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BUTLER v. McKELLAR

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United States Supreme Court

FACTS

In August of 1980, Horace Butler was arrested on an assault and battery charge in Charleston County, South Carolina. Upon his arrest, Butler invoked his fifth amendment right to counsel. Although Counsel was appointed and represented Butler at a pre-trial hearing, he was unable to post the required bond and, therefore, remained in jail. On September 1, 1980, Butler was informed that, in addition to the assault and battery charge, he was suspected of the unrelated murder of Pamela Lane.

After informing Butler of their suspicions, the police initiated a new interrogation pertaining to the murder. Butler eventually confessed to the murder of Pamela Lane. Based upon his confession, Butler was found guilty of committing murder in the commission of a rape and was sentenced to death. The Supreme Court of South Carolina affirmed Butler's conviction on direct appeal. *State v. Butler*, 277 S.C. 452, 290 S.E.2d 1 (1982). The United States Supreme Court denied certiorari.

In collateral proceedings, Butler relied primarily on *Edwards v. Arizona*, 451 U.S. 477 (1981), a case decided before his direct appeal had ended with denial of certiorari by the United States Supreme Court.

In *Edwards*, the Supreme Court held that law enforcement officials are prohibited from further questioning a defendant held in continuous custody, once that defendant invokes his right to counsel. *Butler*, 110 S. Ct. at 1215. Butler's *Edwards* claim was unsuccessful in both state and federal habeas actions and the Supreme Court later noted that his confession "was conducted in strict accordance with established law at the time." *Id.* at 1216.

One month after the Fourth Circuit affirmed the dismissal of Butler's federal habeas petition, the United States Supreme Court issued its opinion in *Arizona v. Roberson*, 486 U.S. 675 (1988). In *Roberson*, the Supreme Court reviewed a claim identical to Butler's and expressly denied Arizona's request to make an exception to *Edwards*. Arizona sought an exception which would have allowed the police to conduct a new interrogation on unrelated charges. The Court ruled that once a suspect held in continuous custody requests counsel, the fifth amendment bars police initiated interrogation of the accused involving *any* matter. *Roberson*, 486 U.S. at 688.

The Fourth Circuit initially denied Butler's claim on the merits. In light of *Roberson*, a Fourth Circuit panel reconsidered Butler's claims. However, the court refused to give Butler the retroactive benefit of *Roberson* because it found that the *Edwards-Roberson* limitations are only tangentially related to the truth finding function. Butler, 110 S. Ct. at 1216.

HOLDING

After granting Butler's petition for certiorari, the United States Supreme Court in a five to four decision (Chief Justice Rehnquist, joined by Justices White, O'Connor, Scalia and Kennedy), affirmed the Fourth Circuit's denial of relief and held that *Roberson* stated a "new rule" under *Teague v. Lane*, 489 U.S. 288 (1989), and that consequently Butler was not entitled to the benefit of a retroactive application of the decision in *Roberson*. Further, the Court held that *Roberson* did not fit within one of the two exceptions to the *Teague* doctrine. (*See* case summaries of *Saffle v. Parks* and *Sawyer v. Smith*, Capital Defense Digest, this issue.)

The Court denied Butler federal habeas relief based upon *Roberson* because it found that the result in Roberson was not *definitely dictated* by precedent existing at the time Butler's conviction became final. *Butler*, 110 S. Ct. at 1218.

ANALYSIS/APPLICATION IN VIRGINIA

In *Butler*, the Supreme Court has virtually completed the destruction of federal habeas review which it began in *Teague*. In *Teague*, the Court denied the petitioner relief and adopted a version of Justice Harlan's theory of retroactivity, holding that "a case announces a new rule when it breaks new ground or imposes a new obligation on the States or the Federal Government, . . . [or] if the result was not *dictated* by precedent existing at the time the defendant's conviction became final." *Teague*, 109 S. Ct. at 1070 (emphasis in original). The Court's policy in *Teague* is that in most cases the state's interest of leaving convictions in a state of repose outweighs the individual's interest in re-adjudicating his case based upon new legal rules created after the time at which his conviction became final. *Id.* at 1072. The purpose of the "new rule" doctrine is to allow state courts to issue their decisions based upon a faithful application of well established constitutional standards existing at the time the case is heard, even though later decisions may modify those standards. *Butler*, 110 S. Ct. at 1217. However, the *Butler* Court did not apply the tests established in *Teague*. Instead, the Court held that a "new rule" will be found to exist whenever the issue of whether a holding is dictated by precedent is "susceptible to debate among reasonable minds". *Id.* Although the Court outlined two exceptions under which a "new rule" may apply retroactively, these exceptions are quite narrow and rarely occur.

The first exception allowing retroactive application of a "new rule" occurs when, either a specific form of conduct is placed "beyond the power of the criminal law-making authority to proscribe" or, as extended in *Penry v. Lynaugh*, 109 S. Ct. 1952 (1989), when the imposition of a particular form of punishment is prohibited on a certain class of individuals. *Butler*, 110 S. Ct. at 1218 (citing, *Teague*, 109 S. Ct. at 1063 (quoting *Mackey v. United States*, 401 U.S. 667, 692 (1971) (separate opinion of Harlan, J.))). The second exception to the rule limits the scope of retroactive application by limiting it to "those new procedures without which the likelihood of an accurate conviction is seriously diminished." *Id.* (citing *Teague*, 109 S. Ct. at 1076.) (*See* case summaries of *Saffle v. Parks* and *Sawyer v. Smith*, Capital Defense Digest, this issue.)

It appears evident that Butler should have been granted habeas relief based upon *Edwards v. Arizona*, supra. In *Edwards*, the Court reviewed the defendant's petition for habeas relief based upon the fact that the police renewed their interrogation of Edwards after he asserted his right to obtain counsel during a previous interrogation regarding the *same* alleged crimes. *Butler*, 110 S. Ct. at 1219. Upon review, the Court established the rule that "a suspect who has 'expressed his desire to deal with the police only through counsel is not subject to further interrogation by the authorities until counsel has been made available to him, unless the accused himself initiates further communication . . . with the police.'" *Id.* at 1220 (quoting *Edwards*, 451 U.S. at 484-85).

Later, in *Arizona v. Roberson*, the Supreme Court applied its holding in *Edwards* to cases in which the police wished to continue interrogation of the defendant based upon *different charges*. *Id.* As

Justice Brennan stated in his dissent in *Butler*, "It is clear from our opinion in *Roberson* that we would have reached the identical conclusion had that case reached us in 1983 when Butler's conviction became final." *Id.* It is clear that the decision in *Roberson* was dictated by *Edwards*, that *Roberson* did not establish a "new rule," and that Butler should have been granted habeas relief. The Court's new standard, however, apparently established that a result is not "dictated" if one judge could erroneously but not unreasonably conclude otherwise.

Justice Brennan's dissent, joined by Justices Marshall, Blackmun and Stevens, characterized the majority holding as now requiring a defendant seeking habeas relief to show "that the state court's rejection of the constitutional challenge was *so* clearly invalid under then-prevailing legal standards that the decision could not be defended by any reasonable jurist." *Id.* at 1219 (emphasis in original). Brennan also pointed out that the majority's *broad definition* of what constitutes a "new rule," coupled with their *narrow definition* of what constitutes prior precedent "limits [a] federal court's habeas corpus function to reviewing state courts' legal analysis under the equivalent of a 'clearly erroneous' standard of review." *Id.* at 1221-22.

The *Butler* opinion clearly effects Virginia defense counsel by decreasing the effectiveness of appellate advocacy. Butler's only possible benefit to the defense community is to foster an increased sense of responsibility and professionalism on the part of trial judges and attorneys because, as of now, an entire layer of appellate review has been virtually eliminated.

Summary and analysis by:
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SAFFLE v. PARKS

110 S. Ct. 1257, 108 L.Ed.2d 415 (1990)
United States Supreme Court

FACTS

Robyn Leroy Parks shot and killed Abdullah Ibrahim at an Oklahoma City gas station where Ibrahim worked. The victim died of a single chest wound. Parks told a friend that he shot Ibrahim because he feared Ibrahim would tell the police that Parks purchased gasoline with a stolen credit card.

The jury found Parks guilty of capital murder. During his penalty trial, Parks offered evidence of his background and character in an effort to show that his youth, race, school experience and broken home were mitigating factors. The trial judge instructed the jury that it must consider all mitigating circumstances proffered by Parks and that it could consider any additional mitigating circumstances found from the evidence. The judge specifically warned the jury, however, to avoid any influence of sympathy, sentiment, passion, prejudice, or other arbitrary factor when imposing sentence.

After deliberation, the jury found that Parks committed the murder for the purpose of avoiding or preventing a lawful arrest or prosecution and sentenced him to death. Parks exhausted his direct appeal and state collateral proceedings. He then sought federal habeas relief claiming, *inter alia*, that the trial judge's antisympathy instruction violated the eighth amendment because it effectively told the jury to disregard the type of mitigating evidence Parks presented. Both the District Court and the Court of Appeals for the Tenth Circuit denied relief. On rehearing, the Tenth Circuit reversed, holding that the antisympathy instruction was unconstitutional for the reasons advanced by Parks. The United States Supreme Court granted certiorari and reversed.

HOLDING

The Supreme Court held that Parks was not entitled to federal habeas relief because he was requesting the court to apply a "new rule" of constitutional law. (*See* case summary of *Butler v. McKellar*, Capital Defense Digest, this issue, which discusses the stark realities of the Supreme Court's "new rule" doctrine in greater detail.) In *Teague v. Lane*, 109 S. Ct. 1060 (1989), the Court held that a new rule of constitutional law will not be applied retroactively in cases on collateral review unless the rule comes within one of two narrow exceptions. *Id.* at 1075. A new rule was defined as a rule that "breaks new ground or imposes a new obligation on the States or the Federal Government" or one that "was not *dictated* by precedent existing at the time the defendant's conviction became final." *Id.* at 1070 (emphasis in original). The Court held that the relief Parks sought would indeed constitute a new rule under *Teague* because at the time the state court was considering Parks' claim, that court was not compelled by existing precedent to conclude that the antisympathy instruction violated the eighth amendment. *Saffle v. Parks*, 110 S. Ct. 1257, 1260 (1990).

Additionally, the Court held that the new rule did not fall within either of the two exceptions set forth in *Teague*. The first exception allows the retroactive application of a new rule on collateral review if the new rule "places 'certain kinds of primary, private individual conduct beyond the power of the criminal law-making authority to proscribe.'" *Teague*, 109 S. Ct. at 1073 (quoting *Mackey v. United States*, 401 U.S. 667, 692 (1971) (separate opinion of Harlan, J.)).

In *Penry v. Lynaugh*, 109 S. Ct. 2934 (1989), the Court examined this exception in greater detail in response to Penry's claim that the eighth amendment prohibited the execution of mentally retarded individuals. The Court stated, "[i]f we were to hold that the eighth amendment prohibits the execution of mentally retarded persons such as Penry, we would be announcing a 'new rule.'" *Id.* at 2952. The Court went on to say, however, that such a new rule would meet the first *Teague* exception because, "a new rule placing a certain class of individuals beyond the State's power to punish by death is analogous to a new rule placing certain conduct beyond the State's power to punish at all." *Id.* Consequently, *Penry* expanded the first exception to include retroactive application of a new rule when the rule prohibits "a certain category of punishment for a class of defendants because of their status or offense." *Id.*

The *Parks* court found that a new rule which held that an antisympathy instruction violated the eighth amendment would not fall within the first exception as developed by *Teague* and *Penry*. *Parks*, 110 S.Ct. at 1264. Further, after examining the second *Teague* exception, (which is discussed in more detail in the case summary of *Sawyer v. Smith*, Capital Defense Digest, this issue) the Court found that the potential unconstitutionality of an antisympathy instruction did not fall into the category of "'watershed rules of criminal procedure' implicating the fundamental fairness and accuracy of the criminal proceeding." *Id.*

ANALYSIS/APPLICATION IN VIRGINIA

Years ago, the decisions in *Lockett v. Ohio*, 438 U.S. 586 (1978) and *Eddings v. Oklahoma*, 455 U.S. 104 (1982), established that a State