Fleisher Vs. United States

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Court : US Supreme Court

Decided On : Dec-06-1937

Appeal No. : 302 U.S. 218

Appellant : Fleisher

Respondent : United States

Judgement :

Fleisher v. United States - 302 U.S. 218 (1937)
U.S. Supreme Court Fleisher v. United States, 302 U.S. 218 (1937)

Fleisher v. United States

No. 202

Argued November 15, 1937

Decided December 6, 1937 *

302 U.S. 218

CERTIORARI TO THE CIRCUIT COURT OF APPEALS

FOR THE SIXTH CIRCUIT

SYLLABUS

1. Registration of stills for the production of distilled spirits should be with the District Supervisor of the Alcohol Tax Unit in the Bureau of Internal Revenue. P. 302 U. S. 219 .

A count charging conspiracy to commit the offense of possessing such stills "without having the same registered with the Collector of Internal Revenue, as required by law," is therefore bad. (*Cf.* Rev.Stats. 3258; 26 U.S.C. 1162.)

2. When the first of several counts upon which consecutive sentences are based is defective, the sentences should be corrected so as to fix a definite date for their commencement. P. 302 U. S. 220 .

91 F.2d 404 reversed.

Certiorari, *post,* p. 673, to review judgments affirming judgments sentencing petitioners after conviction upon four counts of a joint indictment for conspiracy.

PER CURIAM.

Judgments of conviction on four counts of an indictment charging conspiracies to violate provisions of the internal revenue laws were affirmed by the Circuit Court of Appeals. 91 F.(2d) 404. Certiorari was granted, limited to the question whether the first count of the indictment states an offense under federal law.

The first count alleged that defendants, from October 1, 1934, to the date of the indictment, October 30, 1935, unlawfully conspired to possess, and caused to be possessed, stills and apparatus for the production of distilled spirits without having the same registered with the Collector of Internal Revenue as required by law. The government concedes that, under the applicable law, the charge should have been that there was failure to register the stills with the District Supervisor of the Alcohol Tax Unit in the Bureau of Internal Revenue. The first count failed to state an offense. Act of March 3, 1927, c. 348, 44 Stat. 1381, 5 U.S.C. 281c; Regulations No. 3, Bureau of Industrial Alcohol, Treasury Department (March 24, 1931), Article 14; Act of March 3, 1933, c. 212, 16, 47 Stat. 1518; Executive Order No. 6639, March 10, 1934, 5 U.S.C. 132 note; Treasury Decision No. 4432, May 10, 1934. *Scott v. United States,* 78 F.(2d) 791; *Benton v. United States,* 80 F.2d 162.

The sentence upon count 2 provides that it shall run "from and after expiration of term of imprisonment imposed

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on count one." Each of the sentences on the remaining counts runs from the expiration of the term of imprisonment imposed on the preceding count. In view of the invalidity of the sentence on count 1, the sentences on the remaining counts should be amended so as to fix a definite date for their commencement.

The judgments on count 1 are severally reversed, and the causes are remanded for further proceedings in conformity with this opinion.

Reversed.

* Together with No. 203, *Sam Fleisher v. United States,* and No. 204, *Stein v. United States,* also on writs of certiorari to the Circuit Court of Appeals for the Sixth Circuit.