Tulsa Law Review

Volume 5 | Number 1

1968

Criminal Law--Effective Assistance of Counsel

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CRIMINAL LAW—Effective Assistance of Counsel

After serving ten years of a life sentence for murder, the petitioner was released by a federal district court on a writ of habeas corpus. In *Walker v. Brough*[1], the circuit court upheld the writ stating that the petitioner, William Walker, had been denied his constitutional right to effective assistance of counsel. The circuit court pointed out that Walker was interrogated during his arraignment by the clerk in open court. In response to direct questions, he twice pleaded guilty. Because Walker was not represented by counsel, the presiding judge ordered the plea stricken from the record. However, after waiving the right to a jury, the defendant Walker was found guilty by the same judge who had presided over his arraignment.[2]

Though the presiding judge had knowledge of the prior plea of guilty, this information was not conveyed to Walker's attorney. Furthermore, the docket did not show that the plea had been entered and later stricken. Because of the attorney's ignorance of the guilty plea, he was not in a position to provide effective legal assistance to the defendant. Ordering the defendant released under the writ of habeas corpus, the court stated:

> [W]e can only speculate as to what course of action Walker's trial counsel would have pursued had he known that his client had twice tendered a plea of guilty. . . before the judge who was to determine the guilt or innocence of his client. But it is inconceivable that a competent defender, with full information of what had transpired, would not immediately sense the *possibility of prejudice* if the arraigning judge should try the case. He would act to eliminate any such possibility.[3]

1 368 F.2d 349 (4th Cir. 1966).

2 *Id.* at 350-351. *See* Wood v. United States, 357 F.2d 425 (10th Cir. 1966) (success is not the test for effective assistance of counsel).

3 368 F.2d at 352. *See* McGill v. United States, 348 F.2d 791

While the trial judge was not disqualified from presiding at the trial simply because he had presided at the arraignment, Walker had an absolute right to remove his case to another court, to ask for a different judge and to demand a jury trial.[4] His counsel's ignorance of what had happened at the arraignment prevented him from exercising these rights.

In *White v. Maryland*[5], the prisoner was without counsel when he was taken before a magistrate for a preliminary hearing where he entered a plea of guilty to a murder charge. At the trial this plea was introduced into evidence with no objection being offered and the defendant was convicted of murder. Reversing the decision, the United States Supreme Court stated: "[W]e do not stop to determine whether prejudice resulted: 'only the presence of counsel could have enabled this accused to know all the defenses available to him and to plead intelligently'."[6]

In analyzing *White v. Maryland,* the district court stated: "As we understand and construe the *White* case the conviction was not reversed solely on the ground that the accused was not represented by counsel at the preliminary hearing."[7] The court was referring to the fact that the trial judges had knowledge of the defendant's prior guilty plea. It was also observed that:

> In the instant case the trial judge had first hand

(D.C. Cir. 1965) (the sixth amendment does not require the presence of counsel at a point where there is not a reasonable possibility of prejudice to the rights of the accused).

4 *See* Brack v. State, 187 Md. 542, 51 A.2d 171 (1947); Jones v. State, 185 Md. 481, 45 A.2d 350 (1946). The constitution of Maryland gives an absolute right of removal in all cases "on charges of capital crime." Lee v. State, 161 Md. 430, 157 A. 723 (1931).

5 373 U.S. 59 (1963).

6 *Id.* at 60. *See* United States v. Hill, 310 F.2d 601 (4th Cir. 1962).

7 368 F.2d at 353.

> knowledge of Walker's admission of guilt by the repeated tender of a guilty plea in the court's presence. It cannot be logically argued that the trial court's personal knowledge of the admission of guilt is less likely to be prejudicial than similar knowledge obtained by the three judges of *White* through introduction of evidence at trial. The *possibility* of prejudice is as real in one instance as in the other.[8]

The personal knowledge of the judge was the determining factor—a factor that could possibly have had a detrimental effect on the defendant's subsequent trial. The trial court, looking strictly to the possibility of prejudice, refused to determine if it had actually resulted. In determining that a possibility of prejudice existed, the appellate court placed itself in the position of defendant's counsel when it stated: "We quickly conclude that the best interests of the accused would prompt counsel to first obtain removal of the trial to another court."[9] The court then stated: "Upon removal, if it appeared likely that the same judge would follow to try the case, the next logical move would be to seek the possible assignment of another judge . . . ."[10]

The sixth amendment states that an accused shall "have the assistance of counsel for his defense."[11] This has been construed to mean "effective assistance of counsel."[12] Generally, the courts have been very strict in applying these words. *United States v. Malfetti*[13] required the representation to make "a farce and mockery of justice" before an accused's right had been violated. In *Goforth v. United States,*[14] the defendant had "effective representation" even though the counsel was appointed only a few minutes before the trial.

8 *Id.*
9 *Id.* at 352. *See* Williams v. Beto, 354 F.2d 698 (5th Cir. 1965).
10 368 F.2d at 352.
11 U.S. CONST. amend. VI.
12 Thomas v. District of Columbia, 90 F.2d 424, 428 (D.C. Cir. 1937); *accord,* Powell v. Alabama, 287 U.S. 45, 68-71 (1932).
13 125 F.Supp. 27, 30 (D.N.J. 1954).
14 314 F.2d 868, 871 (10th Cir. 1963).

Recent cases have been liberal in construing what is effective assistance of counsel. *Poe v. United States*[15] held that when the defense is substantially weakened because of unawareness on the part of defense counsel of a rule of law basic to the case, the defendant is not given effective assistance of counsel. One thrust of recent cases has determined that if the effectiveness of legal assistance is likely to be prejudiced by a prior denial of counsel at an earlier proceeding, a conviction obtained in such circumstances is invalid. An example of this idea was shown in *Hamilton v. Alabama.*[16] In Alabama, defensive maneuvers such as insanity are waived if not asserted at the arraignment. The defendant in *Hamilton,* because of his lack of counsel at the arraignment, did not know that he should introduce these defenses. Therefore, the rights of this defendant were prejudiced and effective assistance of counsel at the trial was an impossibility.

Walker v. Brough seems to be the most liberal case to date in determining whether a defendant has been deprived of effective assistance of counsel. A strong dissent argued that the court should not be eager to set aside a murder conviction almost ten years old. The dissent stated: "The grounds given for Walker's release are too hypothetical and tenuous to sustain a charge of Constitutional invalidity."[17] The dissent went on to say: "The court rests wholly on its speculation of what *might* have happened in the prosecution. His counsel *might* have moved for a change of venue; he *might* have asked for another judge; he *might* have asked for a jury; or the judge *might* have been prejudiced." [18]

The dissent pointed to Justice Frankfurter's statement in *Adams v. United States* ex rel. *McCann*:

If the result of the adjudicatory process is not to be

[15] 233 F.Supp. 173 (D.D.C. 1964).
[16] 368 U.S. 52 (1961).
[17] 368 F.2d at 354.
[18] *Id.* at 353.

> set at naught, it is not asking too much that the burden of showing essential unfairness be sustained by him who claims such injustice and seeks to have the result set aside, and that it be sustained not as a matter of speculation but as a demonstrable reality.[19]

It is apparent that in determining whether a defendant has effective assistance of counsel the following questions must be kept in mind.

1. Has the attorney had ample time to determine a reasonable course of defending the accused and to prepare a valid defense?
2. Does the attorney have knowledge of all matters concerning the case against the accused? If not, whose fault is it that such knowledge is not known by the attorney? Will such lack of knowledge possibly prejudice the rights of the accused?

Upon reviewing *Walker v. Brough* an important question should be raised — how far will the courts go in protecting the accused's rights to effect assistance of counsel? The courts at the present time are creating new ways to safeguard individual's rights, and the *Walker* case appears to represent a new approach. *Walker v. Brough* seems to be in line with the liberal trend established by the United States Supreme Court in criminal cases but as to whether it goes beyond remains to be seen.

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[19] 317 U.S. 269, 281 (1942).