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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1963

ST. PAUL, MINN.
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1965

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84 S. Ct.

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when it tried Jackson according to its existing rules

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does not give the State its due. Those rules had been directly considered and explicitly approved by this Court in *Stein* just seven years before Jackson was tried. They were implicitly reaffirmed by this Court in *Spano*, *supra*, little more than one year before the trial. If the concept of due process has as little stability as this case suggests, so that the States cannot be sure from one year to the next what this Court, in the name of due process, will require of them, surely they are entitled at least to be *heard* on the question of retroactivity. See my dissenting opinion in *Pickelsimer v. Wainwright*, 375 U.S. 2, 84 S.Ct. 80.

I would affirm.⁹



378 U.S. 226

Robert Mack BELL et al., Petitioners,

v.

STATE OF MARYLAND.

No. 12.

Argued Oct. 14 and 15, 1963.

Decided June 22, 1964.

Negro students who participated in a "sit-in" protest demonstration at a Baltimore restaurant which refused to serve colored people were convicted for violating the Maryland criminal trespass law. The Criminal Court of Baltimore rendered judgment, and the defendants appealed. The Court of Appeals of Maryland, 227 Md. 302, 176 A.2d 771, affirmed, and certiorari was granted. The Supreme Court, Mr. Justice Brennan, held that whether Maryland general

saving clause statute would save the Maryland convictions after enactment of the Baltimore and Maryland public accommodations laws was question of Maryland law, which should be determined initially by Maryland Court of Appeals.

Reversed and remanded.

Mr. Justice Black, Mr. Justice Harlan and Mr. Justice White dissented.

1. Criminal Law ⇐1189

Where a significant change had taken place in applicable law of Maryland since Maryland state court convictions were affirmed by Maryland Court of Appeals, the judgments must be vacated and reversed and the case remanded so that the state court may consider the effect of the supervening change in state law.

2. Criminal Law ⇐1181

Under common law of Maryland, supervening enactment of statutes abolishing crime for which accuseds have been convicted causes Maryland Court of Appeals to reverse the convictions and order the indictments dismissed.

3. Criminal Law ⇐15

The common-law rule is that when the legislature repeals a criminal statute or otherwise removes the state's condemnation from conduct that was formerly deemed criminal, this action requires dismissal of pending criminal proceeding charging such conduct; the rule applies to any such proceeding which, at time of supervening legislation, has not yet reached final disposition in highest court authorized to review it.

4. Criminal Law ⇐15

For purposes of Maryland common-law rule that legislative abolition of crime requires dismissal of pending criminal proceeding, the only question is whether legislature acts before affirm-

9. Like the Court, *ante*, p. 1789, n. 20, I reject petitioner's contention that looking only to the undisputed evidence his confes-

sion must be deemed involuntary as a matter of law.

ance of conviction becomes final, and judgment which is on direct review in United States Supreme Court is not yet final.

5. Criminal Law ⇨1181

It is the general rule that the province of an appellate court is only to inquire whether a judgment of conviction when rendered was erroneous or not; but if subsequent to the judgment and before the decision of the appellate court, a law intervenes and positively changes the rule which governs, the law must be obeyed.

6. Criminal Law ⇨1189

Whether Maryland general saving clause statute would save Maryland state convictions for violations of Maryland criminal trespass law after enactment of Baltimore and Maryland public accommodations laws was question of Maryland law, and Supreme Court would vacate and reverse Maryland state court judgments convicting Negroes for criminal trespass arising out of their participation in a "sit-in" protest demonstration at a Baltimore restaurant which refused to serve colored people and would remand case to Maryland Court of Appeals for determination of this question. Code Md.1957, art. 1, § 3; art. 27, § 577; Code Md.Supp. art. 49B, § 11; Acts Md.1963, c. 227, § 4.

7. Courts ⇨365(1)

The Supreme Court has a tradition of deference to state courts on questions of state law.

8. Constitutional Law ⇨69

The Supreme Court has constitutional inability to render advisory opinions.

9. Courts ⇨399(1)

The Supreme Court has a policy of refusing to decide a federal question in a case that might be controlled by a state ground of decision.

10. Courts ⇨400

Where a supervening event raises a question of state law pertaining to a

case pending on review in the Supreme Court, the practice is to vacate and reverse the judgment and remand the case to the state court, so that it may consider it in the light of the supervening change in state law.

11. Courts ⇨399(1)

Ordinarily the Supreme Court on writ of error to state court considers only federal questions and does not review questions of state law; but where questions of state law arising from the decision below are presented in the Supreme Court, the court's appellate powers are not thus restricted; either because new facts have supervened since the judgment below, or because of a change in the law, the Supreme Court, in the exercise of its appellate jurisdiction, may consider the state questions thus arising and either decide them or remand the cause for appropriate action by the state courts.

12. Courts ⇨400

Supreme Court exercising appellate jurisdiction may not only correct error in judgment but may make such disposition of case as justice requires, and hence must consider any change in fact or law supervening since entry of judgment, and may recognize such change, which may affect result, by setting aside judgment and remanding case so that state court may be free to act.

Jack Greenberg, New York City, for petitioners.

Loring E. Hawes and Russell R. Reno, Jr., Baltimore, Md., for respondent.

Ralph S. Spritzer, Washington, D. C., for United States, as amicus curiae, by special leave of Court.

Mr. Justice BRENNAN delivered the opinion of the Court.

Petitioners, 12 Negro students, were convicted in a Maryland state court as a result of their participation in a "sit-in" demonstration at Hooper's restaurant in