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### Supreme Court, Bronx County, People v. Butler

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**SUPREME COURT OF NEW YORK  
BRONX COUNTY**

People v. Butler<sup>1</sup>  
(decided December 22, 2005)

On March 11, 2005, Jamel Butler was charged with two Class A misdemeanors, and a violation in the New York City Criminal Court.<sup>2</sup> The case was subsequently transferred to the Criminal Division of the Supreme Court, Bronx County, where the charges were reduced to two Class B misdemeanors and a violation, over defendant's objections.<sup>3</sup> An order of the Chief Administrative Judge, under section 142.3 of the New York Codes, Rules and Regulations "provided that every case transferred from the Criminal Court of the City of New York to the Criminal Division of the Supreme Court, Bronx County, was to be adjudicated 'subject to the same substantive and procedural law as would have applied to it had it not been transferred.'"<sup>4</sup> Pursuant to that order, the court applied the procedural requirements of section 340.40 (2) of New York Criminal Procedure Law<sup>5</sup> (hereinafter "CPL"), which would have been applied

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<sup>1</sup> 2005 N.Y. Slip Op. 25550, (Sup. Ct. 2005).

<sup>2</sup> *Id.*, at \*1.

<sup>3</sup> *Id.*, at \*2.

<sup>4</sup> *Id.*, at \*1 (quoting N.Y. COMP. CODES R. & REGS. tit. 22, § 142.3 (b) (2004) which governs the mode of transferring criminal cases to the Criminal Division of the Supreme Court)).

<sup>5</sup> N.Y. CRIM. PROC. LAW § 340.40 (2) (McKinney 2005) states in pertinent part: "[I]n the New York city criminal court the trial of an information which charges a misdemeanor for which the authorized term of imprisonment is not more than six months must be a single

to defendant's case had it not been transferred.<sup>6</sup> Under CPL 340.40 (2), a defendant charged with a misdemeanor for which the maximum authorized term of imprisonment is six months or less, cannot be tried by a jury.<sup>7</sup> Therefore, the defendant was not entitled to a jury trial, because the authorized term of imprisonment for the misdemeanors that he was charged with did not exceed six months.<sup>8</sup>

After the reduction of his charges, defendant moved for a court order directing that he receive a jury trial.<sup>9</sup> The People objected, arguing that the defendant was not entitled to a jury trial, in light of the aforementioned rules.<sup>10</sup> In support of his claim, defendant argued among other things, that CPL 340.40 (2) violated his right to a jury trial under the Sixth and Fourteenth Amendments of the United States Constitution,<sup>11</sup> and article 1, section 2 and article 6, section 18 of the New York State Constitution.<sup>12</sup> This claim was based on the fact that CPL § 340.40 (2) only permits consideration of the maximum penalty for the crime that a defendant is charged with, in determining whether a defendant is entitled to a jury trial.<sup>13</sup> Defendant claimed that the court should permit the consideration of

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judge trial.”

<sup>6</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*4.

<sup>7</sup> N.Y. CRIM. PROC. LAW § 340.40 (2) (McKinney 2005).

<sup>8</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*4.

<sup>9</sup> *Id.*, at \*2.

<sup>10</sup> *Id.*

<sup>11</sup> U.S. CONST. amend. VI, states in pertinent part: “In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . . .” ; U.S. CONST. amend. XIV, § 1, states in pertinent part: “No state shall . . . deprive any person of . . . liberty . . . without due process of law . . . .”

<sup>12</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*2; N.Y. CONST. art. I, § 2, states in pertinent part: “Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever . . . .”; N.Y. CONST. art. VI, § 18, states in pertinent part: “Trial by jury is guaranteed as provided in article one of this constitution.”

additional criteria in determining whether a crime is serious enough to warrant a jury trial.<sup>14</sup> Additionally, the defendant argued that the Criminal Division of the Supreme Court is not a New York City criminal court, and thus CPL 340.40 (2), entitled him to a trial.<sup>15</sup> Moreover, defendant claimed that failure to give him a jury trial would violate article 2, section 12 of the New York State Civil Rights Law.<sup>16</sup> Another claim made on behalf of the defense was that, if the court failed to afford a jury trial to defendant, it would be acting in violation of defendant's right to Equal Protection under the Fourteenth Amendment of the United States Constitution<sup>17</sup> and article 1, section 11 of the New York State Constitution.<sup>18</sup> Finally, the defendant argued that CPL § 340.40 (2) was passed in violation of the New York State Constitution.<sup>19</sup>

In denying the motion for a jury trial, the court explained that the "Sixth Amendment's guarantee of the right to a jury trial applies only to 'serious crimes' and not to 'petty offenses.'"<sup>20</sup> Additionally, in determining whether the crime is serious enough to trigger the

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<sup>13</sup> *Id.*, at \*5.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*, at \*2.

<sup>16</sup> *Id.*; N.Y. CIV. RIGHTS LAW § 12 (McKinney 1992) provides in pertinent part: "In all criminal prosecutions, the accused has a right to a . . . public trial, by an impartial jury. . . ."

<sup>17</sup> U.S. CONST. amend. XIV, § 1 states in pertinent part: "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

<sup>18</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*2; N.Y. CONST. art. I, § 11, states in pertinent part:

No person shall be denied the equal protection of the laws of this state . . .  
 . No person shall, because of race, color, creed or religion, be subjected  
 to any discrimination in his or her civil rights by any other person . . . or  
 by the state . . . .

<sup>19</sup> *Id.*

<sup>20</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*5 (citing *Duncan v. Louisiana*, 391 U.S. 145 (1968)).

right to a jury trial, the court reasoned that the “primary” consideration is the maximum prison sentence that the defendant may receive for the crime.<sup>21</sup> Where the maximum authorized penalty is six months imprisonment or less, the Supreme Court, and the New York courts will almost always deem the offense as petty.<sup>22</sup> While the defendant’s argument that the court should consider other criteria in determining the severity of the offense was supported by “older cases in other jurisdictions,” according to the court, that claim could not be reconciled with the bright line test employed by the New York Court of Appeals.<sup>23</sup>

Under the New York test, a crime is “petty” and does not necessitate a jury trial where the maximum possible prison sentence is six months or less.<sup>24</sup> The court explained that the defendant here was “charged with attempted assault in the third degree and attempted criminal mischief in the fourth degree, Class B misdemeanors, as well as harassment in the second degree, a violation.”<sup>25</sup> The misdemeanors were punishable by up to three months imprisonment, and the penalty for the violation was a fine of no more than \$500.<sup>26</sup> Thus, the court reasoned that under New York’s bright line test, the defendant was not entitled to a jury trial, because the maximum authorized penalty for each of the crimes

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<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*, at \*6.

<sup>24</sup> *Id.*

<sup>25</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*6.

<sup>26</sup> *Id.*

defendant was charged with did not exceed six months.<sup>27</sup> Furthermore, the monetary fine was not severe enough to necessitate a jury trial.<sup>28</sup>

The court also rejected the defendant's arguments regarding the state constitution.<sup>29</sup> According to the defendant, article I, section 2 and article VI, section 18 of the New York State Constitution required the court to provide him with a jury trial.<sup>30</sup> Article I, section 2 requires that a court provide a trial by jury where it is guaranteed by the constitution.<sup>31</sup> Therefore, the court reasoned that under both the state constitution and the Federal Constitution, a defendant is not entitled to a jury trial if the maximum penalty is six months or less.<sup>32</sup> However, the defendant further claimed he was entitled to a jury trial under article VI, section 18 of the state constitution, which states:

Trial by jury is guaranteed as provided in article one of this constitution. The legislature may provide that in any court of original jurisdiction a jury shall be composed of six or of twelve persons and may authorize any court which shall have jurisdiction over crimes and other violations of law, other than crimes prosecuted by indictment, to try such matters without a jury, provided, however, that crimes prosecuted by indictment shall be tried by a jury composed of twelve persons, unless a jury trial has been waived as provided in section two of article one of this

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<sup>27</sup> *Id.*

<sup>28</sup> *Id.*, at \*6-7.

<sup>29</sup> *Id.*, at \*7.

<sup>30</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*7.

<sup>31</sup> *Id.*; N.Y. CONST. art. I, § 2.

<sup>32</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*7 (citing *People v. Foy*, 673 N.E.2d 589 (N.Y. 1996)).

<sup>33</sup> N.Y. CONST. art. VI, § 18.

constitution.<sup>33</sup>

The defendant interpreted this section to confer a right to a jury trial upon a defendant charged with a petty offense, and argued that absent legislative action, the court could not withhold this right.<sup>34</sup> The court explained that defendant's analysis misconstrued the meaning of the provision, because the section cited by defendant does not give criminal defendants a right to a jury trial.<sup>35</sup> In actuality, article VI, section 18 does not confer upon defendant a right to a jury trial, but rather "specifically provides that the extent of a defendant's right to a jury trial is governed by Article I, Section 2 of the Constitution."<sup>36</sup> Therefore, defendant's state constitutional argument failed, because article I, section 2 authorizes a jury trial only for serious crimes with a maximum term of imprisonment of six months or less, and not certain petty crimes as claimed by defendant.<sup>37</sup> The court explained "defendant's suggestion that Article VI, Section 18 guarantees the right to a jury trial for a petty offense is belied by the plain language of its first sentence."<sup>38</sup>

In *Baldwin v. New York*,<sup>39</sup> the United States Supreme Court, in an opinion written by Justice White, held that a defendant charged with a misdemeanor punishable by more than six months has a right

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<sup>34</sup> *Butler*, 2005 N.Y. Slip Op. 25550, at \*7.

<sup>35</sup> *Id.*, at \*7.

<sup>36</sup> *Id.*, at \*7-8.

<sup>37</sup> *Id.*, at \*8.

<sup>38</sup> *Id.*

<sup>39</sup> 399 U.S. 66 (1970).

to a jury trial, because the offense cannot be deemed petty.<sup>40</sup> The Court explained that, in determining the severity of the offense and the right to a jury trial, it looked to “the nature of the offense itself as well as the maximum potential sentence.”<sup>41</sup> The state of New York attempted to persuade the Court that for the purpose of determining a right to jury trials, misdemeanor crimes should be considered petty, and felony offenses ought to be deemed serious.<sup>42</sup> The Supreme Court refused to adopt this distinction, and reasoned that while felony convictions are more serious, because they subject defendants to harsher penalties, certain misdemeanors are also sufficiently grave to raise the guarantees of the Sixth Amendment.<sup>43</sup>

Additionally, the Court explained that the maximum possible penalty is the “only objective criterion by which a line could ever be drawn . . . between offenses that are and that are not regarded as ‘serious’ for purposes of trial by jury.”<sup>44</sup> Finally the Court acknowledged that any duration of imprisonment, even a period of less than six months, will be serious to a criminal defendant, and may adversely affect his reputation and future.<sup>45</sup> However, where the possible punishment does not exceed six months, the detriment to the defendant is outweighed by the “benefits that result from speedy and inexpensive nonjury adjudications.”<sup>46</sup> On the other hand, the

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<sup>40</sup> *Id.* at 69.

<sup>41</sup> *Id.* at 69 n.6 (citing *District of Columbia v. Colts*, 282 U.S. 63 (1930); *Duncan*, 391 U.S. 145 (1968)).

<sup>42</sup> *Id.* at 69.

<sup>43</sup> *Id.* at 70.

<sup>44</sup> *Baldwin*, 399 U.S. at 72-73.

<sup>45</sup> *Id.* at 73.

<sup>46</sup> *Id.*



administrative benefits accruing to the state are outweighed by the importance of a jury trial to a defendant, where the penalty exceeds six months incarceration.<sup>47</sup>

In a dissenting opinion, Justice Black argued that while the defendant was certainly entitled to a jury trial, because the offense was punishable by a year imprisonment, the Sixth Amendment guarantees a right to a jury in all criminal prosecutions, and not merely those deemed serious.<sup>48</sup> Furthermore, the dissent opined that the majority's decision to balance the administrative interests of the state against the right of a defendant to a jury trial was "constitutional adjudication, . . . amount[ing] . . . to little more than judicial mutilation of our written Constitution."<sup>49</sup>

Chief Justice Burger also dissented from the majority's holding.<sup>50</sup> He argued that the Sixth Amendment was intended by the framers of the Constitution to act as a limitation on federal power and not a limitation on state power.<sup>51</sup> Justice Burger explained that, at the time the Sixth Amendment was written, states were charged with the adjudication of petty offenses, which often did not receive a trial by jury.<sup>52</sup> Therefore he concluded that the majority's holding was incorrect because the Sixth Amendment was erroneously being applied as a limitation on state power.<sup>53</sup> Thus, while Justice Burger agreed that the Sixth Amendment's command only applies to serious

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<sup>47</sup> *Id.* at 73-74.

<sup>48</sup> *Id.* at 74-75 (Black, J., dissenting).

<sup>49</sup> *Baldwin*, 399 U.S. at 75.

<sup>50</sup> *Id.* at 76.

<sup>51</sup> *Id.* at 76-77.

<sup>52</sup> *Id.* at 77.

crimes, he argued that offenses punishable by a year, as in this case, would not necessarily fall under that rubric depending on the state scheme.<sup>54</sup>

Subsequently, in *Lewis v. United States*,<sup>55</sup> the Supreme Court was faced with the issue of whether a defendant prosecuted in a “single proceeding for multiple petty offenses ha[d] a constitutional right to a jury trial, where the aggregate sentence authorized for the offenses exceed[ed] six months’ imprisonment.”<sup>56</sup> The Court held that there is no right to a jury trial where the defendant is charged with multiple petty offenses, stating “[t]he Sixth Amendment’s guarantee of the right to a jury trial does not extend to petty offenses, and its scope does not change where a defendant faces a potential aggregate prison term in excess of six months for petty offenses charged.”<sup>57</sup> In this case, the defendant was charged with two counts of obstructing the mail, and each count carried a maximum authorized prison sentence of six months.<sup>58</sup> When the defendant requested a jury trial, the judge refused, and explained that she would not sentence the defendant to more than a six month prison term.<sup>59</sup> The Court explained that the character of the offense that a defendant is charged with, as set forth by the legislature in determining the maximum penalty, is the determinative factor in a defendant’s right

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<sup>53</sup> *Id.* at 76.

<sup>54</sup> *Baldwin*, 399 U.S. at 77.

<sup>55</sup> 518 U.S. 322 (1996).

<sup>56</sup> *Id.* at 325.

<sup>57</sup> *Id.* at 323-24.

<sup>58</sup> *Id.* at 324.

<sup>59</sup> *Id.*

to a trial by jury.<sup>60</sup> According to the Court, despite the fact that defendant was charged with two offenses characterized as petty by the legislature, with a combined maximum prison sentence exceeding six months, there was no right to a jury trial.<sup>61</sup> The Court further explained that the determination of whether a crime is petty and necessitates a jury trial is based only on the character of the offense, and not the maximum authorized prison term faced by a particular defendant.<sup>62</sup> “Where the offenses charged are petty, and the deprivation of liberty exceeds six months only as a result of the aggregation of charges, the jury trial right does not apply.”<sup>63</sup>

In *Morgenthau v. Erlbaum*,<sup>64</sup> the New York Court of Appeals held that CPL 340.40 does not violate the Sixth Amendment.<sup>65</sup> In that case, the defendants, who were faced with a maximum, three-month sentence for prostitution, argued that CPL 340.40 was unconstitutional because “it deprived them of their Sixth Amendment right to jury trial and denied them equal protection of the law.”<sup>66</sup> The lower court judge agreed with the defendants and held that prostitution is a serious crime, for which the Sixth Amendment commands a jury trial.<sup>67</sup> The Court of Appeals reasoned that the result of defendant’s argument, in practical effect, “would be to allow

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<sup>60</sup> *Lewis*, 518 U.S. at 327.

<sup>61</sup> *Id.* (stating “[t]he fact that the petitioner was charged with two counts of a petty offense does not revise the legislative judgment as to the gravity of that particular offense, nor does it transform the petty offense into a serious one, to which the jury trial right would apply.”).

<sup>62</sup> *Id.* at 328.

<sup>63</sup> *Id.* at 330.

<sup>64</sup> 451 N.E.2d 150 (N.Y. 1983).

<sup>65</sup> *Id.* at 156.

<sup>66</sup> *Id.* at 152.

<sup>67</sup> *Id.* at 156.

each Judge to make a subjective decision on the seriousness of prostitution as an offense requiring a jury trial.”<sup>68</sup> While the court acknowledged that older case law relied on various factors to determine whether a particular defendant was entitled to a jury trial, the relevant Supreme Court case law has relied on the authorized maximum penalty as the sole indicium of a defendant’s right to a jury trial.<sup>69</sup> The potential term of imprisonment and not necessarily the actual sentence, reflects the local opinion regarding the gravity of the crime, and therefore, is the relevant criterion for the court’s consideration.<sup>70</sup>

Additionally, the court reiterated that the dividing boundary between serious crimes necessitating a jury trial and petty crimes which don’t require a jury trial, is fixed: offenses punishable in excess of six months imprisonment are serious, and offenses punishable by a maximum term of six months or less, are petty.<sup>71</sup> This objective, prefixed standard, according to the court, is preferable to a subjective case-by-case standard, because it ensures a uniform result.<sup>72</sup> The court feared that a subjective standard, like that proposed by the defendant, would place the outcome of a defendant’s right to a jury trial, “only on the Judge before whom they happened to appear, not on the offense charged.”<sup>73</sup> The court stated that “in establishing sentences, the Legislature must be presumed to have

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<sup>68</sup> *Id.*

<sup>69</sup> *Morgenthau*, 451 N.E.2d at 156.

<sup>70</sup> *Id.*

<sup>71</sup> *Id.* (quoting *Codispoti v. Pennsylvania*, 418 U.S. 506, 512 (1974)).

<sup>72</sup> *Id.* at 156.

<sup>73</sup> *Id.*

weighed public opinion and history, and to have been aware of the civil implications of conviction.”<sup>74</sup> Hence placing the determination of what constitutes a serious crime, deserving of a jury trial within the discretion of judges, would be an abuse of discretion and an impermissible usurpation of legislative power.<sup>75</sup>

In *People v. Foy*,<sup>76</sup> a defendant charged with multiple misdemeanors carrying a maximum aggregate sentence in excess of six months, argued that the court should adopt an “ ‘aggregate sentence approach’ for determining the constitutional right to a jury trial.”<sup>77</sup> In upholding the constitutionality of CPL 340.40, the court denied the defendant’s claims and held that the right to a jury trial is not based on the aggregate sentence a defendant faces for several misdemeanor offenses.<sup>78</sup> Rather, the court reiterated that the right to a jury trial depends on the severity of the crime with which a defendant is charged.<sup>79</sup> Furthermore, the court restated the well-settled proposition that the defendant’s right to a jury trial attaches only to serious offenses, where the sentence exceeds six months.<sup>80</sup> Explaining that it would not adopt the aggregate sentence approach urged by defendant, the court stated that “[m]ultiple petty crimes remain ‘petty’ by legislative classification and their nature, and are not transformed by their sheer number alone into matters of a serious

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<sup>74</sup> *Morgenthau*, 451 N.E.2d at 156.

<sup>75</sup> *Id.*

<sup>76</sup> 673 N.E.2d 589 (N.Y. 1996).

<sup>77</sup> *Id.* at 591.

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 591-92

<sup>80</sup> *Id.* (citing *Baldwin*, 399 U.S. 66).

level and nature.”<sup>81</sup> Additionally, the court emphasized the concept that the classification between crimes which necessitate a jury trial and those which do not, is based on legislative policy and a constitutional guarantee to a trial where the defendant is exposed to a deprivation of liberty for a serious crime.<sup>82</sup> However, the court stated that administrative efficiency concerns did not factor into the opinion of the court.<sup>83</sup>

In sum, New York law does not operate to afford broader rights than federal law regarding a defendant’s right to a jury trial. While the Supreme Court and the New York courts give consideration to the effect that imprisonment of any duration has on a defendant, there is a fixed line between those crimes which entitle the defendant to a jury trial and those which do not. In determining whether a defendant is entitled to a jury trial, the most relevant factor at both the state and federal level is the character of the offense. Where the offense is punishable by a term of imprisonment exceeding six months, the courts will deem the crime serious, and hold that there is a right to a jury trial. On the other hand, where the crime is punishable by six months imprisonment or less, the nature of the offense will be classified as petty and the defendant will not be entitled to a jury trial. This is true even where the defendant is charged with a series of offenses and faces an aggregate term of imprisonment exceeding six months. The predetermined boundary between serious and petty offenses, is the result of a number of

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<sup>81</sup> *Foy*, 673 N.E.2d at 593.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

considerations including the judicial decision to give effect to judgment of the state legislature, and giving effect to the ethical and social mores of the locality. Additionally, the courts employ a notion that in balancing the competing interests of state and defendant, where the defendant is facing less than six months imprisonment, the defendant's interest in a jury trial is outweighed by the state interest in speedy, and comparatively inexpensive adjudication.

*Courtney Weinberger*