

The Burger Court Opinion Writing Database

Moon v. Maryland

398 U.S. 319 (1970)

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

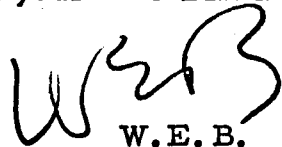
CHAMBERS OF
THE CHIEF JUSTICE

May 14, 1970

Re: No. 267 - Moon v. Maryland

Dear Potter:

I concur in your "PC DISIG".


W.E.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 19, 1970

Moon

No. 267 69 OT

MEMORANDUM TO THE CONFERENCE

Re: No. 10 - Cox v. May
No. 36 - Cox v. McLaren
No. 69 - Cox v. Pennington
No. 5 Misc. - Smith v. Illinois
No. 10 Misc. - Murphy v. Tennessee
No. 33 Misc. - Odom v. United States -1732
No. 82 Misc. - Romontio v. United States
156 Misc. O. T. 1968 - Ellenbogen v. United States
(Petition for Rehearing)

I have Justice Stewart's memorandum of June 18 on the "Hold for Moon" group.

I have reached no conclusion as to which, if any, of the "held" cases is an appropriate vehicle for cert. However, I was startled by any intimation that an increased second sentence must rest on conduct occurring after the first sentence. Our opinion in Moon surely negates that limitation as does the holding in Pearce. In Moon the second judge had simply a more graphic picture of the details of the crime, not information as to acts performed between the two trials.

The primary test of Pearce, as I read it, is in the language of Williams v. New York, 337 U.S., at 245, and relates to "new light upon the defendant's life, health, habits, conduct, and mental and moral propensities." Under Pearce we might well sustain an increased sentence because the first judge had no pre-sentence report and was unaware of five or six convictions for violent crimes and hence unaware of the remoteness of rehabilitation prospects. The second judge, learning of these very relevant facts of the man's "life, health, habits, conduct, and mental and moral propensities" could well be influenced, as was the Judge in the Moon case, to increase the sentence.

In short, the basic teaching of Pearce is something akin to a "newly discovered evidence" concept relevant to sentencing.

WES

May 11, 1970

Dear Fetter,

Re: No. 267, Moon v. Maryland

Please note that I concur in the
result.

Sincerely,

E. J. H.

To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
~~Mr. Justice Douglas~~
Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 267.—OCTOBER TERM, 1969

Circulated: 5-8

Recirculated: _____

Dennis Mullene Moon, }
Petitioner, } On Writ of Certiorari to the
v. } Court of Appeals of Mary-
State of Maryland. } land.

[May —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

Petitioner was first convicted of armed robbery in 1964 and received a 12-year sentence. On appeal the judgment was reversed. He was tried again in 1966 for armed robbery, again convicted, and this time received a sentence of 20 years. Under the Annotated Code of Maryland, Article 27, § 488, the maximum punishment possible was 20 years. As I stated in my separate opinion in *North Carolina v. Pearce*, 395 U. S. 711, 726, 727:

“He [the defendant] risks the maximum permissible punishment when first tried. That risk having been faced once need not be faced again.” That is the respect I would give the constitutional guarantee against double-jeopardy.

I would reverse the judgment below.

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

SUPREME COURT OF THE UNITED STATES

No. 267.—OCTOBER TERM, 1969

From: Douglas, J.

Dennis Mullene Moon,
Petitioner,
v.
State of Maryland.

On Writ of Certiorari to the
Court of Appeals of Mary-
land.

Circulated: _____
Recirculated: 6-3

[June —, 1970]

MR. JUSTICE DOUGLAS, dissenting.

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“He [the defendant] risks the maximum permissible punishment when first tried. That risk having been faced once need not be faced again.” That is the respect I think is due the constitutional guarantee against double jeopardy.

I would reverse the judgment below.

May 11, 1870

Ms. No. 287 - Mason v. Maryland

Dear Father:

Would you kindly add at the foot of your Far

Card to this case

that the State of Maryland would not be a party
to the case and that the case is now pending
in the Supreme Court of the United States
and that the case is now pending in the
Supreme Court of the United States

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1970

RE: No. 267 - Moon v. Maryland

Dear Potter:

I agree with your Per Curiam in
the above case.

Sincerely,


W. J. B. Jr.,

Mr. Justice Stewart

cc: The Conference

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Hayes

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

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 267.—OCTOBER TERM, 1969

Circulated: **MAY 7 1970**

Dennis Mullene Moon,
Petitioner,
v.
State of Maryland.

On Writ of Certiorari to
the Court of Appeals of
Maryland.

Recirculated: _____

[May —, 1970]

PER CURIAM.

“When at the behest of the defendant a criminal conviction has been set aside and a new trial ordered, to what extent does the Constitution limit the imposition of a harsher sentence after conviction upon retrial?” This was the question the Court dealt with last Term in *North Carolina v. Pearce*, 395 U. S. 711. We held in that case that there exists no absolute constitutional bar to the imposition of a harsher sentence upon retrial, but that due process “requires that vindictiveness against a defendant for having successfully attacked his first conviction must play no part in the sentence he receives after a new trial.” *Id.*, at 725. “In order to assure the absence of such a motivation,” we held that “whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding.” *Id.*, at 726. The *Pearce* case was decided on June 23, 1969.

In the present case the petitioner was found guilty of armed robbery by a Maryland jury and sentenced by the trial judge to 12 years’ imprisonment. This conviction

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

pp. 1, 2

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Regulated: _____

No. 267.—OCTOBER TERM, 1969

Recirculated: MAY 13 1970

Dennis Mullene Moon, }
Petitioner, } On Writ of Certiorari to
v. } the Court of Appeals of
State of Maryland. } Maryland.

[May —, 1970]

PER CURIAM.

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p. 2

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Douglas
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice ~~Forbes~~
 Mr. Justice Marshall

SUPREME COURT OF THE UNITED STATES

No. 267.—OCTOBER TERM, 1969

From: Stewart, J.

Circulated: _____

Recirculated: JUN

Dennis Mullene Moon, }
 Petitioner, } On Writ of Certiorari to
 v. } the Court of Appeals of
 State of Maryland. } Maryland.

[June —, 1970]

PER CURIAM.

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May 8, 1970

Re: No. 267 - Moon v. Maryland

Dear Potter:

Please join me.

Sincerely,

A.R.V.

Mr. Justice Stewart

cc: Conference