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YATES v. UNITED STATES

Certiorari to the Ninth Circuit

Timely. This contempt proceeding arises out of the California Communist case which is Nos. 308, 309, and 310 of this Term. Petitioner here is also petitioner in No. 308.

At the trial, Mrs. Yates took the stand in her own defense. On cross-examination on June 26, 1952, she refused to identify certain persons as Communists since she stated she feared retaliation against their families, and she would not be an informer. She was instructed to answer, and on continued refusal, she was ordered to be imprisoned until she purged the contempt. Four days later, near the end of her cross-examination, the pros- ecuting attorney returned to the identification of certain persons as communists, and asked eleven additional questions, all of which were not answered on the same ground as the refusal of June 26. The Judge at this time stated that these refusals would be treated as criminal contempt. At the close of the trial, Mrs Yates was again called before the Judge, and on continued refusal to answer, she was sentenced to one year's imprison-

ment on each of the eleven counts; the sentences to run concurrently and to begin after the five year sentence on the Smith Act convicion. It is this conviction that comes up on cert. here.

The one year sentence is quite harsh. In similar circumstances in other circuits (also involving Smith Act defendants, who were much more impolite than Mrs. Yates, the penalties were from one to three months.) It might well be decided that the proper solution is to remand the case for another hearing before another judge. The reason for this is the behavior of the trial judge as to these contempt proceedings. In an attempt to coerce Mrs. Yates after her first refusal, he put her in jail until she purged her contempt. This is O.K., but Mrs. Yates was apparently willing to stay in jail indefinitely, and the trial judge refused to release her, even after the conclusion of the trial. The theory of civil contempt is denial of assistance to the other side: here the conviction had already been obtained, and the evidence to the Government was unnecessary. The C.A. reversed this refusal, and Mrs. Yates was let out. The ground for this

reversal was that the jury had been disbanded, and it was not possible now to give the testimony and use it for the required purpose. Next, the judge attempted to sentence Mrs. Yates to a three year term for criminal contempt, for her refusal to answer the questions the first day of her cross examination. This sentence was shockingly large, and the C.A. also reversed on the ground no notice was given Mrs. Yates at the time that she would be held in criminal contempt. Finally, the Judge refused to set bail for the defendants pending appeal; after one reversal, the C.A. set bail itself.

The affirmance of the conviction for contempt on each of the eleven counts by the C.A. (Stephens, FEE, and Chambers, C.J.) is now attacked as a form of double jeopardy. It is argued that this is an example of asking the same question over and over again to multiply the number of distinct contempts. My reaction is that, since the questions were about different people, and since Mrs. Yates' gratuitous initial statement should not bar the questions, each statement should be a separate

contempt. But this apparently runs squarely contra to United States v. Costello, 198 F. 2d 200 (2d Cir.). Costello simply stated he refused to answer any questions, and the counts of the contempt prosecution listed each refusal as a separate contempt. The Second Circuit held that the act of contempt was total when Costello refused to answer any questions at all, and it could not be multiplied by continuing to answer questions.

Now, it might be argued that the present case is different, first, because the sentences were concurrent, so that the result would be the same if only one contempt was found. Or it might be suggested that the contempt here was not total until the refusal to answer the eleven questions the third day. This would solve the problem, since then there is only one civil and one criminal contempt indictment for one contumacious act. But this also apparently conflicts with Costello, where it was held that the contempt was total with the refusal to answer any question. Finally, it might be suggested that each day Mrs. Yates refused to answer was a separate contempt.

Something similar to this occured in Costellow, where the Court held that, upon being recalled to the stand several days later, a continued refusal was a separate contempt. But there the refusals were on different grounds.

A full application of the Costello case here would let Mrs. Yates off: she cannot be convicted of criminal contempt for her first refusal since no notice was given here of the proposed prosecution, and she could not be convicted for her second refusal, since that was not a further act of contempt beyond the first. A somewhat strange result.

It is argued that the penalties were too harsh. They are, but this is within the discretion of the trial judge, and, if the case is not sent back for retrial before another judge, it is hard to say the sentence itself is an abuse of discretion. I don't think this Court should get into this here.

Finally, petitioner argues that the judgment is void, since the Judge made the unfortunate remark that petitioner can get her sentence reduced if she purged the contempt within 60 days.

This remark is hardly apropos of a criminal conviction, but I can't see that it makes any difference. The judge does have some power to reduce the sentence, and the remark does not conclusively show that the proceeding was really civil in nature (so that the sentence is beyond the jurisdiction of the Judge.)

All in all, the C.A. gave very close examination to the treatment accorded Mrs. Yates. The procedural requirements established for this type of proceeding were followed. The Costello case, however, seems very close.

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