

Rothgery v. Gillespie Cnty.

Texas police arrested Rothgery as a felon in possession of a firearm based on erroneous information that he had a previous felony conviction. As required by state law, police brought Rothgery before a magistrate for an Article 15.17 hearing at which the magistrate made the 4th Amendment probable cause determination, set bail, and formally apprised Rothgery of the accusation against him. Rothgery was released from jail after posting a surety bond. Despite several ignored requests for appointed counsel, he was subsequently indicted and rearrested, his bail was increased, and he was jailed when he could not post the bail. After a later-assigned lawyer obtained a dismissal of Rothgery's indictment, he brought a 42 U.S.C. Section 1983 action against the County, claiming that if it had provided him a lawyer within a reasonable time after the Article 15.17 hearing, he would not have been indicted, rearrested, or jailed, and that its unwritten policy of denying appointed counsel to indigent defendants out on bond until an indictment is entered violates his 6th Amendment right to counsel.

The Court held that Texas' Article 15.17 hearing marks the point of attachment of the 6th Amendment right to counsel, with the consequent state obligation to appoint counsel within a reasonable time once a request for assistance is made. The 5th Circuit's finding based on a prosecutorial awareness standard was wrong. The properly formulated test is whether the State has objectively committed itself to prosecute. An initial appearance following a charge signifies a sufficient commitment to prosecute regardless of a prosecutor's participation, indictment, information, or what the County called a "formal" complaint.