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Boyd v. Dutton

405 U.S. 1 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 16, 1972

Dear Potter:

In No. 70-5075 - Boyd v. Dutton

please join me.

WW

William O. Douglas

Mr. Justice Stewart

CC: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 4, 1972

RE: No. 70-5075 - Boyd v. Dutton

Dear Potter:

I agree with the Per Curiam you have prepared in the above.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

January 3, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-5075-CFH Boyd v. Dutton

This case is listed for discussion at our January 7 Conference (Page 18a of the Conference List). We considered it at our first Conference of the Term in October, 1971. My notes indicate that there were then at least four tentative votes to grant certiorari, vacate the judgment, and remand the case for an evidentiary hearing by the district court. The case was relisted for a subsequent Conference, however, and this time we decided to hold it for consideration by a nine-member Court. I continue to support the disposition of the case originally proposed.

The petitioner, Jack Boyd, pleaded guilty in a trial court to three counts of forging checks and to one count of possession of a forged check. He was not represented by a lawyer. The court sentenced him to serve 28 years in prison--4 consecutive terms of 7 years each. He sought habeas corpus relief in the state trial court, alleging, among other things, that he had been denied the assistance of counsel. An evidentiary hearing was held, and relief was denied. An appeal was dismissed by the Georgia Supreme Court. The petitioner then filed a petition for habeas corpus in a federal district court, which denied relief without a hearing, basing its decision on the record of the state post-conviction proceeding. The Court of Appeals for the Fifth Circuit affirmed, Boyd v. Smith, 435 F. 2d 153.

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At the Georgia post-conviction hearing, where the petitioner was also without the assistance of counsel, the only witness for the State on the question of waiver of counsel at the arraignment was a man named Dunnaway, who had been present at the arraignment as Deputy Sheriff of Terrill County, Georgia. According to Dunnaway, the prosecutor told the petitioner that he was entitled to legal counsel and that the court would appoint a lawyer if the petitioner could not afford one. By Dunnaway's account, the prosecutor then asked the petitioner if he wanted a lawyer, and the petitioner replied that he did not. Yet there were apparently no questions from either the judge or the prosecutor during the arraignment inquiring whether the petitioner understood the nature and consequences of his alleged waiver of the right to counsel or of his guilty plea.

Dunnaway testified that he had known the petitioner for some years and that the petitioner was a man of "average" intelligence. Dunnaway also said that it "appeared" from the petitioner's demeanor at the arraignment that the petitioner "understood" the proceedings. Yet the petitioner testified, without contradiction, that he could neither read nor write. There was no explanation of this apparent contradiction in the state post-conviction hearing.

The petitioner expressed a desire to call witnesses at the state post-conviction hearing, but the court did not ask him who the proposed witnesses were or inquire about the expected nature of their testimony. The judge simply noted that the petitioner, who obviously possessed no legal skills, had failed to subpoena those whom he wanted to testify.

A person charged with a felony in a state court has an unconditional and absolute constitutional right to a lawyer. Gideon v. Wainwright, 372 U.S. 335. This right attaches at the pleading stage of the criminal process, Rice v. Olsen, 324 U.S. 786, and may be waived only by voluntary and knowing action, Johnson v. Zerbst, 304 U.S. 458, Carnley v. Cochran, 369 U.S. 506. Waiver will not be "lightly presumed," and a trial judge "must indulge every reasonable presumption against waiver." Johnson, supra, at 464.

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The controlling issue in this case is whether the petitioner knowingly and voluntarily waived his constitutional right to counsel before entering the guilty plea in the state trial court. It seems clear to me that the material facts bearing upon that issue were inadequately developed in the state court post-conviction hearing. That being so, the federal district court was under a duty to hold an evidentiary hearing. Townsend v. Sain, 372 U.S. 293, 313. Accordingly, I would vacate the judgment before us and remand the case to the district court for an evidentiary hearing.

P.S.

P. S.

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Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Stewart, J.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated:
Recirculated: JAN 15 1972

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70-5075. Decided January —, 1972

PER CURIAM.

The petitioner, Jack Boyd, pleaded guilty in a Georgia trial court to three counts of forging checks and to one count of possession of a forged check. He was not represented by a lawyer. The court sentenced him to serve 28 years in prison—four consecutive terms of seven years each. No transcript of that plea or sentencing proceeding exists.

He sought habeas corpus relief in the state trial court, alleging, among other things, that he had been denied the assistance of counsel. An evidentiary hearing was held, and relief was denied. An appeal was dismissed by the Georgia Supreme Court. The petitioner then filed a petition for habeas corpus in a federal district court, which denied relief without a hearing, basing its decision on the record of the state post-conviction proceeding. The Court of Appeals for the Fifth Circuit affirmed, *Boyd* v. *Smith,* 435 F. 2d 153 (CA5 1970).

At the Georgia post-conviction hearing, where the petitioner was also without the assistance of counsel, the only witness for the State on the question of waiver of counsel at the arraignment was a man named Dunnaway, who had been present at the arraignment as Deputy Sheriff of Terrill County, Georgia. According to Dunnaway, the prosecutor told the petitioner that he was entitled to legal counsel and that the court would appoint a lawyer if the petitioner could not afford one. By Dunnaway's account, the prosecutor then asked the petitioner if he wanted a lawyer, and the petitioner replied

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To: The Chief
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice Rehnquist

3rd DRAFT

From: Stewart

Circulated:

Recirculated: FEB 16 1972

SUPREME COURT OF THE UNITED STATES

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided January —, 1972

PER CURIAM.

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: White, J.

Circulated: 2-16-72

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided February —, 1972

MR. JUSTICE WHITE, dissenting.

There is no suggestion that either the trial court accepting petitioner's plea of guilty or the state court denying habeas corpus employed an erroneous legal standard in proceeding as it did. On this record we may "properly assume that the state trier of fact applied correct standards of federal law to the facts, in the absence of evidence . . . that there is reason to suspect that an incorrect standard was in fact applied." *Townsend* v. *Swain*, 372 U. S. 293, 315 (1963). And in participating in our appellate function and acting on the cold record before us, I cannot presume greater insight into petitioner's understanding of his rights, his waiver of counsel and his plea of guilty than that of the other courts that have considered this case, including the state court accepting the plea of guilty and the habeas corpus court that heard petitioner and the other evidence. According to the undisputed evidence as to the circumstances surrounding the plea, petitioner stated that he waived counsel, admitted that he was guilty and accordingly entered his plea. Like MR. JUSTICE POWELL, I think the judgment of the state court was fairly supported by the evidence. The petition for writ of certiorari having been granted, I would affirm the judgment of the Court of Appeals.

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Mr. Justice Powell
Mr. Justice Rehnq

1st DRAFT

From:

SUPREME COURT OF THE UNITED STATES

2/1/72

Recirculated:

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70-5075. Decided February —, 1972

MR. JUSTICE BLACKMUN, concurring.

I join the Court's *per curiam* opinion and judgment. I do so, however, only after some initial hesitation, for there is force in MR. JUSTICE REHNQUIST's dissent when he stresses that the unanimous judgment of four courts is being overturned and that the trier of fact in the state post-conviction procedure decided the factual issues against the petitioner.

A reading of the post-conviction transcript, however, persuades me, that the petitioner was utterly lost at that proceeding; that his assertion that favorable witnesses existed was frustrated because he did not know how to compel their attendance and received no assistance in this respect; and that the development of the material facts leaves something to be desired and falls somewhat short of the standards laid down in *Townsend* v. *Sain*, 372 U. S. 293, 313 (1963). When a 20-year-old who claims he could not read or write (although he apparently was able to sign his name to the petition in the present proceeding) receives four consecutive seven-year sentences, totaling 28 years, for forging three checks within a fortnight in the respective amounts of $45, $45, and $40, and for possessing a forged check in the amount of $10, his post-conviction hearing, for me, must clearly meet those standards. Certainly, the appointment of counsel is indicated.

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Justice
Douglas
Brennan
Stewart
White
Marshall
Justice Powell
Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

2/4/72

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided February —, 1972

MR. JUSTICE BLACKMUN, concurring.

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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

3rd DRAFT

From:

SUPREME COURT OF THE UNITED STATES

Circulated:

2/15/72

JACK BOYD *v.* A. L. DUTTON, WARDEN

Recirculated:

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided February —, 1972

MR. JUSTICE BLACKMUN, concurring.

I join the Court's *per curiam* opinion and judgment. I do so, however, only after some initial hesitation, for there is force in the dissent when it stresses that the unanimous judgment of four courts is being overturned and that the trier of fact in the state post-conviction procedure decided the factual issues against the petitioner.

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To: The Chief
Mr. Just
Mr. Just
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Mr. Justi
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Mr. Justice
Mr. Justice Re

1st DRAFT

From: Powell, J.

SUPREME COURT OF THE UNITED STATES

Circulated: FEB 3 19

Recirculated:

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided February —, 1972

MR. JUSTICE POWELL, dissenting.

The controlling issue is whether petitioner knowingly and voluntarily waived his constitutional right to counsel before pleading guilty. At the state court post-conviction hearing, Deputy Sheriff Dunaway, who was present at the time petitioner waived counsel, testified as follows:

"Q. What prompted you to get him out of jail? Had he indicated he wanted to enter a plea or what?

"A. He stated he wanted to go before the Judge and enter a plea of guilty.

"Q. And is Saturday the regular day that the Judge takes pleas there?

"A. Yes, sir. He takes 'em in Colquitt, his home town.

"Q. And you took him yourself to the Courtroom from the jail?

"A. Yes, sir.

"Q. Would you tell the Court briefly what happened whenever you got him to the Courtroom?

"A. He was carried to the Courtroom, and, uh, the Solicitor drawed up the accusations against him, and after he drawed up the accusation against him, and I signed the accusation, we called Jack Boyd and Clinton Henderson, another boy that was with him, into the Courtroom, and Mr. Ray advised each of 'em what the charges against 'em was and asked 'em did they have legal counsel, and which both of 'em stated they did not have legal counsel. Mr. Ray advised both of 'em that they were entitled to

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Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: _____

Recirculated: FEB 11

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided February —, 1972

MR. JUSTICE POWELL, with whom MR. JUSTICE REHNQUIST joins, dissenting.

The *per curiam* opinion of the Court finds that the facts in this case were "inadequately developed" with respect to the controlling issue whether petitioner knowingly and voluntarily waived his constitutional right to counsel before entering the guilty plea in the state trial court. Relying on *Townsend* v. *Sain*, 372 U. S. 293 (1962), the majority remands the case to the District Court.

As it seems to me that the facts on this issue were adequately developed in the state post-conviction evidentiary hearing, I dissent from the majority holding. At that hearing Deputy Sheriff Dunaway, who was present at the time petitioner waived counsel, testified as follows:

> "Q. What prompted you to get him out of jail? Had he indicated he wanted to enter a plea or what?
>
> "A. He stated he wanted to go before the Judge and enter a plea of guilty.
>
> "Q. And is Saturday the regular day that the Judge takes pleas there?
>
> "A. Yes, sir. He takes 'em in Colquitt, his home town.
>
> "Q. And you took him yourself to the Courtroom from the jail?
>
> "A. Yes, sir.
>
> "Q. Would you tell the Court briefly what happened whenever you got him to the Courtroom?

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To: The
Mr.
Mr. Justice
Mr. Justice
Mr. Justice W
Mr. Justice Bl
Mr. Justice Bl
Mr. Justice Po

1st DRAFT

From: Rehnquist, J.

Circulated: 1/14/72

Recirculated:

SUPREME COURT OF THE UNITED STATES

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70-5075. Decided January —, 1972

MR. JUSTICE REHNQUIST, dissenting.

In this case the Court overturns the unanimous judgment of four courts which have heard and rejected petitioner's claims to collateral relief from his state court conviction. Deciding to reverse summarily, the Court chooses to act without the benefit of oral argument or even full briefs on the merits. I must respectfully dissent.

The petitioner was convicted in the Superior Court of Terrell County, Georgia, after his plea of guilty to four counts of forgery. Five years later he claimed that he had not intended to waive his right to go to trial on these charges. The Georgia trial court granted him an evidentiary hearing on this claim, and several witnesses, including petitioner, were heard. There was substantial evidence presented at the hearing that before his guilty plea petitioner was informed of his right, that he understood these rights, and that he voluntarily and knowingly signed a waiver of them. Petitioner attempted to contradict the State's testimony that he had been fully informed of his rights. The State sought to impeach petitioner's credibility both on the basis of his general reputation for truthfulness and on the basis of inconsistencies in his testimony at the hearing. The evidentiary hearing thus presented issues which the trier of fact determined against petitioner. The Court's opinion notes that the state trial court did not "explain" a contradiction between petitioner's claim that he could "neither read nor write" (though he had pleaded guilty

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

20

JACK BOYD *v.* A. L. DUTTON, WARDEN

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 70–5075. Decided January —, 1972

MR. JUSTICE REHNQUIST, dissenting.

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Following the Georgia Supreme Court's dismissal of his appeal, petitioner sought federal habeas corpus relief. The District Court reviewed the record and denied relief, holding that the state evidentiary hearing was adequate

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February 7, 1972

Re: No. 70-5075 - Boyd v. Dutton

Dear Lewis:

Attached is a proposed modification of your dissenting opinion, showing me joining. It is, I fear, pretty much of a paste pot job, but I agreed with just about all you had to say, and wanted to make the one additional point which was contained in my draft dissent: that the primary responsibility for administering federal habeas corpus, even under the very liberalized decisions of this Court, rests with the federal district courts, rather than with this Court. I tried to make that point by slightly editing the opening sentence of your draft, by inserting two paragraphs from mine following quotation of the transcript and the comments in your drafts, and by very tentatively drafting a concluding paragraph which combined what seemed to me to be the common sentiments we had separately expressed. If you feel that my tinkering has detracted from your effort, don't hesitate to say so, and I would certainly expect you to take your hand at revising my contributions. In any event, I will probably join you, rather than going ahead with my earlier draft.

Sincerely,

WHR

Mr. Justice Powell

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[illegible]/7/7[illegible]

BOYD V. DUTTON

MR. JUSTICE POWELL, with whom [illegible], dissenting.

The controlli[illegible] issue in this case is whether the federal habeas court could properly fi[illegible] that the petitioner had a full and fair hearing in the state post-conviction proceeding on the issue of waiver of right to counsel before entry of a guilty plea. At the state court post-conviction hearing, Deputy Sheriff [illegible], who was present at the time petitioner waived counsel, testified as follows:

"Q. What prompted you to get him out of jail? Had he indicated he wanted to enter a plea or what?

"A. He stated he wanted to go before the Judge and enter a plea of guilty.

"Q. And is Saturday the regular day that the Judge takes pleas there?

"A. Yes, sir. He takes 'em in Colquitt, his home town.

"Q. And you took him yourself to the Courtroom from the jail?

"A. Yes, sir.

"Q. Would you tell the Court briefly what happened whenever you got him to the Courtroom?

"A. He was carried to the Courtroom, and, uh, the Solicitor drawed up the accusations against him, and after he drawed up the accusation against him, and I signed the accusation, we called Jack Boyd and Clinton Henderson, another boy that was with him, into the Courtroom, and Mr. Ray advised each of 'em what the charges against 'em was and asked 'em did they have legal counsel, and which both of 'em stated they did not have legal counsel. Mr. Ray advised both of 'em that they were entitled to

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 14, 1972

Re: 70-5075 - Boyd v. Dutton

Dear Lewis:

I think the present draft of your dissent in this case says, inter alia, what I was trying to get at in my draft dissent, and says it well. I therefore will join your dissent, and withdraw mine.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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