

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

United States of America ex rel. Silvio De Vita v. Lloyd W. McCorkle,
Principal Keeper of the New Jersey State Prison at Trenton, New
Jersey

248 F.2d 1 (3d Cir. 1957) · No. No. 11726 · Decided November 12, 1957

SUMMARY

The Third Circuit held that a state prisoner was entitled to habeas corpus relief because a juror concealed a recent robbery experience and possible connections with law-enforcement personnel during voir dire. The court concluded that these undisputed circumstances demonstrated sufficient potential bias to undermine the constitutional requirement of an impartial tribunal, particularly in a capital case. The district court's orders were reversed and the case was remanded for issuance of the writ, with the possibility of a new trial limited to sentencing if permitted by New Jersey law.

CASE DETAILS

COURT	United States Court of Appeals for the Third Circuit
WRITING FOR THE COURT	McLaughlin; Biggs; Maris; Goodrich; Kalodner; Staley; Hastie
JURISDICTION	Federal
DECIDED	November 12, 1957
DOCKET	No. 11726
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Federal habeas corpus appeal from the denial of De Vita's petition by the United States District Court for the District of New Jersey. The petition challenged his New Jersey murder conviction and death sentence on the ground that a juror was biased and concealed material information during voir dire.
STANDARD OF REVIEW	Review of the denial of state-prisoner habeas corpus relief for fundamental unfairness and deprivation of due process, including whether the state courts fairly considered the constitutional claim under Brown v. Allen.
PRECEDENTIAL VALUE	published precedential federal appellate opinion

PARTIES

Silvio De Vita v. Lloyd W. McCorkle, Principal Keeper of the New Jersey State Prison at Trenton, New Jersey

TOPICS

federal habeas corpus

jury selection

due process

criminal procedure

jury instructions

PRACTICE AREAS

criminal procedure

federal habeas corpus

constitutional law

post-conviction relief

jury selection

QUESTIONS PRESENTED

1. Whether the participation of a juror who had recently been the victim of a similar armed robbery and failed to disclose that fact during voir dire rendered De Vita's trial fundamentally unfair under the Due Process Clause.
2. Whether the state courts and federal district court adequately considered De Vita's claim that Kuhnle was biased and had falsely denied knowing personnel connected with the prosecution.
3. What habeas relief was appropriate after the constitutional defect in the jury was established.

HOLDINGS

1. In a capital case, the undisputed circumstances of Kuhnle's recent armed-robbery victimization, his failure to disclose it during voir dire, and the similarity between his experience and the charged offense demonstrated bias sufficient to invalidate the process and deny De Vita a fundamentally fair trial.
2. The state courts did not give fair and satisfactory consideration to the portions of De Vita's prejudice claim concerning Kuhnle's relationship with local law-enforcement personnel and the resulting possibility of bias.
3. The writ of habeas corpus should issue; if New Jersey law permitted retrial on the sentence alone, relief could be limited to a new sentencing proceeding, otherwise a general new trial was required.

KEY QUOTATIONS

"The assurance of an impartial tribunal is too vital to be subjected to speculation concerning the quantum of prejudice flowing from this grossly disqualified juror." (248 F.2d at 8)

"One who has been assaulted, threatened with a deadly weapon and robbed is not likely to forget or forgive nor to treat lightly or even fairly similar conduct in others." (248 F.2d at 8)

"Under the law as it is today, both federal and New Jersey, the admitted facts demonstrate bias to the extent that it voids the process." (248 F.2d at 7)

FACTUAL BACKGROUND

De Vita and Joseph Grillo robbed a food market while its manager and a special police officer were taking receipts to a bank; Grillo shot and killed the officer. Juror Arthur Kuhnle, who served on the jury, had been

robbed approximately seven months earlier while making a nighttime bank deposit and regularly received a police escort. During voir dire, Kuhnle did not disclose the robbery and denied knowing any of the State's officers or personnel. The prosecutor later made an argument warning jurors that the defendants might rob them, and the jury sentenced De Vita and Grillo to death while recommending life imprisonment for codefendant Rosania.

PROCEDURAL HISTORY

De Vita was convicted in New Jersey of felony murder and sentenced to death after a jury declined to recommend life imprisonment. After learning that juror Kuhnle had recently been robbed and had failed to disclose that experience during voir dire, De Vita sought a new trial in the New Jersey courts; relief was denied by the trial court and the New Jersey Supreme Court. The federal district court denied habeas relief after examining the documentary record. The Third Circuit reversed and remanded for issuance of a writ of habeas corpus, subject to a possible new trial limited to sentencing if New Jersey law permitted such a proceeding.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the district court's July 14 and July 25, 1955 orders and remand for issuance of a writ of habeas corpus. If New Jersey permits a retrial limited to the sentencing question, the writ should require that limited proceeding; otherwise, a general new trial should be allowed. De Vita was to remain in New Jersey custody.

CASES CITED

- Chessman v. Teets, 77 S. Ct. 1127, 1132 (1957)
- State v. Grillo, 11 N.J. 173, 177-178, 93 A.2d 328, 330 (1953)
- State v. Grillo, 16 N.J. 103, 106 A.2d 294 (1954)
- Brown v. Allen, 344 U.S. 443, 73 S. Ct. 397, 97 L. Ed. 469 (1953)
- Remmer v. United States, 350 U.S. 377, 76 S. Ct. 425, 100 L. Ed. 435 (1956)
- Wright v. Bernstein, 23 N.J. 284, 129 A.2d 19 (1957)
- Durham v. State, 182 Tenn. 577, 188 S.W.2d 555, 160 A.L.R. 746 (1945)
- Kerr v. B. F. Goodrich Co., 31 N.E.2d 709, 712 (Ohio App. 1936)
- United States v. Burr, 25 F. Cas. 49, 50 (C.C.D. Va. 1807)
- Clark v. United States, 289 U.S. 1, 11, 16, 53 S. Ct. 465, 77 L. Ed. 993 (1933)
- In re Savin, 131 U.S. 267, 9 S. Ct. 699, 33 L. Ed. 150 (1889)
- United States v. Dachis, 36 F.2d 601 (D.C.)
- Tumey v. Ohio, 273 U.S. 510, 532, 47 S. Ct. 437, 71 L. Ed. 749 (1926)
- United States ex rel. Darcy v. Handy, 224 F.2d 504 (3d Cir. 1955)
- United States ex rel. Smith v. Baldi, 192 F.2d 540 (3d Cir. 1951)

- United States of America ex rel. Darcy v. Handy, 203 F.2d 407, 419 (3d Cir. 1953)
- United States ex rel. Daverse v. Hohn, 198 F.2d 934, 938 (3d Cir. 1952)
- United States of America ex rel. Luzzi v. Martin, D.C. E.D. Pa. Nov. 23, 1956

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