Argersinger v. Hamlin, 407 U.S. 25 (1972)

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner, an indigent, was charged in Florida with carrying a concealed weapon, an offense punishable by imprisonment up to six months, a $1,000 fine, or both. The trial was to a judge, and petitioner was unrepresented by counsel. He was sentenced to serve 90 days in jail, and brought this habeas corpus action in the Florida Supreme Court, alleging that, being deprived of his right to counsel, he was unable as an indigent layman properly to raise and present to the trial court good and sufficient defenses to the charge for which he stands convicted. The Florida [p27] Supreme Court, by a four-to-three decision, in ruling on the right to counsel, followed the line we marked out in Duncan v. Louisiana, 391 U.S. 145, 159, as respects the right to trial by jury, and held that the right to court-appointed counsel extends only to trials "for non-petty offenses punishable by more than six months imprisonment." 236 So.2d 442, 443. [n1]

The case is here on a petition for certiorari, which we granted. 401 U.S. 908. We reverse.

The Sixth Amendment, which, in enumerated situations, has been made applicable to the States by reason of the Fourteenth Amendment (see Duncan v. Louisiana, supra; Washington v. Texas, 388 U.S. 14; Klopfer v. North Carolina, 386 U.S. 213; Pointer v. Texas, 380 U.S. 400; Gideon v. Wainwright, 372 U.S. 335; and In re Oliver, 333 U.S. 257), provides specified standards for "all criminal prosecutions." [p28]

One is the requirement of a "public trial." In re Oliver, supra, held that the right to a "public trial" was applicable to a state proceeding even though only a 60-day sentence was involved. 333 U.S. at 272.

Another guarantee is the right to be informed of the nature and cause of the accusation. Still another, the right of confrontation. Pointer v. Texas, supra. And another, compulsory process for obtaining witnesses in one's favor. Washington v. Texas, supra. We have never limited these rights to felonies or to lesser but serious offenses.

In Washington v. Texas, supra, we said,

We have held that due process requires that the accused have the assistance of counsel for his defense, that he be confronted with the witnesses against him, and that he have the right to a speedy and public trial.

388 U.S. at 18. Respecting the right to a speedy and public trial, the right to be informed of the nature and cause of the accusation, the right to confront and cross-examine witnesses, the right to compulsory process for obtaining witnesses, it was recently stated,

It is simply not arguable, nor has any court ever held, that the trial of a petty offense may be held in secret, or without notice to the accused of the charges, or that, in such cases, the defendant has no right to confront his accusers or to compel the attendance of witnesses in his own behalf.

Junker, The Right to Counsel in Misdemeanor Cases, 43 Wash.L.Rev. 685, 705 (1968).

District of Columbia v. Clawans, 300 U.S. 617, illustrates the point. There, the offense was engaging without a license in the business of dealing in second-hand property, an offense punishable by a fine of $300 or imprisonment for not more than 90 days. The Court held that the offense was a "petty" one, and could be tried without a jury. But the conviction was reversed [p29] and a new trial ordered, because the trial court had prejudicially restricted the right of cross-examination, a right guaranteed by the Sixth Amendment.

The right to trial by jury, also guaranteed by the Sixth Amendment by reason of the Fourteenth, was limited by Duncan v. Louisiana, supra, to trials where the potential punishment was imprisonment for six months or more. But, as the various opinions in Baldwin v. New York, 399 U.S. 66, make plain, the right to trial by jury has a different geneology, and is brigaded with a system of trial to a judge alone. As stated in Duncan:

Providing an accused with the right to be tried by a jury of his peers gave him an inestimable safeguard against the corrupt or overzealous prosecutor and against the compliant, biased, or eccentric judge. If the defendant preferred the common sense judgment of a jury to the more tutored, but perhaps less sympathetic, reaction of the single judge, he was to have it. Beyond this, the jury trial provisions in the Federal and State Constitutions reflect a fundamental decision about the exercise of official power -- a reluctance to entrust plenary powers over the life and liberty of the citizen to one judge or to a group of judges. Fear of unchecked power, so typical of our State and Federal Governments in other respects, found expression in the criminal law in this insistence upon community participation in the determination of guilt or innocence. The deep commitment of the Nation to the right of jury trial in serious criminal cases as a defense against arbitrary law enforcement qualifies for protection under the Due Process Clause of the Fourteenth Amendment, and must therefore be respected by the States.

391 U.S. at 156. [p30]

While there is historical support for limiting the "deep commitment" to trial by jury to "serious criminal cases," [n2] there is no such support for a similar limitation on the right to assistance of counsel:

Originally, in England, a person charged with treason or felony was denied the aid of counsel, except in respect of legal questions which the accused himself might suggest. At the same time, parties in civil cases and persons accused of misdemeanors were entitled to the full assistance of counsel. . . .

* * * *

[It] appears that, in at least twelve of the thirteen colonies, the rule of the English common law, in the respect now under consideration, had been definitely rejected, and the right to counsel fully recognized in all criminal prosecutions, save that, in one or two instances, the right was limited to capital offenses or to the more serious crimes. . . .

Powell v. Alabama, 287 U.S. 45, 60, 64-65.

The Sixth Amendment thus extended the right to counsel beyond its common law dimensions. But there is nothing in the language of the Amendment, its history, or in the decisions of this Court to indicate that it was intended to embody a retraction of the right in petty offenses wherein the common law previously did require that counsel be provided. See James v. Headley, 410 F.2d 325, 331-332, n. 9.

We reject, therefore, the premise that, since prosecutions for crimes punishable by imprisonment for less than [p31] six months may be tried without a jury, they may also be tried without a lawyer.

The assistance of counsel is often a requisite to the very existence of a fair trial. The Court in Powell v. Alabama, supra, at 68-69 -- a capital case -- said:

The right to be heard would be, in many cases, of little avail if it did not comprehend the right to be heard by counsel. Even the intelligent and educated layman has small, and sometimes no, skill in the science of law. If charged with crime, he is incapable, generally, of determining for himself whether the indictment is good or bad. He is unfamiliar with the rules of evidence. Left without the aid of counsel, he may be put on trial without a proper charge, and convicted upon incompetent evidence, or evidence irrelevant to the issue or otherwise inadmissible. He lacks both the skill and knowledge adequately to prepare his defense, even though he have a perfect one. He requires the guiding hand of counsel at every step in the proceedings against him. Without it, though he be not guilty, he faces the danger of conviction because he does not know how to establish his innocence. If that be true of men of intelligence, how much more true is it of the ignorant and illiterate, or those of feeble intellect.

In Gideon v. Wainwright, supra (overruling Betts v. Brady, 316 U.S. 455), we dealt with a felony trial. But we did not so limit the need of the accused for a lawyer. We said:

[I]n our adversary system of criminal justice, any person haled into court who is too poor to hire a lawyer cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth. Governments, both state and federal, [p32] quite properly spend vast sums of money to establish machinery to try defendants accused of crime. Lawyers to prosecute are everywhere deemed essential to protect the public's interest in an orderly society. Similarly, there are few defendants charged with crime, few indeed, who fail to hire the best lawyers they can get to prepare and present their defenses. That government hires lawyers to prosecute and defendants who have the money hire lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. The right of one charged with crime to counsel may not be deemed fundamental and essential to fair trials in some countries, but it is in ours. From the very beginning, our state and national constitutions and laws have laid great emphasis on procedural and substantive safeguards designed to assure fair trials before impartial tribunals in which every defendant stands equal before the law. This noble ideal cannot be realized if the poor man charged with crime has to face his accusers without a lawyer to assist him.

372 U.S. at 344. [n3]

Both Powell and Gideon involved felonies. But their rationale has relevance to any criminal trial, where an accused is deprived of his liberty. Powell and Gideon suggest that there are certain fundamental rights applicable to all such criminal prosecutions, even those, such [p33] as In re Oliver, supra, where the penalty is 60 days' imprisonment:

A person's right to reasonable notice of a charge against him, and an opportunity to be heard in his defense -- a right to his day in court -- are basic in our system of jurisprudence, and these rights include, as a minimum, a right to examine the witnesses against him, to offer testimony, and to be represented by counsel.

333 U.S. at 273 (emphasis supplied).

The requirement of counsel may well be necessary for a fair trial even in a petty offense prosecution. We are by no means convinced that legal and constitutional questions involved in a case that actually leads to imprisonment even for a brief period are any less complex than when a person can be sent off for six months or more. See, e.g., Powell v. Texas, 392 U.S. 514; Thompson v. Louisville, 362 U.S. 199; Shuttlesworth v. Birmingham, 382 U.S. 87.

The trial of vagrancy cases is illustrative. While only brief sentences of imprisonment may be imposed, the cases often bristle with thorny constitutional questions. See Papachristou v. Jacksonville, 405 U.S. 156.

In re Gault, 387 U.S. 1, dealt with juvenile delinquency and an offense which, if committed by an adult, would have carried a fine of $5 to $50 or imprisonment in jail for not more than two months (id. at 29), but which, when committed by a juvenile, might lead to his detention in a state institution until he reached the age of 21. Id. at 36-37. We said (id. at 36) that

[t]he juvenile needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he has a defense and to prepare and submit it. The child "requires the guiding hand of counsel [p34] at every step in the proceedings against him," citing Powell v. Alabama, 287 U.S. at 69. The premise of Gault is that, even in prosecutions for offenses less serious than felonies, a fair trial may require the presence of a lawyer.

Beyond the problem of trials and appeals is that of the guilty plea, a problem which looms large in misdemeanor, as well as in felony, cases. Counsel is needed so that the accused may know precisely what he is doing, so that he is fully aware of the prospect of going to jail or prison, and so that he is treated fairly by the prosecution.

In addition, the volume of misdemeanor cases, [n4] far greater in number than felony prosecutions, may create an obsession for speedy dispositions, regardless of the fairness of the result. The Report by the President's Commission on Law Enforcement and Administration of Justice, The Challenge of Crime in a Free Society 128 (1967) , states:

For example, until legislation last year increased the number of judges, the District of Columbia Court of General Sessions had four judges to process the preliminary stages of more than 1,500 felony cases, 7,500 serious misdemeanor cases, and 38,000 petty offenses and an equal number of traffic offenses per year. An inevitable consequence of volume that large is the almost total preoccupation [p35] in such a court with the movement of cases. The calendar is long, speed often is substituted for care, and casually arranged out-of-court compromise too often is substituted for adjudication. Inadequate attention tends to be given to the individual defendant, whether, in protecting his rights, sifting the facts at trial, deciding the social risk he presents, or determining how to deal with him after conviction. The frequent result is futility and failure. As Dean Edward Barrett recently observed:

Wherever the visitor looks at the system, he finds great numbers of defendants being processed by harassed and overworked officials. Police have more cases than they can investigate. Prosecutors walk into courtrooms to try simple cases as they take their initial looks at the files. Defense lawyers appear having had no more than time for hasty conversations with their clients. Judges face long calendars with the certain knowledge that their calendars tomorrow and the next day will be, if anything, longer, and so there is no choice but to dispose of the cases.

Suddenly it becomes clear that, for most defendants in the criminal process, there is scant regard for them as individuals. They are numbers on dockets, faceless ones to be processed and sent on their way. The gap between the theory and the reality is enormous.

Very little such observation of the administration of criminal justice in operation is required to reach the conclusion that it suffers from basic ills.

That picture is seen in almost every report.

The misdemeanor trial is characterized by insufficient and frequently irresponsible preparation on the part of the defense, the prosecution, and the court. Everything is rush, rush.

Hellerstein, The Importance of the Misdemeanor [p36] Case on Trial and Appeal, 28 The Legal Aid Brief Case 151, 152 (1970).

There is evidence of the prejudice which results to misdemeanor defendants from this "assembly line justice." One study concluded that

[m]isdemeanants represented by attorneys are five times as likely to emerge from police court with all charges dismissed as are defendants who face similar charges without counsel.

American Civil Liberties Union, Legal Counsel for Misdemeanants, Preliminary Report 1 (1970).

We must conclude, therefore, that the problems associated with misdemeanor and petty [n5] offenses often [p37] require the presence of counsel to insure the accused a fair trial.

MR. JUSTICE POWELL suggests that these problems are raised even in situations where there is no prospect of imprisonment. Post at 48. We need not consider the requirements of the Sixth Amendment as regards the right to counsel where loss of liberty is not involved, however, for here, petitioner was, in fact, sentenced to jail. And, as we said in Baldwin v. New York, 399 U.S. at 73,

the prospect of imprisonment, for however short a time, will seldom be viewed by the accused as a trivial or "petty" matter, and may well result in quite serious repercussions affecting his career and his reputation. [n6]

We hold, therefore, that, absent a knowing and intelligent waiver, no person may be imprisoned for any offense, whether classified as petty, misdemeanor, or felony, unless he was represented by counsel at his trial. [n7]

That is the view of the Supreme Court of Oregon, with which we agree. It said, in Stevenson v. Holzman, 254 Ore. 94, 102, 458 P.2d 414, 418:

We hold that no person may be deprived of his [p38] liberty who has been denied the assistance of counsel as guaranteed by the Sixth Amendment. This holding is applicable to all criminal prosecutions, including prosecutions for violations of municipal ordinances. The denial of the assistance of counsel will preclude the imposition of a jail sentence. [n8]

We do not sit as an ombudsman to direct state courts how to manage their affairs, but only to make clear the federal constitutional requirement. How crimes should be classified is largely a state matter. [n9] The fact that traffic charges technically fall within the category of "criminal prosecutions" does not necessarily mean that many of them will be brought into the class [n10] where imprisonment actually occurs. [p39]

The American Bar Association Project on Standards for Criminal Justice states:

As a matter of sound judicial administration, it is preferable to disregard the characterization of the offense as felony, misdemeanor or traffic offense. Nor is it adequate to require the provision of defense services for all offenses which carry a sentence to jail or prison. Often, as a practical matter, such sentences are rarely, if ever, imposed for certain types of offenses, so that, for all intents and purposes, the punishment they carry is, at most, a fine. Thus, the standard seeks to distinguish those classes of cases in which there is real likelihood that incarceration may follow conviction from those types in which there is no such likelihood. It should be noted that the standard does not recommend a determination of the need for counsel in terms of the facts of each particular case; it draws a categorical line at those types of offenses for which incarceration as a punishment is a practical possibility.

Providing Defense Services 40 (Approved Draft 1968). [p40]

Under the rule we announce today, every judge will know when the trial of a misdemeanor starts that no imprisonment may be imposed, even though local law permits it, unless the accused is represented by counsel. He will have a measure of the

seriousness and gravity of the offense, and therefore know when to name a lawyer to represent the accused before the trial starts.

The run of misdemeanors will not be affected by today's ruling. But, in those that end up in the actual deprivation of a person's liberty, the accused will receive the benefit of "the guiding hand of counsel" so necessary when one's liberty is in jeopardy.

Reversed.

1. For a survey of the opinions of judges, prosecutors, and defenders concerning the right to counsel of persons charged with misdemeanors, see 1 L. Silverstein, Defense of the Poor in Criminal Cases in American State Courts 127-135 (1965).

A review of federal and state decisions following Gideon is contained in Comment, Right to Counsel: The Impact of Gideon v. Wainwright in the Fifty States, 3 Creighton L.Rev. 103 (1970).

Twelve States provide counsel for indigents accused of "serious crime" in the misdemeanor category. Id. at 119-124.

Nineteen States provide for the appointment of counsel in most misdemeanor cases. Id. at 124-133. One of these is Oregon, whose Supreme Court said, in Stevenson v. Holzman, 254 Ore. 94, 100-101, 458 P.2d 414, 418,

If our objective is to insure a fair trial in every criminal prosecution, the need for counsel is not determined by the seriousness of the crime. The assistance of counsel will best avoid conviction of the innocent -- an objective as important in the municipal court as in a court of general jurisdiction.

California's requirement extends to traffic violations. Blake v. Municipal Court, 242 Cal.App.2d 731, 51 Cal.Rptr. 771.

Overall, 31 States have now extended the right to defendants charged with crimes less serious than felonies. Comment, Right to Counsel, supra, at 134.

2. See Frankfurter & Corcoran, Petty Federal Offenses and the Constitutional Guaranty of Trial by Jury, 39 Harv.L.Rev. 917, 980-982 (1926); James v. Headley, 410 F.2d 325, 331. Cf. Kaye, Petty Offenders Have No Peers!, 26 U.Chi.L.Rev. 245 (1959).

3. See also Johnson v. Zerbst, 304 U.S. 458, 462-463:

[The Sixth Amendment] embodies a realistic recognition of the obvious truth that the average defendant does not have the professional legal skill to protect himself when brought before a tribunal with power to take his life or liberty, wherein the prosecution is [re]presented by experienced and learned counsel. That which is simple, orderly and necessary to the lawyer, to the untrained layman may appear intricate, complex and mysterious.

4. In 1965, 314,000 defendants were charged with felonies in state courts, and 24,000 were charged with felonies in federal courts. President's Commission on Law Enforcement and Administration of Justice, Task Force Report: The Courts 55 (1967). Exclusive of traffic offenses, however, it is estimated that there are annually between four and five million court cases involving misdemeanors. Ibid. And, while there are no authoritative figures, extrapolations indicate that there are probably between 40.8 and 50 million traffic offenses each year. Note, Dollars and Sense of an Expanded Right to Counsel, 55 Iowa L.Rev. 1249, 1261 (1970).

5. Title 18 U.S.C. § 1 defines a petty offense as one in which the penalty does not exceed imprisonment for six months, or a fine of not more than $500, or both. Title 18 U.S.C. § 3006A(b) provides for the appointment of counsel for indigents in all cases "other than a petty offense." But, as the Court of Appeals for the Fifth Circuit noted in James v. Headley, 410 F.2d at 330-331, 18 U.S.C. § 3006A, which was enacted as the Criminal Justice Act of 1964, contains a congressional plan for furnishing legal representation at federal expense for certain indigents, and does not purport to cover the full range of constitutional rights to counsel.

Indeed, the Conference Report on the Criminal Justice Act of 1964 made clear the conferees' belief that the right to counsel extends to all offenses, petty and serious alike. H.R.Conf.Rep. No. 1709, 88th Cong., 2d Sess. (1964).

In that connection, the Federal Rules of Criminal Procedure, as amended in 1966, provide in Rule 44(a):

Every defendant who is unable to obtain counsel shall be entitled to have counsel assigned to represent him at every stage of the proceedings from his initial appearance before the commissioner or the court through appeal, unless he waives such appointment.

The Advisory Committee note on Rule 44 says:

Like the original rule, the amended rule provides a right to counsel which is broader in two respects than that for which compensation is provided in the Criminal Justice Act of 1964:

(1) The right extends to petty offenses to be tried in the district courts, and

(2) The right extends to defendants unable to obtain counsel for reasons other than financial.

6. See Marston v. Oliver, 324 F.Supp. 691, 696 (ED Va.1971):

Any incarceration of over thirty days, more or less, will usually result in loss of employment, with a consequent substantial detriment to the defendant and his family.

7. We do not share MR. JUSTICE POWELL's doubt that the Nation's legal resources are sufficient to implement the rule we announce today. It has been estimated that between 1,575 and 2,300 full-time counsel would be required to represent all indigent

misdemeanants, excluding traffic offenders. Note, Dollars and Sense of an Expanded Right to Counsel, 55 Iowa L.Rev. 1249, 1260-1261 (1970). These figures are relatively insignificant when compared to the estimated 355,200 attorneys in the United States (Statistical Abstract of the United States 153 (1971)), a number which is projected to double by the year 1985. See Ruud, That Burgeoning Law School Enrollment, 58 A.B.A.J. 146, 147. Indeed, there are 18,000 new admissions to the bar each year -- 3,500 more lawyers than are required to fill the "estimated 14,500 average annual openings." Id. at 148.

8. Article I, § 9, of the proposed Revised Constitution of Oregon provides:

Every person has the right to assistance of counsel in all official proceedings and dealings with public officers that may materially affect him. If he cannot afford counsel, he has the right to have counsel appointed for him in any case in which he may lose his liberty.

9. One partial solution to the problem of minor offenses may well be to remove them from the court system. The American Bar Association Special Committee on Crime Prevention and Control recently recommended, inter alia, that:

Regulation of various types of conduct which harm no one other than those involved (e.g., public drunkenness, narcotics addiction, vagrancy, and deviant sexual behavior) should be taken out of the courts. The handling of these matters should be transferred to nonjudicial entities, such as detoxification centers, narcotics treatment centers and social service agencies. The handling of other nonserious offenses, such as housing code and traffic violations, should be transferred to specialized administrative bodies.

ABA Report, New Perspectives on Urban Crime iv (1972). Such a solution, of course, is peculiarly within the province of state and local legislatures.

10.

Forty thousand traffic charges (arising out of 150,000 nonparking traffic citations) were disposed of by court action in Seattle during 1964. The study showed, however, that in only about 4,500 cases was there any possibility of imprisonment as the result of a traffic conviction. In only three kinds of cases was the accused exposed to any danger of imprisonment: (1) where the offense charged was hit-and-run, reckless or drunken driving; or (2) where any additional traffic violation was charged against an individual subject to a suspended sentence for a previous violation; or (3) where, whatever the offense charged, the convicted individual was unable to pay the fine imposed.

Junker, The Right to Counsel in Misdemeanor Cases, 43 Wash.L.Rev. 685, 711 (1968).

Of the 1,288,975 people convicted by the City of New York in 1970 for traffic infractions such as jaywalking and speeding, only 24 were fined and imprisoned, given suspended sentences, or jailed. Criminal Court of the City of New York Annual Report 11 (1970). Of the 19,187 convicted of more serious traffic offenses, such as driving under the influence, reckless driving, and leaving the scene of an accident, 404 (2.1%) were subject to some form of imprisonment. Ibid.