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Right to Trial by Jury, Court of Appeals People v. Foy

N.Y. CONST. art. I, § 8:

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 constitution.

COURT OF APPEALS

People v. Foy[1]
(decided October 17, 1996)

Defendant, Edward Foy, was charged with multiple petty offenses in a joined trial in relation to two separate altercations.[2] Foy was convicted only of a single violation which carried a maximum punishment of fifteen days imprisonment.[3] After a bench trial, the defendant was sentenced to a conditional discharge.[4] Foy appealed and claimed that he was entitled to a jury trial under the Federal[5] and New York State[6] Constitutions because the maximum aggregate sentence for the multiple offenses charged was in excess of six months imprisonment.[7]

1. 88 N.Y.2d 742, 673 N.E.2d 589, 650 N.Y.S.2d 79 (1996).
2. *Id.*
3. *Id.* at 744, 673 N.E.2d at 591, 650 N.Y.S.2d at 81.
4. *Id.* at 743, 673 N.E.2d at 590, 650 N.Y.S.2d at 80.
5. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a . . . trial, by an impartial jury . . . . " *Id.*
6. N.Y. CONST. art. 1, § 2. This section provides in pertinent part: "Trial by jury in all cases in which it has heretofore been guaranteed by constitutional provision shall remain inviolate forever . . . ." *Id.*
7. *Foy*, 88 N.Y.2d at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81.

The Appellate Term affirmed the judgment of the Criminal Court and held that the defendant was not constitutionally entitled to a jury trial because each offense was considered "petty" within the meaning of the Sixth Amendment and therefore, would not have been triable before a jury if prosecuted individually.[8] The New York State Court of Appeals affirmed and held that the determination of whether a defendant is entitled to a jury trial depends on the seriousness of the offense, and "not the potential aggregate sentence for a series of petty offenses that may be consolidated for trial."[9]

Edward Foy was originally charged, under two separate informations, with multiple misdemeanors and lesser offenses relating to two altercations with his wife which occurred more than one week apart.[10] At the time of trial, the charges on the first information were two class B misdemeanors,[11] each of which carried a maximum authorized jail term of three months.[12] The second information was reduced to three class B misdemeanors,[13] and a single count of harassment.[14] The

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8. People v. Foy, 166 Misc. 2d 358, 359-61, 636 N.Y.S.2d 559, 560 (1st Dep't 1995). *See* N.Y. CRIM. PROC. LAW § 340.40(2) (McKinney 1994). This section codified the rule that an offense is "petty" when the authorized prison term is six months or less. The section provides in pertinent part:

> In any local criminal court a defendant who has entered a plea of not guilty to an information which charges a misdemeanor must be accorded a jury trial except that in 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 judge trial . . . .

Id.

9. *Foy*, 88 N.Y.2d at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81.

10. *Foy*, 166 Misc. 2d at 359, 636 N.Y.S.2d at 560.

11. *Id.* at 359, 636 N.Y.S.2d at 560. Defendant was charged with "attempted criminal mischief in the fourth degree" (Penal Law §§ 110.00, 145.00[1]), and "menacing in the third degree" (Penal Law § 120.15).

Id.

12. *Id.* at 359, 636 N.Y.S.2d at 560 (citing Penal Law § 70.15 [2]).

13. *Id.* Defendant was charged with "attempted third degree assault" (Penal Law §§ 110.00, 120.00 [1]), "attempted fourth degree criminal

prosecution made a motion to consolidate the informations for trial for reasons of administrative convenience.[15] Although the defendant conceded that each count was equivalent to a "petty" offense within the meaning of the Sixth Amendment and therefore not triable by a jury if individually prosecuted, he nonetheless argued that a jury trial was warranted because if he were convicted of all the offenses charged, he conceivably could receive a jail term in excess of six months.[16] The court rejected the defendant's proposed "aggregate sentence approach" and held that the seriousness of the *offense* was the central point of inquiry, not the "sheer number of accumulated offenses tried on a given day or on a given accusatory instrument."[17]

In its analysis, the New York State Court of Appeals recognized that offenses that warrant a jail term of greater than six months are classified as "serious" and thus afford a defendant a New York and United States constitutional right to a jury trial.[18] Conversely, offenses with sentences of less than six

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mischief" (Penal Law §§ 110.00, 145.00 [1]), and "attempted second degree criminal contempt" (Penal Law §§ 110.00, 215.50 [3]). *Id.*

14. *Id.* The charge is now designated "harassment in the second degree" and renumbered Penal Law § 240.26, a "violation punishable by a maximum sentence of 15 days" (Penal Law § 70.15 [4])." *Id.*

15. *Id.* at 360, 636 N.Y.S.2d at 560. "The administrative convenience of litigating these multiple charges in one trial did not serve to enhance the ultimate risk faced by the defendant or to somehow transform the 'petty' offenses alleged to the level of a 'serious' crime" *Id.* [citations omitted].

16. *Foy*, 166 Misc.2d at 359-60, 636 N.Y.S.2d at 560.

17. *Id.* at 360, 636 N.Y.S.2d at 560. The criminal court determined that since the two informations consolidated for the joint trial involved two separate incidents, each of which carried a potential sentence of less than six months, there was no constitutional right to a jury trial. *Foy*, 88 N.Y.2d at 744, 673 N.E.2d at 591, 650 N.Y.S.2d at 81.

18. *Foy*, 88 N.Y.2d at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81. *See also* Duncan v. Louisiana, 391 U.S. 145, 159-62 (1968). The penalty authorized for a particular offense is the relevant factor in determining whether an offense should be classified as either "serious" or "petty." *Duncan*, 391 U.S. at 159. In *Duncan*, appellant was convicted of the offense of "simple battery" which carried a possible punishment of up to two years imprisonment and a $300.00 fine. *Id.* at 146. Although Duncan was sentenced to serve only 60 days in the parish prison and pay a $150.00 fine, the Court found that because of the punishment that *could have* been imposed, such offense should

months are "petty" offenses, and are not afforded the right to a jury trial.[19] The court emphasized that offenses are to be examined "individually and separately" to determine whether the legislature has classified the offense as "serious."[20] Thus, if a court determines that the offense is not "serious," the defendant is *not* entitled to a trial by jury.[21]

In *Baldwin v. New York*,[22] the Supreme Court of the United States reversed appellants conviction and held that the possibility of a one year prison sentence was enough in itself to warrant a jury trial.[23] The Court found that "no offense c[ould] be deemed 'petty' for purposes of the right to trial by jury, where imprisonment for more than six months [wa]s authorized."[24] Furthermore, the Court recognized that although a prison sentence of less than six months may not seem like a "petty" matter to an accused, that type of inconvenience is outweighed by the advantages of a "speedy and inexpensive nonjury adjudication."[25]

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be classified as "serious" and not "petty" and therefore appellant was entitled to a jury trial. *Id.* at 161-62 (emphasis added).

19. *Foy*, 88 N.Y.2d at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81 (citations omitted). "[P]etty offenses may be prosecuted in State court without a jury." *People v. Foy*, 166 Misc. 2d 358, 359 (1995) (citing Duncan, 391 U.S. at 161-62).

20. *Foy*, 88 N.Y.2d at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81.

21. *Id.* at 745, 673 N.E.2d at 592, 650 N.Y.S.2d at 82 (emphasis added).

22. 399 U.S. 66 (1969).

23. *Baldwin*, 399 U.S. at 69. In *Baldwin*, appellant was charged with a Class A misdemeanor in New York City Criminal Court and was subject to punishment of up to one year imprisonment. *Id.* at 67. Appellant asserted that the applicable New York statute was unconstitutional insofar as it denied him his Sixth Amendment right to a trial by jury. *Id.* at 68. The Court agreed. *Id.* The statute provides in part:

> all trials in the court shall be without a jury . . . all trials . . . shall be held before a single judge; provided, however, that where the defendant has been charged with a misdemeanor . . . [he] shall be advised that he has the right to a trial . . . held by a panel of three of the judges thereof . . . .

Id. at 67 n.2 (quoting N.Y.C. Crim. Ct. Act § 40 (Supp. 1969)).

24. *Id.* at 69.

25. *Id.* at 73.

Recently, in *Lewis v. United States*,[26] the Supreme Court addressed the question of whether a defendant has the constitutional right to a jury trial when the aggregate prison term for multiple petty offenses charged in a single proceeding exceeds six months.[27] In *Lewis*, the defendant was charged with two counts of obstructing the mail.[28] Each charge carried a maximum authorized prison sentence of six months. Interestingly, the magistrate denied the defendant's request for a jury trial reasoning that she "would not sentence him to more than six months imprisonment," and ordered a bench trial.[29]

In rejecting the defendant's Sixth Amendment argument, the Supreme Court held that the Sixth Amendment only reserves a jury-trial right to defendants that are accused of serious offenses.[30] The determination is made by looking to the intent of the legislature in their expression of the maximum term of imprisonment for the offense.[31] The Court stated that "[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."[32] Furthermore, the Court reiterated that when the legislature determines that an offense is "petty," the potential prison term faced by a *particular defendant* who is charged with more than one such petty offense is irrelevant.[33] Because it was determined that the right to a jury trial did not exist, the Court never reached the question of "whether a judge's self-imposed limitation on sentencing could affect the right to a jury trial."[34]

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26. 116 S. Ct. 2163 (1996).

27. *Id.* at 2164.

28. *Id.* at 2165. Defendant, Lewis, was a mail handler who, while under observation by postal inspectors, opened mail and removed currency. *Id.*

29. *Id.*

30. *Id.* at 2167.

31. *Id.*

32. *Id.*

33. *Id.*

34. *Id.* at 2168.

In *Morgenthau v. Erlbaum*,[35] the respondent was a New York City Criminal Court Judge, and the petitioner was the District Attorney who was seeking a declaratory judgment to attack respondent's interlocutory criminal court ruling.[36] The case arose when two women, accused of prostitution, moved for a jury trial.[37] Each offense carried a three-month maximum jail sentence.[38] The defendants claimed that New York Criminal Procedure Law [hereinafter CPL] section 340.40(2)[39] was unconstitutional because it deprived them of their right to a jury trial as guaranteed in the Sixth Amendment.[40] In granting the defendants' motion, the court reasoned that notwithstanding the minor sentences that could be imposed, the crime of prostitution is *of itself* a "serious" crime and therefore comes within the purview of the Sixth Amendment.[41] The New York State Court of Appeals ruled that CPL section 340.40(2), as applied to prostitution charges, was not violative of the Sixth Amendment.[42] In so ruling, the Court recognized that prostitution is a "petty" offense, as evidenced by its maximum length of incarceration.[43] The Court stated that "[a]lthough earlier cases may have considered various factors of a crime . . . recent Supreme Court decisions have emphasized the length of sentence to the exclusion of virtually everything else."[44]

In support of his argument to adopt the "aggregate-sentence approach," Foy relied on *Codispoti v. Pennsylvania*.[45] In

35. 59 N.Y.2d 143, 451 N.E.2d 150, 464 N.Y.S.2d 392 (1983).

36. *Id.* at 146, 451 N.E.2d at 151-52, 464 N.Y.S.2d at 393-94.

37. *Id.* at 146, 451 N.E.2d at 152, 464 N.Y.S.2d at 394.

38. *Id.* at 154, 451 N.E.2d at 154, 464 N.Y.S.2d at 398.

39. *See infra* note 8 (directing that crimes punishable by not more than six months imprisonment must be heard by a single judge).

40. *Morgenthau*, 59 N.Y.2d at 146, 451 N.E.2d at 152, 464 N.Y.S.2d at 394.

41. *Id.* (emphasis added).

42. *Id.* at 154, 451 N.E.2d at 156, 464 N.Y.S.2d at 398.

43. *Id.* ("The penalty is deemed of major relevance . . . . ") *Id.* at 153, 451 N.E.2d at 156, 464 N.Y.S.2d at 398.

44. *Id.* at 153, 451 N.E.2d at 156, 464 N.Y.S.2d at 398 (citations omitted).

45. *Foy*, 88 N.Y.2d at 747, 673 N.E.2d at 592, 650 N.Y.S.2d at 82.

Codispoti,[46] the defendant was charged and convicted of several counts of criminal contempt, and was denied his demand for a jury trial.[47] Codispoti's demand for a jury trial was denied.[48] The lower courts found that since no term of imprisonment in excess of six months was imposed for any single offense, the petitioners were not entitled to a jury trial.[49] In its analysis, the Supreme Court recognized that, while judgment of the seriousness of a crime is normally determined by the Legislature, here the Legislature had remained silent as to a penalty for criminal contempt and as such, the Court determined that "[t]he pettiness or seriousness of the contempt will be judged by the penalty actually imposed."[50] Therefore, in terms of the sentence imposed on Codispoti, the Court found that the defendant was "tried for what was equivalent to a serious offense and was entitled to a jury trial."[51] Consequently in *Foy*, the Legislature did not remain silent as to the penalties for the multiple petty crimes with which Foy was charged. Moreover, the court noted 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 level and nature."[52] Foy's argument also failed under *Lewis*.[53] *Lewis* limited the

46. 418 U.S. 506 (1974).

47. *Id.* at 507-08. Defendant was convicted of seven counts of contempt and sentenced to six months in prison for each of the six counts and three months in prison for the seventh count. *Id.* at 509.

48. *Id.* at 508.

49. *Id.* at 510.

50. *Id.* at 511.

51. *Id.* at 517. "[T]he salient fact remains that the contempts arose from a single trial, were charged by a single judge, and were tried in a single proceeding. The individual sentences imposed were then aggregated, one sentence taking account of the others and not beginning until the immediately preceding sentence had expired." *Id.*

52. *Foy*, 88 N.Y.2d at 747, 673 N.E.2d at 593, 650 N.Y.S.2d at 83.

53. *See infra* notes 25-33. Lewis was charged with two petty offenses, each with a maximum authorized prison sentence of six months, which did not warrant a jury trial. *Lewis*, 116 S. Ct. at 2167. The *Lewis* Court further explained that the intent of the legislature in their expression of the maximum term of imprisonment of a single offense prevails, and their judgment is what determines whether an offense is or is not serious. *Id.* It is of no consequence

rationale of *Codispoti* when it recognized that a court "[n]eed not look to the punishment actually imposed, [when the court is] able to discern Congress' judgment of the character of the offense."[54]

In sum, Foy's aggregate sentence approach failed. The basis for the court's rationale was its analysis of the severity of the offense. That severity is, in effect, determined by the Legislature in its punishment classification. It is believed that those prosecuted for "serious" offenses, i.e. greater than six months imprisonment, have a greater exposition to the deprivation of liberty and therefore, the inalienable guarantee deeply rooted in both the Federal and State Constitutions is to provide for a trial by jury.[55] It was along that line of reasoning that the court firmly dismissed the allegation that the offenses were consolidated solely for efficiency reasons.[56] The emphasis, the Court explained, is on the examination of each offense *individually and separately* and not an aggregation of the sentences promulgated as petty offenses.[57] Therefore, in order for a defendant to invoke the Sixth Amendment right to a jury trial, he or she must first have been charged with at least a single offense that has been legislatively qualified as "serious."

People v. Knowles[58]
(decided October 22, 1996)

The defendant, Newton Knowles, claimed that his right to counsel was violated under the Federal[59] and State

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that a defendant has been charged with multiple counts of a petty offense because the legislature has already determined the gravity and appropriate punishment for that offense. *Id.*

54. *Id.* at 2168.

55. *Foy*, 88 N.Y.2d at 747, 673 N.E.2d at 593, 650 N.Y.S.2d at 83.

56. *Id.* at 747, 673 N.E.2d at 593, 650 N.Y.S.2d at 83.

57. *Id.* at 745, 673 N.E.2d at 591, 650 N.Y.S.2d at 81 (emphasis added).

58. 88 N.Y.2d 763, 673 N.E.2d 902, 650 N.Y.S.2d 617 (1996).

59. U.S. CONST. amend. VI. The Sixth Amendment provides in pertinent part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial . . . and to have the Assistance of Counsel for his defense." *Id.*