UNITED STATES v. DUARTE-ACERO

United States Court of Appeals for the Eleventh Circuit
208 F.3d 1282 (2000)

TJOFLAT, CIRCUIT JUDGE:

This is an interlocutory appeal of a district court decision denying appellant's motion to dismiss an indictment on double jeopardy grounds. *See United States v. Benitez,* 28 F. Supp. 2d 1361 (S.D.Fla.1998). The offenses alleged in the indictment took place in Colombia, South America, and arose out of a conspiracy to murder two special agents of the Drug Enforcement Agency ("DEA"). Appellant alleges, and the Government all but concedes, that he was convicted in Colombia of the same conduct alleged in the instant indictment. Appellant argues that the double jeopardy provision of the International Covenant on Civil and Political Rights (the "ICCPR") bars his prosecution in the district court. We agree with the district court that this provision constitutes no bar to appellant's prosecution in the Southern District of Florida and therefore affirm. . . .

The indictment in this case charges appellant and three others (Rene Benitez, Armando Benitez, and Jairo David Valencia) with five offenses, all occurring on February 10, 1982, in Cartagena, Colombia. On that day, the four men abducted two DEA agents (who were investigating drug trafficking between Colombia and the United States) from their hotel room and, after leaving the city, shot the agents and left them for dead. The agents survived the shooting and returned to the United States.

On August 28, 1997, DEA agents, using a ruse, lured appellant across the Colombian border into Quito, Equador, and arrested him. The next day, appellant appeared before the district court in the Southern District of Florida and entered a not guilty plea. On April 28, 1998, appellant moved the court to dismiss the indictment. He argued that because he had been convicted in Colombia for the conduct alleged in the indictment, the double jeopardy provision of the ICCPR barred his prosecution. That provision, Article 14(7), states that "no one shall be liable to be tried or punished again for an offence for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country." The district court denied appellant's motion, holding that the ICCPR's double jeopardy provision precluded appellant's reprosecution in Colombia but did not bar his prosecution in the United States. . . .

Article 2(1) of the ICCPR provides that a state that becomes party to the treaty "undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status." Among those rights a state

"undertakes to respect and ensure" are the right to life, . . . freedom from torture, . . . the right to a fair trial, . . . freedom of opinion and expression, . . . and freedom of association. . . . On September 8, 1992, the United States, following the advice and consent of the Senate, became a party to the ICCPR, at which time the treaty became, coexistent with the United States Constitution and federal statutes, the supreme law of the land.

. . . . Appellant contends, in his brief, that Article 14(7) creates an international double jeopardy bar that "is broader than modern constructions of the [U.S.] Constitution's Double Jeopardy Clause" and that "the obligations under the ICCPR run not only between all State parties to the agreement but they also run between a State party and any individual within that State." Albeit a matter of first impression, appellant's argument can be dismissed rather easily; it is clearly contradicted by the language of the ICCPR as well as Article 14 (7)'s legislative history and the United Nations Human Rights Committee's (the "HRC") interpretation of this provision.

Naturally, our first focus in interpreting the ICCPR is its plain language. . . . If the language of the treaty is clear and unambiguous, as with any exercise in statutory construction, our analysis ends there, and we apply the words of the treaty, as written. . . .

Finally, although treaties are to be liberally construed, . . . this does not mean . . . that treaty provisions are construed broadly. Rather, this "liberal" approach to treaty interpretation merely reflects . . . the willingness of courts, when interpreting difficult or ambiguous treaty provisions, to "look beyond the written words to the history of the treaty, the negotiations, and the practical construction adopted by the parties." . . .

The clear language of the ICCPR manifests that its provisions are to govern the relationship between an individual and his state, and, not as appellant argues, the relationship between sovereigns. In other words, the ICCPR is concerned with conduct that takes place within a state party; its provisions do "not purport to regulate affairs between nations." . . .

Second, the bar against successive prosecutions in Article 14(7) is only for those individuals who have "already been finally convicted or acquitted *in accordance with the law and penal procedure of each country*." art. 14(7) (emphasis added). Thus, a successive prosecution is barred only when the accused is tried under the same law and criminal procedure. Intuitively, this would only happen when the second prosecution takes place in the same country. Clearly, then, a state party could try an individual under its law even though the individual has already been prosecuted for the same conduct under another party state's criminal code. . . . In sum, country X faithfully complies with its obligation under the ICCPR even when it prosecutes an individual

previously convicted or acquitted in country Y if the conduct that is the subject of the prosecution in X constitutes an "offence" under the laws of country X. . . .

Finally, and "most importantly perhaps," . . . the HRC, the body charged under the ICCPR with monitoring its implementation, has spoken on this issue and has endorsed the view that "article 14, paragraph 7 . . . does not guarantee *non bis in idem* with regard to the national jurisdictions of two or more States." . . .

For the forgoing reasons, we conclude that Article 14(7) of the ICCPR cannot be invoked defensively to avoid a prosecution in the courts of the United States despite an earlier prosecution for the same offense in the courts of another state party. Affirmed. . . .