SUPREME COURT OF THE UNITED STATES

ITS_JACOB *v.* UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 05–47. Decided May 30, 2018

The petition for a writ of certiorari is denied.

Statement of JUSTICE ROBERTS, with whom JUSTICE BORK joins, respecting the denial of certiorari.

We held in *Nye* v. *United States*, 313 U. S. 33, 52 (1941), that conduct proscribed by 18 U. S. C. § 401 includes "misbehavior in the vicinity of the court disrupting to quiet and order or actually interrupting the court in the conduct of its business." Leading up to this development, however, was a long march toward a limitation on the judiciary's originally unfettered contempt powers. Because the "power of courts to punish for contempt . . . was considered essential to the proper and effective functioning of the courts and to the administration of justice," *Bloom* v. *Illinois*, 391 U. S. 194, 196 (1968), the power to punish criminal contempt without jury trials or other protections was often upheld. See, *e.g.*, *Eilenbecker* v. *District Court of Plymouth County*, 123 U. S. 31, 36–39 (1890); *I. C. C.* v. *Brimson*, 154 U. S. 447, 488–489 (1894).[1]

Bloom rolled back some of these spacious freedoms on the contempt power. Its most important change to the contempt jurisprudence was the requirement of jury trials of

---

[1] In these cases, the Due Process Clause and "inclusive language of Article III and the Sixth Amendment," *Bloom*, *supra*, at 196, were read to enable summary trials in contempt cases. This stemmed from the common law view that contempts were tried without juries, with a premium focus again being placed on the importance of a functioning judiciary.

"contempts subjected to severe punishment." *Bloom*, *supra*, at 198. The *Bloom* Court felt the lack of protections around *all* criminal contempts represented "an unconstitutional assumption of powers by the [courts] which no lapse of time or respectable array of opinion [should have made us] hesitate to correct." *Black & White Taxicab & Transfer Co.* v. *Brown & Yellow Taxicab & Transfer Co.*, 276 U. S. 518, 533 (1928) (Holmes, J., dissenting). This power, being "liable to abuse," *Ex parte Terry*, 128 U. S. 289, 313 (1888), justified such a shift.

The problem, however, with *Bloom* is that the Court failed to specify what constitutes a "serious" contempt offense.[2] Though we can look to its reliance on *Cheff* v. *Schnackenberg*, 384 U. S. 373 (1966), for possible guidance. In *Cheff*, the Court held that a punishment of six months constituted the punishment of a "petty offense," and, therefore, sentences "exceeding six months for criminal contempt may not be imposed . . . absent a jury trial or waiver thereof." *Id.*, at 379–380.

At the present case petitioner requests a writ of mandamus to challenge his six-day sentence for contempt of a district court. Petitioner shouted obscenities in the vicinity of the judge, was told to stop, yet continued. Petitioner argues that his conduct falls outside of the scope of 18 U. S. C. § 401. Section 401(3), however, makes it an offense of contempt to be disobedient toward or resist a "lawful writ, process, order, rule, decree, or command" of a court. Petitioner's conduct certainly falls under the definition; he was asked to cease, yet continued. That would appear, to me, to

---

[2] In *DeStefano* v. *Woods*, 392 U. S. 631, 633 (1968), the Court, relating to *Bloom* v. *Illinois*, 391 U. S., wrote, "[b]oth *Duncan* and *Bloom* left open the question of whether a contempt punished by imprisonment one year is, *by virtue of the sentence*, a sufficiently serious matter to require that a request for jury trial be honored" (emphasis added). The suggestion, of course, being that whether a contempt under Bloom requires jury protections rests on the length of the sentence imposed.

foreclose this matter. And it has been long understood that "guarantees of jury trial found in Article III and the Sixth Amendment do not apply to petty offenses," *Bloom*, 391 U. S., at 210, especially when they occur in the direct presence of the judge. See *ibid.*; Fed. Rules of Crim. Proc. 42(a). Serious offenses, and thus serious sentences, requiring jury trials surely do not comprise six-day sentences. I, therefore, would see no merit in the granting of the petition.