

WOOD *v.* UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

No. 27, Misc. Decided October 16, 1967.

Petitioner before trial filed an affidavit requesting the District Court to assign counsel pursuant to the Criminal Justice Act but the court, without adequate inquiry into petitioner's financial ability to retain counsel, disapproved the request. The Court of Appeals, after granting leave to appeal *in forma pauperis*, affirmed. *Held*: The trial court should have explored the possibility that petitioner could afford only partial payment for the services of trial counsel and that counsel be appointed on that basis as permitted by the Act.

Certiorari granted; 373 F. 2d 894, vacated and remanded.

Solicitor General Marshall, Assistant Attorney General Vinson, Beatrice Rosenberg and Robert G. Maysack for the United States.

PER CURIAM.

Petitioner was found guilty by the United States District Court for the Northern District of Georgia of refusing to report for civilian employment, in violation of § 12 of the Universal Military Training and Service Act, 62 Stat. 622, 50 U. S. C. App. § 462. Before trial he filed an affidavit with the court requesting assigned counsel pursuant to the Criminal Justice Act, 18 U. S. C. § 3006A. The court considered the affidavit, questioned petitioner and disapproved the request. The Court of Appeals for the Fifth Circuit granted leave to appeal *in forma pauperis*, assigned counsel to assist petitioner in his appeal and affirmed the conviction. Petitioner seeks a writ of certiorari.

Before this Court the Solicitor General has conceded that the record does not convincingly show that there

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Per Curiam.

was adequate inquiry into the question of petitioner's financial ability to retain counsel, in that "the trial court should have explored the possibility that petitioner could afford only partial payment for the services of trial counsel and that counsel be appointed on that basis, as the Criminal Justice Act permits (see 18 U. S. C. § 3006(A) (c) and (f))." The Solicitor General urges, however, that there is no basis for believing that petitioner suffered prejudice from the District Court's error, an argument we find unpersuasive.

The motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted, the judgment is vacated and the case is remanded to the Court of Appeals for the Fifth Circuit for reconsideration in light of the Solicitor General's Memorandum and the relevant criteria of the Criminal Justice Act.

MR. JUSTICE BLACK dissents.

MR. JUSTICE MARSHALL took no part in the consideration or decision of this case.