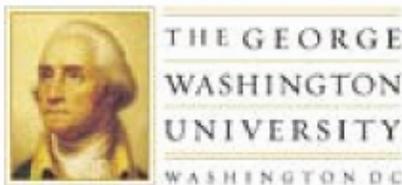


The Burger Court Opinion Writing Database

Minor v. United States

396 U.S. 87 (1969)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University



Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

December 5, 1969

Dear Bill,

Re: No. 189 and 271 - James Minor
v. United States

Please add the following at the end of
your dissent in the above:

"MR. JUSTICE BLACK substantially
agrees with the above dissent except as to the
last full paragraph."

Sincerely,

H.L.B.

H. L. B.

Mr. Justice Douglas

Bill (20)

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HUGO L. BLACK

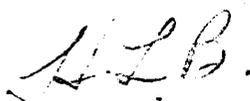
December 5, 1969

Dear Bill,

Re: Nos. 189 and 271 - James
Minor v. United States;
Michael Buie v. United States.

I agree to your dissent in this
case.

Sincerely yours,



H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated: 11/11/69

No. 189.—OCTOBER TERM, 1969

Recirculated:

James Minor, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
United States. } peals for the Second Circuit.

[November —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

The guilt of petitioner on this record seems plain. Two counts charge sales of heroin on two different dates in 1967 "not in pursuance of a written order form." He was found guilty on each count by the District Court, a trial by jury having been waived. But that is not the end of my difficulties. Mr. Justice Holmes used to say that one dealing with the Government should turn square corners. See *Rock Island R. R. v. United States*, 254 U. S. 141, 143. When the present all-powerful, all-pervasive Government moves to curtail the liberty of the person it too should turn square corners.

The statute involved in this case, 26 U. S. C. § 4705 (a), was derived from the Anti-Narcotic Act of December 17, 1914, c. 1, 38 Stat. 785, commonly called the Harrison Narcotics Act. This Act, as amended, imposes an occupational tax on registered dealers in narcotics, 26 U. S. C. §§ 4721-4722, and also imposes a commodity excise tax on narcotics sold or removed for consumption or sale, 26 U. S. C. § 4701. Under § 4705 (a), with certain exceptions not relevant here, all transfers of narcotics must be made pursuant to an official order form given to the transferor by the transferee. The order form can be obtained only by persons properly registered to deal in narcotics. It was conceded by the Government on oral argument, however, that "it is impossible to secure an order form for the purchase of heroin The order forms may only be used to purchase a lawful drug for

113

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan ✓
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.
No. 189.—OCTOBER TERM, 1969

James Minor, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
United States. } peals for the Second Circuit.

11/19/69

[November —, 1969]

MR. JUSTICE DOUGLAS, dissenting.

The guilt of petitioner on this record seems plain. Two counts charge sales of heroin on two different dates in 1967 "not in pursuance of a written order form." He was found guilty on each count by the District Court, a trial by jury having been waived. The basis of his attack upon his conviction in this Court is that the requirement of an order form violates his privilege against self-incrimination. But that is not the end of the matter for me. Mr Justice Holmes used to say that one dealing with the Government should turn square corners. See *Rock Island R. R. v. United States*, 254 U. S. 141, 143. When the present all-powerful, all-pervasive Government moves to curtail the liberty of the person it too should turn square corners.

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Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 189.—OCTOBER TERM, 1969

12/6/69

James Minor, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
United States. } peals for the Second Circuit.

[December 8, 1969]

MR JUSTICE DOUGLAS, with whom MR. JUSTICE BLACK concurs, dissenting.

The guilt of petitioner on this record seems plain. Two counts charge sales of heroin on two different dates in 1967 "not in pursuance of a written order form." He was found guilty on each count by the District Court, a trial by jury having been waived. The basis of his attack upon his conviction in this Court is that the requirement of an order form violates his privilege against self-incrimination. But that is not the end of the matter for me. Mr. Justice Holmes used to say that one dealing with the Government should turn square corners. See *Rock Island R. R. v. United States*, 254 U. S. 141, 143. When the present all-powerful, all-pervasive Government moves to curtail the liberty of the person, it too should turn square corners.

The statute involved in this case, 26 U. S. C. § 4705 (a), was derived from the Anti-Narcotic Act of December 17, 1914, c. 1, 38 Stat. 785, commonly called the Harrison Narcotics Act. This Act, as amended, imposes an occupational tax on registered dealers in narcotics, 26 U. S. C. §§ 4721-4722, and also imposes a commodity excise tax on narcotics sold or removed for consumption or sale, 26 U. S. C. § 4701. Under § 4705 (a), with certain exceptions not relevant here, all transfers of narcotics must be made pursuant to an official order form given to the transferor by the transferee. The order form can be

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NOV 5 1969

November 5, 1969

Re: Nos. 169 and 271 - Minor, Bule

Dear Byron:

I am glad to join your very solid opinion
in these two cases.

Sincerely,

J. M. H.

Mr. Justice White

U.S. Supreme Court

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

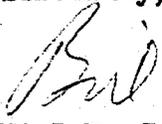
November 6, 1969

RE: Nos. 189 & 271 - Minor and Buie v.
United States

Dear Byron:

I agree with your opinion in the
above cases.

Sincerely,


W. J. B. Jr.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

November 25, 1969

Nos. 189 & 271 - Minor v. United States

Dear Byron,

I am glad to join the opinion you have
written for the Court in these cases.

Sincerely yours,

P.S.
/

Mr. Justice White

cc: The Conference

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

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SUPREME COURT OF THE UNITED STATES

From: White, J.

Nos. 189 AND 271.—OCTOBER TERM, 1969

Circulated: 11-3-69

Recirculated: _____

James Minor, Petitioner,
189 v.

United States.
Michael Buie, Petitioner,
271 v.

United States.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Second Circuit.

[October — 1969]

MR. JUSTICE WHITE delivered the opinion of the Court.

These cases raise related questions about the availability of the Fifth Amendment as a defense to convictions for selling narcotic drugs and marihuana without the written order forms required by law.

James Minor, petitioner in No. 189, sold heroin on two separate occasions in 1967 to an undercover narcotics agent. Having waived trial by jury, petitioner was convicted in the United States District Court for the Southern District of New York of selling narcotics not pursuant to a written order on an official form—a violation of § 2 of the Harrison Narcotics Act, 26 U. S. C. § 4705 (a).¹

Michael Buie, petitioner in No. 271, sold five packages of marihuana in May 1967 to an undercover narcotics agent. The agent did not have the official order form required for such transactions by § 6 of the Marihuana

¹ Section 4705 (a) provides:

“It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.”

pp 9, 10

To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
✓ Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Fortas
Mr. Justice Marshall

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

Nos. 189 AND 271.—OCTOBER TERM, 1969

Recirculated: 11-18-69

James Minor, Petitioner,
189 v.
United States.
Michael Buie, Petitioner,
271 v.
United States.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Second Circuit.

[October — 1969]

MR. JUSTICE WHITE delivered the opinion of the Court.

These cases raise related questions about the availability of the Fifth Amendment as a defense to convictions for selling narcotic drugs and marihuana without the written order forms required by law.

James Minor, petitioner in No. 189, sold heroin on two separate occasions in 1967 to an undercover narcotics agent. Having waived trial by jury, petitioner was convicted in the United States District Court for the Southern District of New York of selling narcotics not pursuant to a written order on an official form—a violation of § 2 of the Harrison Narcotics Act, 26 U. S. C. § 4705 (a).¹

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“It shall be unlawful for any person to sell, barter, exchange, or give away narcotic drugs except in pursuance of a written order of the person to whom such article is sold, bartered, exchanged, or given, on a form to be issued in blank for that purpose by the Secretary or his delegate.”

