4-1-1956

Procedure: Remanding Where There Has Been an Avoidance of A Federal Right

June A. Murray

Follow this and additional works at: https://digitalcommons.law.buffalo.edu/buffalolawreview

Part of the Civil Procedure Commons

Recommended Citation

Available at: https://digitalcommons.law.buffalo.edu/buffalolawreview/vol5/iss3/12
RECENT DECISIONS

Procedure: Remanding Where There Has Been an Avoidance of a Federal Right

Defendant made an extraordinary motion for a new trial to the Georgia state court, which had convicted him of murder, alleging a deprivation of his Constitutional rights because the system employed in the selection of jurors used yellow slips of paper for prospective Negro jurors and white slips for Whites. The court denied the motion, holding that he had waived his right to challenge the array of the jury and also that he had not exercised due diligence in making the motion. Held (6-3): Remanded to the state court for reconsideration due to the State Attorney General's acknowledgment before the Supreme Court that, if it had not been for the procedural issue involved, as a matter of law defendant would have been deprived of his constitutional rights. Williams v. Georgia, 349 U. S. 375 (1955).

On remand, the Georgia Supreme Court affirmed its prior decision on the ground that, under Georgia law, a challenge to the array of the jury had to be made before trial. Williams v. State, 211 Ga. 763, 88 S. E. 2d 376 (1955). A subsequent petition for Certiori was denied by the Supreme Court. Williams v. State, —— U. S. ——, 76 Sup. Ct. 326, 100 L. Ed. 221 (1956).

The Supreme Court has developed, for its own governance in cases which are admittedly within its jurisdiction, a number of rules under which it has avoided passing upon a large part of the Constitutional questions pressed upon it for decision. Among these rules of self-restraint is the rule that appeals from the highest court of a state, challenging its decision on a question arising under the Federal Constitution, will be dismissed where the judgment can be sustained on an independent state ground. Ashwander v. Tennessee Valley Authority, 297 U. S. 288 (1936). This limitation on the Court's granting review resulted from its aversion to giving advisory opinions and its desire to keep within the limits of judicial power in deciding cases and controversies, as the Constitution intended. Muskrat v. United States, 219 U. S. 346 (1911). Should a state court later affirm its prior decision on a state statutory ground, the opinion of the Supreme Court would be rendered nugatory.

The Court, however, has accepted jurisdiction in cases in which the state ground is not independent, but is interwoven with the federal ground, Abie State Bank v. Bryan, 281 U. S. 765 (1931); where the state ground is unsubstantial, Lawrence v. State Tax Commissioner, 286 U. S. 276 (1932); untenable, Ward v. Love County Board of Commissioners, 253 U. S. 17 (1920); or where the non-federal ground was present but was not actually decided by the state court, Grayson v. Harris, 267 U. S. 352 (1925).
In the instant case, certiorari was granted because the Supreme Court felt that the state procedural ground was not the only ground on which the decision rested, and therefore, the result was untenable as an avoidance of a federal right. Admitting that a state procedural rule which forbids the raising of federal questions at late stages in a case is a valid exercise of state power, the Court held that where a state court allows federal questions to be raised at a late stage in proceedings in state courts and to be determined by such courts as a matter of discretion, the Supreme Court is not precluded from deciding whether state court action in the particular circumstances is, in effect, an avoidance of the federal right.

In the light of the decision in *Avery v. Georgia*, 345 U. S. 559 (1954), outlawing the use of colored slips in jury, the Court decided that it should not exercise its jurisdiction over the substantive issue but should remand. It was felt that where an important factor had intervened the State court ought to be allowed another chance to look at the case. *Patterson v. Alabama*, 294 U. S. 600 (1935). In this reexamination of its position, the State's attention was called to two factors: (1) the State Attorney General's acknowledgment, in argument before the Court, that the defendant had been denied his constitutional rights, and (2) his intimation in the brief that another remedy was open to defendant, which was not designated.

The dissenters objected to the use of evasive tactics by the majority which resulted in a failure to set out adequate grounds for the granting of certiorari. They felt that the Court should not have taken jurisdiction where there was an adequate independent state ground, urging that the proper course would be to recognize and honor reasonable state procedure as a valid exercise of sovereign power. They further disagreed with the Court on the question of the propriety of remanding for further consideration of the case by the State, feeling that the Attorney General's statement should be disregarded in light of the Georgia State Court's pronouncement that, but for the procedural objection, the *Avery* decision would govern. They considered the second ground for remand even weaker than the first, since, if Williams had another remedy, he had it as well without the remand, and if he had no other state remedy nothing was gained by the Court's disposition of the case.

An almost immediate response to the Supreme Court's "advice" was forthcoming, with the Georgia court's statement that: "This court bows to the Supreme Court on all federal questions of law but we will not supinely surrender the sovereign power of this state." Thus this unfortunate opinion of the Supreme Court became a valueless piece of disregarded advice upon reaffirmation by the state court; since defendant's position was not improved, the only result flowing from the opinion was a lessening of the prestige of the Court.

*June A Murray*