

Brede Vs. Powers

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Court : US Supreme Court

Decided On : Oct-22-1923

Appeal No. : 263 U.S. 4

Appellant : Brede

Respondent : Powers

Judgement :

Brede v. Powers - 263 U.S. 4 (1923)

U.S. Supreme Court Brede v. Powers, 263 U.S. 4 (1923)

Brede v. Powers

No. 45

Argued October 4, 1923

Decided October 22, 1923

263 U.S. 4

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES

FOR THE EASTERN DISTRICT OF NEW YORK

SYLLABUS

1. The sections of the Revised Statutes governing the places in which sentences of imprisonment for crime may be executed are *in pari materia*, and should be construed together. P. [263 U. S. 11](#) .
2. The power of the district court to sentence to imprisonment in another state, in a penal institution designated by the Attorney General under Rev.Stats. 5546, is not confined to cases in which the imprisonment is for more than a year or at hard labor (5541, 5542), but exists also where the sentence is for imprisonment merely, for a year or less. *Id.*
3. Under 21 of Title II of the National Prohibition Act, which declares any building, boat, vehicle, place, etc., where intoxicating liquor is manufactured, sold, kept, or bartered in violation of that title to be a common nuisance, and provides that any person maintaining such nuisance shall be guilty of a misdemeanor and punishable by fine of not more than \$1,000 or imprisonment for not more than one year, or both, the imprisonment imposed cannot be at hard labor or in a penitentiary, and the offense, not being infamous, may be prosecuted by information. P. [263 U. S. 12](#) .
4. A law of New Jersey (1917, c. 271) authorizing the board of chosen freeholders of any county to "cause to be employed" within the county any or all prisoners in any county jail *construed* as not contemplating the requirement of labor as a punishment. P. [263 U. S. 13](#) .

279 F. 147 affirmed.

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Appeal from an order of the District Court for the Eastern District of New York discharging a writ of habeas corpus which had been sued out by the appellant to try the constitutionality of his sentence and commitment by that court to the Essex County Jail, New Jersey -- a place designated by the Attorney General pursuant to

Rev.Stats. 5546. The sentence was based upon a conviction under an information which charged a violation of 21 of Title II of the National Prohibition Act, 41 Stat. 314.

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MR. JUSTICE Mc KENNA delivered the opinion of the Court.

Dismissal of a writ of habeas corpus is assailed by this appeal. It was issued to review the legality of a conviction upon information and a sentence of imprisonment upon it. In detail of the grounds and justification of it, the charge of the petition is that appellant was proceeded against in the district court upon an information charging him with a violation of 21, Title II, of the Act of Congress of October 28, 1919, the National Prohibition Act, and convicted on the 17th day of June, 1920, and sentenced to pay a fine of \$500 and be imprisoned for 60 days. In execution of the sentence, it is alleged that he was committed to the custody of the appellee, he being the United States marshal for the Eastern district of New York.

The further allegation of the petition is that the court "never acquired jurisdiction of the pretended criminal action upon which, in form, it tried and condemned" him, "for the reason that the crime of which" he "was charged and for which said court sought to try and condemn" him

"is an infamous crime within the meaning of the Fifth Amendment to the Constitution of the United States, and no presentment or indictment of a grand jury charging same was ever filed or presented."

After hearing, the writ was discharged and appellant was remanded to the custody of the marshal to serve his sentence under the commitment, which was to the county jail of Essex County, New Jersey.

Is the contention of appellant justified, in that his was a conviction and commitment of an infamous crime? It is upon this contention that his petition rests.

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It has been decided that a crime takes on the quality of infamy if it be one punishable by imprisonment at hard labor or in a penitentiary, and must be proceeded against upon presentment or indictment of a grand jury. *Ex parte Wilson*, [114 U. S. 417](#) ; *Mackin v. United States*, [117 U. S. 348](#) ; *United States v. Moreland*, [258 U. S. 433](#) . And such is the quality of the crime and the procedure against it if the statute authorizes the court to condemn to such punishment. See also *In re Bonner*, [151 U. S. 242](#) ; *In re Mills*, [135 U. S. 263](#) .

Or, to put it as counsel puts it:

"The construction of the Fifth Amendment to the Constitution is this: an infamous crime is one that carries infamous punishment; the test does not depend upon the punishment that ultimately happens to be inflicted, but upon the punishment the court *has power* to inflict."

To show the pertinence of the test and its adaptation to the case, it is the contention of the appellant that the court had power, and only power, to sentence him to imprisonment in a penal institution of New York, and that, by the law of the state, by federal statute made applicable to federal prisoners therein, imprisonment is at hard labor.

The argument by which the contention is attempted to be sustained is somewhat strained. It rests upon the power the statutes give to the courts to specify the places of imprisonment, which began, it is said, in 1789. By a Resolution then passed, the state legislatures were recommended to receive and keep prisoners committed under the authority of the United States "under the like penalties as in the case of prisoners committed under the authority of such states respectively. . . ." 1 Stat. 96.

The purpose thus expressed was in substance repeated subsequently, and 5537 and 5538 of the Revised Statutes, reproducing a resolution adopted in 1821 (3 Stat. 646), 5542 and 5548, reproducing 4 Stat. 118, 15, and 4 Stat. 777, are

cited. Sections 5546 and 5541 are also cited; they having their origin in 13 Stat. 74, 1 and 500.

It is provided in 5537 and 5538, where a state does not allow the use of its jails to United States prisoners, the marshal, under direction of the court, may hire or procure a temporary jail, and that the marshal shall make provisions for the safekeeping of prisoners until permanent provision for that purpose is made by law.

By 5542, where the sentence is imprisonment to hard labor, the court may direct its execution "within the district or state where such court is held."

Section 5548 provides that, where punishment for an offense is by fine or imprisonment, it may be executed in any house of correction or house of reformation for juvenile delinquents "within the state or district where" such court is held.

Section 5546 provides that the place of imprisonment, where there may be no penitentiary or jail suitable for the confinement of convicts or available therefor, may be in some suitable jail or penitentiary in a convenient state or territory to be designated by the Attorney General, and power to changes is given to the Attorney General.

The provisions of these sections seem adaptive to all imprisonments and to all grades of crime -- in other words, have an adaptive and harmonious relation -- and such relation they were declared to have in *In re Karstendick*, [93 U. S. 396](#) . Appellant, however, contends that 5546 may be treated as a proviso of 5541 and 5542, and that the latter sections

"define the only instances in which a United States court can sentence a prisoner to confinement in a 'state jail or penitentiary' within the state -- that is, when the statute requires hard labor as part of the punishment or when the imprisonment is for more than a year, and that, therefore, when the sentence is in terms of imprisonment merely, for a year or less,

the court has no power to sentence the prisoner to a 'suitable jail or penitentiary in a convenient state . . . designated by the Attorney General.'"

We are not impressed with the contention. The reasoning to sustain it is that Congress "could give district courts the power to sentence short term convicts to institutions beyond the limits of their ordinary jurisdiction, but it has not," and further,

"although Congress was willing, when the facts justified, that a long-termer should be sent beyond the borders of his state, they were unwilling that a short-termer should be so dealt with."

The reasoning does not convince us. We prefer, and accept, the clear and direct power given to the Attorney General (5546), and there is nothing in *In re Mills* and *In re Bonner* that militates against it.

In re Mills decided that, when a statute does not require imprisonment in a penitentiary, a sentence cannot impose it unless the sentence is for a period longer than one year. *In re Bonner* is to the same effect. In other words, the sentences cannot transcend those of the statutes. In both cases, the sentences were convictions upon indictments. They are authorities against, not for, the appellant. His contention changes the penalty of the statute, and therefore repels. The statute provides that, for the offense here charged, the offender shall be fined not more than \$1,000 or imprisoned not exceeding one year, or both. (21.) Where the charge is selling, as in the *Wyman* case, *post*, p. [263 U. S. 14](#) , the punishment for the first offense is a fine not more than \$1,000 and imprisonment not exceeding six months. National Prohibition Act, 29, 41 Stat. 316.

The statute excludes the imposition of hard labor or imprisonment in a penitentiary. Under the contention of appellant, both would be imposed. Imprisonment must be, is the assertion, in a New York penitentiary, and at hard labor, the latter consequence because of the law of New York.

Appellant, while particularly insistent upon the New York law and the absence of power to imprison elsewhere than in a New York institution, however, contends that the imprisonment in the Essex county jail is at hard labor, because the conduct or discipline of that jail requires or permits the imposition of hard labor, and thereby constitutes the crime infamous. If that can be so held, it gives the court power to transcend the statute, which, as we have said, does not include hard labor in its punishment. But such peremptory requirement cannot be assigned to the New Jersey law -- neither employment at hard labor nor any labor. The law is made adaptive to circumstances -- made so by committing its administration to the judgment of the freeholders of the county -- and it is limited to prescribing suitable employment of prisoners to accomplish the purpose of the law. Laws of New Jersey of 1917, page 888. The law gives no indication that the employment is or may be prescribed as punishment. It proceeds along other lines.

It follows that the sentence of the court was not intended to be, and could not have been, to imprisonment at hard labor.

We find no error in the decision of the court in discharging the writ and its action is

Affirmed.

MR. JUSTICE Mc REYNOLDS and MR. JUSTICE BRANDEIS concur in the result.