

Cunningham v Neagle 135-1 1890

[135 US 97]

his duty. It is manifest that the Statute will bear no such construction. In the first place, the judge is not the court; the person does not embody the tribunal, nor does the tribunal follow him in his journeys. In the second place, the direction that he shall attend the court confers no authority or power on him of any character; it is merely a requirement that he shall be present, in person, at the court when sitting, in order to receive the lawful commands of the tribunal, and to discharge the duties elsewhere imposed upon him.

Great as the crime of Terry was in his assault upon Mr. Justice Field, so far from its being a crime against the court, it was not even a contempt of court, and could not have received adequate punishment as such. Section 725 of the Revised Statutes limits contempt to cases of misbehavior in the presence of the court, or so near thereto as to obstruct the administration of justice.

It is claimed that the law needed for appellee's case can be found in section 788 of the Revised Statutes. That section is as follows: "The marshals and their deputies shall have, in each State, the same powers, in executing the laws of the United States, as the sheriffs and their deputies in such State may have, by law, in executing the laws thereof." It is then argued that by the Code of California the sheriff has extensive powers as a conservator of the peace, the Statutes to that effect being quoted in extenso; that he also has certain additional common-law powers and obligations to protect the judges and to personally attend them on their visits to that State; that therefore no statutory authority of the United States for the attendance on Mr. Justice Field by Neagle, and for Neagle's personal presence on the scene was necessary; and that that Statute constituted Neagle a peace officer to keep the peace of the United States. This line of argument seems to us wholly untenable.

By way of preliminary remark it may be well to say that, so far as the simple fact of Neagle's attendance on Mr. Justice Field, and the fact of his personal presence, are concerned, no authority, statutory or otherwise, was needed. He had a right to be there; and being there, no matter how or why, if it became necessary to discharge an official

237-US-502 Collins v Johnston 1915

1 Sutherland Stat. Constr. § 237.

Taking § 8 of art. 6 of the state Constitution as it stood prior to the amendment of November 8, 1910, it simply conferred on the judge from another county the power to hold court; but it is one thing to confer the power to hold court and quite another and essentially different thing to confer jurisdiction on the special court so held. The difference is the fundamental one between the power of the judge to hold court and the jurisdiction of the court so held. **The judge is not the court.**

State ex rel. De Buys v. Civil Dist. Judges, 32 La. Ann. 1261; Ex parte Gardner, 22 Nev. 280, 39 Pac. 570; State ex rel. Ballew v. Woodson, 161 Mo. 453, 61 S. W. 252; State, Lewis, Prosecutor, v. Hoboken, 42 N. J. L. 379; 2 Sutherland, Stat. Constr. § 399.

A jurisdiction vested in a court of twelve judges cannot be exercised or administered by a court of one judge unless special and express provision is made for the purpose.

2 Sutherland Stat. Constr. p. 1046.

If the amendment of November 8, 1910, to § 8 of art. 6 of the state Constitution, is to be applied to the trial, conviction, and sentence of the appellant, then clearly it is an ex post facto law, prohibited by § 10 of art. 1 of the Constitution of the United States.

1 Sutherland, Stat. Constr. 237.

To decide that the "court" held by Judge Burnett, in the trial, conviction, and sentence of appellant, had jurisdiction over the person and subject-matter, is necessarily to give the constitutional amendment of November 8, 1910, a retroactive operation, and thereby make it an ex post facto law, in violation of § 10 of art. 1 of the Federal Constitution. This conclusion is inevitable. It would also deprive the appellant of his liberty without due process of law and deny him the equal protection of the law, in violation of the 14th Amendment.

State v. Doherty, 60 Me. 504; Pryor v. Downey, 50 Cal. 388, 19 Am. Rep. 656.

INVALID PUNISHMENT -- NEW RULE -- RETROACTIVITY

Headnote:[12]

A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But if the laws are unconstitutional and void, the circuit court acquired no jurisdiction of the causes. The same logic governs a challenge to a punishment that the Constitution deprives states of authority to impose. A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.){193 L. Ed. 2d 603}

INVALID PENALTY -- NEW RULE -- RETROACTIVITY

Headnote:[13]

An unconstitutional law is void, and is as no law. A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits states to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. No circumstances call more for the invocation of a rule of complete retroactivity than when the conduct being penalized is constitutionally immune from punishment. The same principle should govern the application of substantive rules on collateral review. Where a state lacks the power to proscribe a habeas petitioner's conduct, it cannot constitutionally insist that he remain in jail. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.)

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that {LEdHR13}[13] "[a]n unconstitutional law is void, and is as no law." *Ibid*. A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in *United States Coin & Currency*, Justice Harlan made this point when he {193 L. Ed. 2d 617} declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 U.S., at 724, 91 S. Ct. 1041, 28 L. Ed. 2d 434. *United States Coin & Currency* involved a case on direct review; yet, for the reasons explained in this opinion, the same principle should govern the application of substantive rules on collateral review. As Justice Harlan explained, where a State lacked the power to proscribe the habeas petitioner's conduct, "it could not constitutionally insist that he remain in jail." *Desist*, *supra*, at 261, n. 2, 89 S. Ct. 1030, 22 L. Ed. 2d 248 (dissenting opinion).

[552 U.S. 272]

Siebold, 100 U.S. 371, 376-377, 25 L. Ed. 717 (1880).⁶ In 1915, the realm of violations for which federal habeas relief would be available to state prisoners was expanded to include state proceedings that "deprive[d] the accused of his life or liberty without due process of law." Frank v. Mangum, 237 U.S. 309, 335, 35 S. Ct. 582, 59 L. Ed. 969. In the early 1900's, however, such relief was only granted when the constitutional violation was so serious that it effectively rendered the conviction **void for lack of jurisdiction**. See, e.g., Moore v. Dempsey, 261 U.S. 86, 43 S. Ct. 265, 67 L. Ed. 543 (1923) (mob domination of a trial); Mooney v. Holohan, 294 U.S. 103, 55 S. Ct. 340, 79 L. Ed. 791 (1935) (per curiam) (knowing use of perjured testimony by the prosecution); Waley v. Johnston, 316 U.S. 101, 62 S. Ct. 964, 86 L. Ed. 1302 (1942) (per curiam) (coerced guilty plea).⁷

100 us 371

INVALID PUNISHMENT -- NEW RULE -- RETROACTIVITY

Headnote:[12]

A conviction under an unconstitutional law is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense that there may be no means of reversing it. But if the laws are unconstitutional and void, the circuit court acquired no jurisdiction of the causes. The same logic governs a challenge to a punishment that the Constitution deprives states of authority to impose. A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced. (Kennedy, J., joined by Roberts, Ch. J., and Ginsburg, Breyer, Sotomayor, and Kagan, JJ.){193 L. Ed. 2d 603}

In *Ex parte Siebold*, 100 U.S. 371, 25 L. Ed. 717 (1880), the Court addressed why substantive rules must {193 L. Ed. 2d 616} have retroactive effect regardless of when the defendant's conviction became final. At the time of that decision, "[m]ere error in the judgment or proceedings, under and by virtue of which a party is imprisoned, constitute[d] no ground for the issue of the writ." *Id.*, at 375, 25 L. Ed. 717. Before *Siebold*, the law might have been thought to establish that so long as the conviction and sentence were imposed by a court of competent jurisdiction, no habeas relief could issue. In *Siebold*, however, the petitioners attacked the judgments on the ground that they had been convicted under unconstitutional statutes. The Court explained that if "this position is well taken, it affects the foundation of the whole proceedings." *Id.*, at 376, 25 L. Ed. 717. {LEdHR12}[12] A conviction under an unconstitutional law

"is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in {136 S. Ct. 731} the sense that there may be no means of reversing it. But . . . if the laws are unconstitutional and void, the Circuit Court acquired no jurisdiction of the causes." *Id.*, at 376-377, 25 L. Ed. 717. As discussed, the Court has concluded that the same logic governs a challenge to a punishment that the Constitution deprives States of authority to impose. *Penry, supra*, at 330, 109 S. Ct. 2934, 106 L. Ed. 2d 256; see also Friendly, *Is Innocence Irrelevant? Collateral Attack on Criminal Judgments*, 38 U. Chi. L. Rev. 142, 151 (1970) ("Broadly speaking, the original sphere for collateral attack on a conviction was where the tribunal lacked jurisdiction either in the usual sense or because the statute under which the defendant had been prosecuted was unconstitutional or because the sentence was one the court could not lawfully impose" (footnotes omitted)). A conviction or sentence imposed in violation of a substantive rule is not just erroneous but contrary to law and, as a result, void. See *Siebold*, 100 U.S., at 376, 25 L. Ed. 717. It follows, as a general principle, that a court has no authority to leave in place a conviction or sentence that violates a substantive rule, regardless of whether the conviction or sentence became final before the rule was announced.

Siebold and the other cases discussed in this opinion, of course, do not directly control the question the Court now answers for the first time. These precedents did not involve a state court's postconviction review of a conviction or sentence and so did not address whether the Constitution requires new substantive rules to have retroactive effect in cases on state collateral review. These decisions, however, have important bearing on the analysis necessary in this case.

In support of its holding that a conviction obtained under an unconstitutional law warrants habeas relief, the *Siebold* Court explained that {LEdHR13}[13] "[a]n unconstitutional law is void, and is as no law." *Ibid.* A penalty imposed pursuant to an unconstitutional law is no less void because the prisoner's sentence became final before the law was held unconstitutional. There is no grandfather clause that permits States to enforce punishments the Constitution forbids. To conclude otherwise would undercut the Constitution's substantive guarantees. Writing for the Court in *United States Coin & Currency*, Justice Harlan made this point when he {193 L. Ed. 2d 617} declared that "[n]o circumstances call more for the invocation of a rule of complete retroactivity" than when "the conduct being penalized is constitutionally immune from punishment." 401 U.S., at 724, 91 S. Ct. 1041, 28 L. Ed. 2d 434. *United States Coin & Currency* involved a case on direct review; yet, for the reasons explained in this opinion, the same principle should govern the application of substantive rules on collateral review. As Justice Harlan explained, where a State lacked the power to proscribe the habeas petitioner's conduct, "it could not constitutionally insist that he remain in jail." *Desist, supra*, at 261, n. 2, 89 S. Ct. 1030, 22 L. Ed. 2d 248 (dissenting opinion).

[372 US 408]

the principles advanced in *Watkins* was relatively brief.¹⁶ In *Ex parte Lange* (US) 18 Wall 163, 21 L ed 872, again a case of direct application to this Court for the writ, the Court ordered the release of one duly convicted in a Federal Circuit Court. The trial judge, after initially imposing upon the defendant a sentence in excess of the legal maximum, had attempted to correct the error by resentencing him. The Court held this double-sentencing procedure unconstitutional, on the ground of double jeopardy, and while conceding that the Circuit Court had a general competence in criminal cases, reasoned that it had no jurisdiction to render a patently lawless judgment.

This marked a return to the common-law principle that restraints contrary to fundamental law, by whatever authority imposed, could be redressed by writ of habeas corpus. See also *Ex parte Wells* (US) 18 How 307, 15 L ed 421; *Ex parte Parks*, 93 US 18, 21, 23 L ed 787, 788. The principle was clearly stated a few years after the *Lange* decision by Mr. Justice Bradley, writing for the Court in *Ex parte Siebold*, 100 US 371, 376, 377, 25 L ed 717, 719.

"... The validity of the judgments is assailed on the ground that the acts of Congress under which the indictments were found are unconstitutional. If this position is well taken, it affects the foundation of the whole proceedings. An unconstitutional law is void, and is as no law. An offense created by it is not a crime. A conviction under <*pg. 851> it is not merely erroneous, but is illegal and void, and cannot be a legal cause of imprisonment. It is true, if no writ of error lies, the judgment may be final, in the sense