BENTON v. MARYLAND

SUPREME COURT OF THE UNITED STATES
395 U.S. 784
June 23, 1969

OPINION: Mr. Justice MARSHALL…In August 1965, petitioner was tried in a Maryland state court on charges of burglary and larceny. The jury found petitioner not guilty of larceny but convicted him on the burglary count. He was sentenced to 10 years in prison. Shortly after his notice of appeal was filed in the Maryland Court on Appeals, that court handed down its decision in the case of *Schowgurow v. State*. In *Schowgurow* the Maryland Court of Appeals struck down a section of the state constitution which required jurors to swear their belief in the existence of God. As a result of this decision, petitioner's case was remanded to the trial court.

Larceny : Felonious stealing of personal property of another.

Burglary : Entering, with or without force, any building with the intent to commit a felony or larceny.

I am surprised that this case would automatically be remanded. Did any juror object to swearing their belief in the existence of God in this case? Wouldn't the principle "no harm, no foul" come into play? Just wondering!

Does Maryland now have to give every living convict a new trial? What do you think?

By the way, how is it possible for a jury to convict of burglary but not larceny? Well, it appears they could have found the defendant "entered a building with the requisite intent," but did not steal anything. Also, I guess he could have "entered" with the intent to commit some felony "other than larceny."

Because both the grand and petit juries in petitioner's case had been selected under the invalid constitutional provision, petitioner was given the option of demanding re-indictment and retrial. He chose to have his conviction set aside, and a new indictment and new trial followed. At this second trial, petitioner was again charged with both larceny and burglary. Petitioner objected to retrial on the larceny count, arguing that because the first jury had found him not guilty of larceny, retrial would violate the constitutional prohibition against subjecting persons to double jeopardy for the same offense. The trial judge denied petitioner's motion to dismiss the larceny charge, and petitioner was tried for both larceny and burglary. This time the jury found petitioner guilty of both offenses, and the judge sentenced him to 5 years on the burglary count and 5 years for larceny, the sentences to run concurrently. On appeal to the newly created Maryland Court of Special Appeals, petitioner's double jeopardy claim was rejected on the merits. The Court of Appeals denied discretionary review…[W]e granted certiorari, but limited the writ to the consideration of two issues:

(1) Is the double jeopardy clause of the Fifth Amendment applicable to the States through the Fourteenth Amendment?

(2) If so, was the petitioner 'twice put in jeopardy' in this case?

…[W]e hold that the Double Jeopardy Clause of the Fifth Amendment is applicable to the States through the Fourteenth Amendment, and we reverse petitioner's conviction for larceny…

In 1937, this Court decided the landmark case of *Palko v. Connecticut*. Palko, although indicted for first-degree murder, had been convicted of murder in the second degree after a jury trial in a Connecticut state court. The State appealed and won a new trial. Palko argued that the Fourteenth Amendment incorporated, as against the States, the Fifth Amendment requirement that no person 'be subject for the same offense to be twice put in jeopardy of life or limb.' The Court disagreed. Federal double jeopardy standards were not applicable against the States. Only when a kind of jeopardy subjected a defendant to 'a hardship so acute and shocking that our polity will not endure it,' did the Fourteenth Amendment apply. The order for a new trial was affirmed. In subsequent appeals from state courts, the Court continued to apply this lesser *Palko* standard.

Recently, however, this Court has 'increasingly looked to the specific guarantees of the Bill of Rights to determine whether a state criminal trial was conducted with due process of law.' In an increasing number of cases, the Court has rejected the notion that the Fourteenth Amendment applies to the States only a watered-down, subjective version of the individual guarantees of the Bill of Rights…*Malloy v. Hogan*. Only last Term we found that the right to trial by jury in criminal cases was 'fundamental to the American scheme of justice' and held that the Sixth Amendment right to a jury trial was applicable to the States through the Fourteenth Amendment. For the same reasons, **we today find that the double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment…*Palko* is overruled…**

Once it is decided that a particular Bill of Rights guarantee is 'fundamental to the American scheme of justice,' the same constitutional standards apply against both the State and Federal

Governments. *Palko's* roots had thus been cut away years ago. We today only recognize the inevitable.

The fundamental nature of the guarantee against double jeopardy can hardly be doubted. Its origins can be traced to Greek and Roman times, and it became established in the common law of England long before this Nation's independence. As with many other elements of the common law, it was carried into the jurisprudence of this Country through the medium of Blackstone, who codified the doctrine in his Commentaries…The validity of petitioner's larceny conviction must be judged, not by the watered-down standard enunciated in *Palko*, but under this Court's interpretations of the Fifth Amendment double jeopardy provision.

It is clear that petitioner's larceny conviction cannot stand once federal double jeopardy standards are applied. Petitioner was acquitted of larceny in his first trial. Because he decided to appeal his burglary conviction, he is forced to suffer retrial on the larceny count as well. As this Court held in *Green v. United States*, 'conditioning an appeal of one offense on a coerced surrender of a valid plea of former jeopardy on another offense exacts a forfeiture in plain conflict with the constitutional bar against double jeopardy.'…

CONCURRENCE: Mr. Justice WHITE…[Not provided.]

DISSENT: Mr. Justice HARLAN/STEWART…[Not provided.]