Touro Law Review

Volume 10 | Number 3 Article 30

1994

Equal Protection: People v. Walker

that it is not necessary to furnish the minutes of the voir dire in order to obtain relief on appeal under *Batson*.[781]

In conclusion, by failing to meet the second prong of the *Batson* test, the defendant did not establish a prima facie showing of racial discrimination in the prosecution's use of peremptory challenges. Therefore, defendant's equal protection rights under both the New York State and Federal Constitutions had not been violated.

People v. Walker[782]
(decided October 12, 1993)

Defendant claimed that his right to equal protection pursuant to the State[783] and Federal[784] Constitutions was violated because

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contrary, their backgrounds and knowledge of the case suggested that any bias they might have would favor the prosecution").

781. *Childress*, 81 N.Y.2d at 268, 614 N.E.2d at 712, 598 N.Y.S.2d at 149. As the court explained:

> [I]n order to give the trial court a proper foundation to evaluate the claim — as well as to ensure an adequate record for appellate review — a party asserting a claim under *Batson v. Kentucky* . . . should articulate and develop all of the grounds supporting the claim, both factual and legal, during the colloquy in which the objection is raised and discussed . . . . Despite the absence of voir dire minutes, a trial or appellate court may determine, based on facts elicited during the *Batson* colloquy, whether a prima facie case of discriminatory use of peremptory challenges has been established . . . .

Id. (citations omitted).

782. 81 N.Y.2d 661, 623 N.E.2d 1, 603 N.Y.S.2d 280 (1993).

783. N.Y. CONST. art. I, § 11. Section 11 states:

> No person shall be denied the equal protection of the laws of this state or any subdivision thereof. No person shall, because of race, color, creed or religion, be subjected to any discrimination in his civil rights by any other person or by any firm, corporation, or institution, or by the state or any agency or subdivision of the state.

Id.

784. U.S. CONST. amend. XIV, § 1. Section 1 states in relevant part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

New York's second felony offender statute[785] treats in-state and out-of-state felonies differently when establishing a predicate felony offense for purposes of sentence enhancement.[786] The New York Court of Appeals held that the statute did not violate equal protection because the distinction drawn between the categories was "rationally related" to the "legitimate state purpose" of enforcing the State's Penal Law.[787]

In February 1984, defendant Walker was convicted of grand larceny in the third degree, a class E felony for the theft of a radio worth more than $250 but less than $1000 and was sentenced under former Penal Law section 155.30[1].[788] Subsequently, "the statute was amended to increase the minimum value to $1000," and thus absent aggravating circumstances, a theft of property worth less than $1000, "became petit larceny, a class A misdemeanor."[789]

Subsequently, in 1990, Walker was indicted on charges of felony drug possession.[790] Following a conviction, the trial court refused to sentence him as a second felony offender because "the conduct for which he was sentenced as a felon in 1984 would constitute only a misdemeanor under existing law."[791] The Appellate Division, Fourth Department, reversed the lower court's decision and "remitted for resentencing as a second

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Id.

785. N.Y. PENAL LAW § 70.06 (McKinney 1987). In determining whether a prior conviction can serve as a "predicate felony conviction," § 70.06 provides in pertinent part:

> (i) The conviction must have been in this state of a felony, or in any other jurisdiction of an offense for which a sentence to a term of imprisonment in excess of one year or a sentence of death was authorized and is authorized in this state irrespective of whether such sentence was imposed;

Id.

786. *Walker*, 81 N.Y.2d at 665, 623 N.E.2d at 4, 603 N.Y.S.2d at 283.

787. *Id.* at 668-69, 623 N.E.2d at 5-6, 603 N.Y.S.2d at 285.

788. *Id.* at 663, 623 N.E.2d at 2-3, 603 N.Y.S.2d at 281-82. The Penal Law at that time treated theft of property valued greater than $250 as a class E felony. N.Y. PENAL LAW § 155.30[1] (McKinney 1988).

789. N.Y. PENAL LAW § 155.25 (McKinney 1988).

790. *Walker*, 81 N.Y.2d at 663, 623 N.E.2d at 3, 603 N.Y.S.2d at 282.

791. *Id.*

felony offender" reasoning that Walker's prior felony conviction was final before the amendment was effective.[792] Based on a grant for leave, defendant appealed urging that his prior conviction should not be viewed as a felony for purposes of sentencing because "(1) the language of the second felony offender statute, read with the definition of felony,[793] (2) doctrine of amelioration,[794] and (3) equal protection principles."[795]

As to the equal protection claim, the court of appeals affirmed the appellate division, holding that the statute did not violate equal protection which requires that similarly situated persons are treated similarly unless there is valid basis for distinguishing between them.[796] Since the statute provided a rational basis for differential treatment of in-state and out-of-state felonies, the

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792. *Id.*

793. *Id.* at 664, 623 N.E.2d at 3, 603 N.Y.S.2d at 282. After an examination of unambiguous statutory language and legislative purpose, the court of appeals rejected defendant's attempt to incorporate the "general definition of 'felony'" into the "specific definition of second felony offender." *Id.* at 665, 623 N.E.2d at 3-4, 603 N.Y.S.2d at 282. Rather, the court determined, one should "look to the time of the prior crime — and the law at that time — when considering whether the prior crime is a predicate felony for second felony offender purposes." *Id.* at 665, 623 N.E.2d at 4, 603 N.Y.S.2d 283.

794. *Id.* at 664, 623 N.E.2d at 3, 603 N.Y.S.2d at 282. The court also rejected defendant's contention that the amelioration doctrine should apply to his 1984 felony offense. *Id.* at 667, 623 N.E.2d at 5, 603 N.Y.S.2d at 284. The amelioration doctrine provides that "[w]hen, between the time a person commits a criminal act and the time of sentencing, a criminal statute is repealed or a penalty reduced because of a changed view regarding the gravity of the crime, . . . the punishment standard at the time of sentencing should guide the sentence." *Id.* at 666, 623 N.E.2d at 5, 603 N.Y.S.2d at 283-84. The court stated that although the statute was "ameliorative in nature," the doctrine will not reconsider defendant's final judgment under the subsequent amendment because it was properly decided under criminal law at the time of the proceeding against him. *Id.* at 667, 623 N.E.2d at 5, 603 N.Y.S.2d at 284.

795. *Id.* at 664, 623 N.E.2d at 3, 603 N.Y.S.2d at 282.

796. People v. Cortlandt Medical Bldg. Assoc., 153 Misc. 2d 692, 694, 582 N.Y.S.2d 640, 641 (Town Ct. Westchester County 1992).

court concluded that defendant's right to equal protection of the laws was not violated.[797]

When analyzing equal protection rights in areas of economic and social welfare, New York State courts utilize a rational relationship test.[798] To survive constitutional scrutiny, the rational relation test requires that a legislative classification have a reasonable basis that is rationally related to a legitimate state purpose.[799] This test pays deference to the legislature which is "presumed to know all the facts" needed to support the constitutionality of the statute.[800]

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797. *Walker*, 81 N.Y.2d at 668-69, 623 N.E.2d at 5-6, 603 N.Y.S.2d at 285.

798. *See, e.g.*, People v. Drayton, 39 N.Y.2d 580, 585, 350 N.E.2d 377, 379, 385 N.Y.S.2d 1, 3 (1976) (finding a rational basis for differentiating between youths based upon "gravity of crime charged" when determining youthful offender status); People v. Parker, 41 N.Y.2d 21, 25, 359 N.E.2d 348, 350, 390 N.Y.S.2d 837, 840 (1976). The court of appeals imposed second felony offender status upon persons convicted of prior out-of-state felonies where there was a rational relation to the "valid governmental aim of treating habitual offenders more severely than first time offenders." *Id.*; Montgomery v. Daniels, 38 N.Y.2d 41, 62, 340 N.E.2d 444, 457, 378 N.Y.S.2d 1, 19 (1975) (upholding state's no-fault insurance plan as rationally related to the legislative purpose of reducing insurance costs); *Cortlandt Medical Bldg. Assoc.*, 153 Misc. 2d at 694, 582 N.Y.S.2d at 641 (striking down town code that failed to provide a rational basis for charging higher fine for commercial false alarms than for residential ones).

799. Maresca v. Cuomo, 64 N.Y.2d 242, 475 N.E.2d 95, 485 N.Y.S.2d 724 (1984); People v. Drayton, 39 N.Y.2d 580, 350 N.E.2d 377, 385 N.Y.S.2d 1, (1976); People v. Parker, 41 N.Y.2d 21, 359 N.E.2d 348, 39 N.Y.S.2d 837 (1976); Montgomery v. Daniels, 38 N.Y.2d 41, 340 N.E.2d 444, 378 N.Y.S.2d 1 (1975).

800. *Walker*, 81 N.Y.2d at 668, 623 N.E.2d at 6, 603 N.Y.S.2d at 285; *Maresca*, at 250, 475 N.E.2d at 98, 485 N.Y.S.2d at 727. The court in *Maresca*, explained that legislative enactments are deemed constitutional because they are presumed to be based upon facts known to legislature. *Id.* Although this presumption is rebuttable, the court cautioned that "it is only as a last resort that courts strike down legislative enactments on the ground of unconstitutionality." *Id.* at 250, 475 N.E.2d at 98-99, 485 N.Y.S.2d at 728. Therefore, even if the court must "hypothesize the motivations of the State Legislature" almost any statute will be constitutional if it can find the classification scheme is based upon "some conceivable and legitimate State interest." *Id.* at 250-51, 475 N.E.2d at 98-99, 485 N.Y.S.2d at 727-28.

In reaching its conclusion the court in *Walker*, relied upon the reasoning of three concurring judges in *People v. Pacheco*,[801] a New York Court of Appeals case, challenging the same penal law and the same legislative classification as the instant case.[802] The judges reasoned that the state has a legitimate interest in enforcing its own criminal statutes and it is "not unreasonable" to provide that an individual "who violated this [s]tate's felony laws once should suffer heightened punishment if he commits a second felony in New York since such a person has demonstrated a repeated disregard for the [s]tate's most serious criminal prohibitions . . . ."[803] The *Walker* court found this reasoning persuasive and held "the distinction drawn by section 70.06 (1)(b)(i) [was] therefore rationally related to the legitimate [s]tate purpose of enforcing New York's criminal laws."[804]

Similarly, when challenging social or economic enactments made by Congress, federal equal protection principles require that the classification scheme has "some reasonable basis."[805] So long as the means used by the legislature are rationally related to

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801. 53 N.Y.2d 663, 421 N.E.2d 114, 438 N.Y.S.2d 994 (1981) (Cooke, J., concurring). Chief Judge Cooke filed opinion in which Judges Gabrielli and Fuchsberg joined. *Id.* at 666-70, 421 N.E.2d at 115-17, 438 N.Y.S.2d at 995-97 (Cooke, J., concurring).

802. *Id.* at 665, 421 N.E.2d at 115, 438 N.Y.S.2d at 995. The majority never addressed the equal protection challenge because the defendant lacked standing to raise the argument. *Id.* at 666, 421 N.E.2d at 115, 438 N.Y.S.2d at 995. The three concurring justices, however, would have reached the issue and upheld the statute under rational basis scrutiny. *Id.* at 669, 421 N.E.2d at 117, 438 N.Y.S.2d at 997 (Cooke, J., concurring).

803. *Id.*

804. *Walker*, 81 N.Y.2d at 668-69, 623 N.E.2d at 6, 603 N.Y.S.2d at 285.

805. *See, e.g.*, United States R.R. Retirement Bd. v. Fritz, 449 U.S. 166, 177 (1980) (insuring "solvency of the railroad retirement system and protecting vested benefits" was a reasonable basis for eliminating "windfall benefits" for some railroad employees and not others based upon date of employment); *But see* Metropolitan Life Ins. Co. v. Ward, 470 U.S. 869, 879 (1985) (promoting in-state insurance companies at the expense of out-of-state competitors was not a legitimate state interest).

the legitimate legislative purpose, the statute will survive constitutional muster.[806]

In areas of economic and social welfare legislation, both State and Federal Constitutions require equal treatment for similarly situated individuals unless the government can demonstrate a rational basis for imposing disparate treatment.

SUPREME COURT, APPELLATE DIVISION

FIRST DEPARTMENT

Chin v. Board of Elections[807]
(decided June 29, 1993)

Petitioner claimed that the failure of New York City to provide language translation assistance to Asian voters at a primary election violated the State[808] and Federal[809] Equal Protection Clauses.[810] The Appellate Division, First Department, held that there was no constitutional violation because the Federal Voting

806. *See, e.g.*, Minnesota v. Clover Leaf Creamery Co., 449 U.S. 456, 461-62 (1981). The United States Supreme Court found discrimination between "plastic and nonplastic nonreturnable milk containers" was rationally related to state's legitimate interests in "promoting resource conservation, easing solid waste disposal problems, and conserving energy . . . ." *Id.*; City of New Orleans v. Dukes, 427 U.S. 297, 304-05 (1976) (excluding street vendors who had worked less than eight years was rationally related to state objective of preserving the custom and appearance of the French Quarter); *but see* Logan v. Zimmerman Brush Co., 455 U.S. 422, 439-42 (1982) (treating differently employment discrimination claims processed within 120 days and those processed after, could not rationally achieve the state objective of "expediting" disputes).

807. 194 A.D.2d 480, 599 N.Y.S.2d 569 (1st Dep't 1993).

808. N.Y. CONST. art. I, § 11. This provision provides: "No person shall be denied the equal protection of the laws of this state or any subdivision thereof." *Id.*

809. U.S. CONST. amend. XIV, §1, cl. 3. This provision provides: "No state shall . . . deny to any person within its jurisdiction the equal protection of the laws." *Id.*

810. *Chin*, 194 A.D.2d at 481, 599 N.Y.S.2d at 570.