

JOHN BARGER *v.* STATE OF ARKANSAS

5240

413 S. W. 2d 54

Opinion delivered April 3, 1967

HABEAS CORPUS—PROCEEDINGS & RELIEF—SENTENCE & COMMITMENT WITHOUT ASSISTANCE OF COUNSEL.—Petitioner's writ of habeas corpus should have been granted and the Pulaski Circuit Court convictions set aside where record of the proceedings indicated petitioner had been sentenced and committed on criminal charges without assistance of counsel, without having been advised of his constitutional right to counsel, and without having waived the right.

Appeal from Pulaski Circuit Court, First Division, *Wm. J. Kirby*, Judge; reversed.

Gerald T. Ridgeway, for appellant.

~~Joe Purcell~~, Attorney General, ~~Don Langton~~, Asst. Atty. General, for appellee.

CONLEY BYRD, Justice. This habeas corpus petitioner, John Barger, alleges that his constitutional right to the assistance of counsel was violated in that he was arrested in Pulaski County, Arkansas, in July, 1963; that he entered a plea of not guilty in the Pulaski Circuit Court on September 4, 1963, when his case was passed with his consent to the September, 1963, term (which began on the fourth Monday of September); that no action was taken in the September, 1963, term nor in the March, 1964, term; and that on February 1, 1965, (a day of the September, 1964, term), he entered a plea of guilty to three charges of forgery and received a ten-year sentence on each charge—all without the assistance of counsel. The state admits that petitioner was not represented by counsel and it does not contend that he was advised of his right to the assistance of counsel.

In *McIntyre v. State* 242 Ark. 229, 412 S. W. 2d 826, we held that under these circumstances the petitioner had not waived his constitutional right to the assistance

of counsel. Therefore, we hold that petitioner's writ of habeas corpus should have been granted and his Pulaski Circuit Court convictions set aside.

Reversed and remanded.
