.