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Smith Vs. Texas

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Court : US Supreme Court

Decided On : Nov-25-1940

Appeal No. : 311 U.S. 128

Appellant : Smith

Respondent : Texas

Judgement :

Smith v. Texas - 311 U.S. 128 (1940)
U.S. Supreme Court Smith v. Texas, 311 U.S. 128 (1940)

Smith v. Texas

No. 33

Argued November 14, 1940

Decided November 25, 1940

311 U.S. 128

CERTIORARI TO THE COURT OF CRIMINAL APPEALS OF TEXAS

SYLLABUS

1. The conviction of a Negro upon an indictment returned by the grand jury of a county in which, at the time of such return and long prior thereto, Negroes were intentionally and systematically excluded from grand jury service, solely on account of their race and color, denies to him the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution. P. 311 U. S. 132 .

2. Upon review of a state court decision wherein a claim of a right under the Federal Constitution was denied, this Court will examine and appraise for itself the evidence relating to such right. P. 311 U. S. 130 .

3. The evidence in this case sustains the claim of racial discrimination in the selection of the grand jury by which the Negro defendant was indicted; and, whether such discrimination was accomplished ingeniously or ingenuously, his conviction was void. Pp. 311 U. S. 130 -132.

136 S.W.2d 842, reversed.

CERTIORARI, 309 U.S. 651, to review the affirmance of a judgment sentencing the petitioner upon his conviction of a crime. The trial court had overruled a motion to quash the indictment.

MR. JUSTICE BLACK delivered the opinion of the Court.

In Harris County, Texas, where petitioner, a negro, was indicted and convicted of rape, negroes constitute

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over 20% of the population, and almost 10% of the poll tax payers; a minimum of from three to six thousand of them measure up to the qualifications prescribed by Texas statutes for grand jury service. The court clerk, called as a state witness and testifying from court records covering the years 1931 through 1938, showed that only 5 of the 384 grand jurors who served during that period were negroes; that, of 512 persons summoned for grand jury duty, only 18 were negroes; that, of these 18, the names of 13 appeared as the last name on the 16-man jury list, the

custom being to select the 12 man grand jury in the order that the names appeared on the list; that, of the 5 negroes summoned for grand jury service who were not given the number 16, 4 were given numbers between 13 and 16, and 1 was number 6; that the result of this numbering was that, of the 18 negroes summoned, only 5 ever served, whereas 379 of the 494 white men summoned actually served; that, of 32 grand juries empaneled, only 5 had negro members, while 27 had none; that, of these 5, the same individual served 3 times, so that only 3 individual negroes served at all; that there had been no negroes on any of the grand juries in 1938, the year petitioner was indicted; that there had been none on any of the grand juries in 1937; that the service of negroes by years had been: 1931, 1; 1932, 2; 1933, 1; 1934, 1; 1935, none; 1936, 1; 1937, none; 1938, none.

It is petitioner's contention that his conviction was based on an indictment obtained in violation of the provision of the Fourteenth Amendment that "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." And the contention that equal protection was denied him rests on a charge that negroes were, in 1938 and long prior thereto, intentionally and systematically excluded from grand jury service solely on account of their race and color. That a conviction based upon an indictment returned by a jury so

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selected is a denial of equal protection is well settled, [Footnote 1] and is not challenged by the state. But both the trial court and the Texas Criminal Court of Appeals were of opinion that the evidence failed to support the charge of racial discrimination. For that reason, the Appellate Court approved the trial court's action in denying petitioner's timely motion to quash the indictment. [Footnote 2] But the question decided rested upon a charge of denial of equal protection, a basic right protected by the Federal Constitution. And it is therefore our responsibility to appraise the evidence as it relates to this constitutional right. [Footnote 3]

It is part of the established tradition in the use of juries as instruments of public justice that the jury be a body truly representative of the community. For racial

discrimination to result in the exclusion from Jury service of otherwise qualified groups not only violates our Constitution and the laws enacted under it, [Footnote 4] but is at war with our basic concepts of a democratic society and a representative government. We must consider this record in the light of these important principles. The fact that the written words of a state's laws hold out a promise that no such discrimination will be practiced is not enough. The Fourteenth Amendment requires hat equal protection to all must be given -- not merely promised.

Here, the Texas statutory scheme is not, in itself, unfair; it is capable of being carried out with no racial discrimination

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whatsoever. [Footnote 5] But by reason of the wide discretion permissible in the various steps of the plan, it is equally capable of being applied in such a manner as practically to proscribe any group thought by the law's administrators to be undesirable. And, from the record before us, the conclusion is inescapable that it is the latter application that has prevailed in Harris County. Chance and accident alone could hardly have brought about the listing for grand jury service of so few negroes from among the thousands shown by the undisputed evidence to possess the legal qualifications for jury service. Nor could chance and accident have been responsible for the combination of circumstances under which a negro's name, when listed at all, almost invariably appeared as number 16, and under which number 16 was never called for service unless it proved impossible to obtain the required jurors from the first 15 names on the list.

The state argues that the testimony of the commissioners themselves shows that there was no arbitrary or systematic exclusion. And it is true that two of the three commissioners who drew the September, 1938, panel testified to that effect. Both of them admitted that they did not select any negroes, although the subject was discussed, but both categorically denied that they intentionally, arbitrarily or systematically discriminated against negro jurors as such. One said that their failure

to select negroes was because hey did not know the names of any who were qualified, and the other said that he was not personally acquainted with any member of the negro race. This is, at best, the testimony of two individuals who participated in drawing 1 out of the 32 jury panels discussed in the record. But even if their testimony were given the greatest possible effect, and their situation considered typical of that of the 94 commissioners who did not testify, we would still feel compelled to reverse the decision below. What the Fourteenth Amendment prohibits is racial discrimination in the selection of grand juries. Where jury commissioners limit those from whom grand juries are selected to their own personal acquaintance, discrimination can arise from commissioners who know no negroes as well as from commissioners who know but eliminate them. If there has been discrimination, whether accomplished ingeniously or ingenuously, the conviction cannot stand.

Reversed.

[Footnote 1]

Pierre v. Louisiana, 306 U. S. 354 ; *Martin v. Texas,* 200 U. S. 316 , 200 U. S. 319 ; *Carter v. Texas,* 177 U. S. 442 , 177 U. S. 447 .

[Footnote 2]

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[Footnote 3]

Chambers v. Florida, 309 U. S. 227 , 309 U. S. 228 ; *Pierre v. Louisiana,* 306 U. S. 354 , 306 U. S. 358 ; *Norris v. Alabama,* 294 U. S. 587 , 294 U. S. 590 .

[Footnote 4]

"No citizen possessing all other qualifications . . . shall be disqualified for service as grand or petit juror in any court of the United States, or of any State, on account

of race, color, or previous condition of servitude; . . ."

18 Stat. 336, 8 U.S.C. 44.

[Footnote 5]

The statutory scheme is set out in the Texas Code of Criminal Procedure, Articles 333-350. At each term of court, three grand jury commissioners are appointed; at the time they are sworn in, the judge instructs them as to their duties; they are required to take an oath not knowingly to select a grand juror whom they believe unfit or unqualified; they must then retire to a room in the courthouse, taking the county assessment roll with them; while in that room, they must select a grand jury of 16 men from different parts of the county; they must next seal in an envelope the list of the 16 names selected; thirty days before court meets, the clerk is required to make a copy of the list and deliver it to the sheriff; thereupon, the sheriff must summon the jurors.

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