SMU | Dedman School of Law

SMU Law Review

Volume 4
Issue 3 *Survey of Southwestern Law for 1949*

Article 5

January 1950

Constitutional Law

Horace J. Blanchard

CONSTITUTIONAL LAW

ACCUSED'S RIGHT TO COUNSEL

Texas. The Sixth Amendment to the Constitution of the United States provides that an accused shall have the right to counsel for his defense in criminal prosecutions by the federal government. It was settled in *Powell v. Alabama*[1] that it is a violation of due process of law for a State to deny counsel where a person is charged with a capital offense. However, the Supreme Court of the United States in *Betts v. Brady*[2] laid down the rule that a State is not required to appoint counsel in every criminal prosecution. Speaking through Mr. Justice Roberts, the court said: ". . . in the great majority of the States, it has been the considered judgment of the people, their representatives and their courts that appointment of counsel is not a fundamental right essential to a fair trial."[3] This rule has been followed in several Texas cases.[4]

In the recent Texas case of *Parsons v. State*[5] the court held that the defendant was not denied due process of law when counsel was not appointed to represent him. The defendant was indicted, tried and convicted of felony theft, and was sentenced to life imprisonment under what is commonly called the Habitual Criminal Act.[6]

The defendant had been convicted of felonies, less than capital, on four previous occasions, had represented himself on the trial, had cross-examined the State's witnesses, and had testified in his own behalf. The court held that a failure to appoint counsel to represent a defendant on trial for theft, wherein defendant received a life sentence as an habitual criminal, did not constitute

---

[1] 287 U. S. 45 (1932).

[2] 316 U. S. 455 (1942).

[3] *Id.* at 471.

[4] Thomas v. State, 132 Tex. Crim. Rep. 549, 106 S. W. 2d. 289 (1937); Faggett v. State, 122 Tex. Crim. Rep. 399, 55 S. W. 2d. 842 (1933); Lopez v. State, 46 Tex. Crim. Rep. 473, 80 S. W. 1016 (1904).

[5] ——Tex. Crim. Rep.——, 218 S. W. 2d. 202 (1949).

[6] TEX. PEN. CODE (Vernon, 1948) art. 63.

a denial of due process of law where the defendant was 47 years old at the time of the trial and experienced in criminal procedure.

The decision appears to be in line with the principle that it is not necessary to appoint counsel in every criminal prosecution.[7] There are exceptions to this principle which do require counsel to be appointed in a non-capital case as well as in a capital case to provide due process of law.[8]

The Supreme Court of the United States has ruled that a defendant is entitled to be represented by counsel for his defense, though charged with a non-capital offense, in the following cases:[9] 1. where the defendant was an inexperienced youth of 18, although familiar with criminal procedure, having been convicted of earlier offenses;[10] 2. where the defendant was unable to comprehend the consequences of his plea of guilty;[11] and 3. where the defendant was an ignorant Indian and the case involved a difficult jurisdictional problem which an ordinary layman could not comprehend.[12]

One may safely conclude that the appointment of counsel is not absolutely necessary where a defendant is charged with a non-capital offense but under certain circumstances appointment is necessary to afford due process. The circumstances which require that counsel be appointed appear to be based upon the facts of the individual case:

> "[T]hat which may, in one setting, constitute a denial of fundamental fairness, shocking to the universal sense of justice, may in other circumstances, and in the light of other considerations fall short of such denial."[13]

---

[7] Betts v. Brady, 316 U. S. 455 (1942).

[8] U. S. CONST. AMEND. XIV: ". . . nor shall any State deprive any person of life, liberty or property without due process of law."

[9] Boles, *Constitutional Law*, 3 Southwestern L. J. 287, 311 (1949).

[10] Wade v. Mayo, 334 U. S. 672 (1948).

[11] Uveges v. Pa., 335 U. S. 437 (1948).

[12] Rice v. Olsen, 324 U. S. 786 (1945).

[13] Betts v. Brady, 316 U. S. 455, 462 (1942).

Generally, the rule that counsel need not be appointed in all criminal prosecutions applies only to States, since the Sixth Amendment requires the appointment of counsel where the defendant is charged with a federal offense.

RIGHT OF TRIAL BY JURY; EXCLUSION OF NEGROES

Oklahoma. It may be said that exclusion of Negroes from jury service solely on account of their race or color denies a Negro charged with crime equal protection and due process of law, contrary to the Constitution of the United States.[14] This principle has been enforced in both Texas[15] and Oklahoma.[16]

In *Dixon v. State*,[17] a recent Oklahoma case, the defendant, a Negro citizen of Texas, was tried and convicted of the felony of assault with a deadly weapon. The court held that defendant was not denied due process or equal protection. Defendant was arrested for drinking liquor in a public place, and while being searched, he shot a deputy sheriff. Defendant moved to quash the panel of jurors on the ground that no Negroes had been called for jury service, thus depriving him of due process and equal protection.

The holding does not appear to violate the principle that a Negro has been denied due process where there has been an exclusion of Negroes from the jury. Where a Negro or other person seeks to quash a panel of jurors on the ground that he is being discriminated against, he has the burden of proving discrimination.[18] This is the distinguishing point of the present case. The court overruled the defendant's motion to quash the panel on the ground that he failed to prove discrimination. It was recognized that if he had shown the alleged discrimination, in that Negroes were excluded from jury service solely on the basis of their race or color, he would have been entitled to quash the panel.

[14] U. S. CONST. AMEND. XIV; Norris v. Alabama, 294 U. S. 587 (1935).
[15] Martin v. Texas, 200 U. S. 316 (1906); Carter v. Texas, 177 U. S. 442 (1900).
[16] Hollins v. Oklahoma, 295 U. S. 394 (1935).
[17] ——Okla.——, 206 P. 2d. 231 (1949).
[18] Hollins v. Oklahoma, 295 U. S. 394 (1935).