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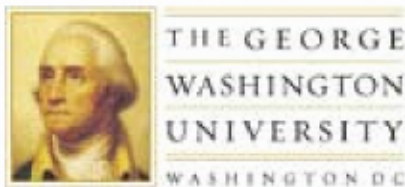
Wade v. Wilson

396 U.S. 282 (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

December 15, 1969

Re: No. 55 - Wade v. Wilson

Dear Bill:

I can join in your opinion in the above and even more heartily with a sentence added at the end

"Upon being advised by the parties that Petitioner has been provided access to a copy of the 1960 transcript, the writ herein will be dismissed."

This will give us a self executing mechanism.

I will not ask you to add, but I will do so for myself, one other bit of comment as follows:

"Mr. Chief Justice Burger (concurring).
I fully agree with the Court's opinion but would add one observation. All of the proceedings in this Court including appointment of counsel who came here from California to present the argument and the use of this Court's limited time resource could have been avoided by a modest amount of cooperation between opposing counsel and - I am gound to add - a similarly modest amount of judicial inventiveness and initiative. This Court has a right to expect that counsel and courts alike will exert efforts to solve problems such as this rather than escallating a simple problem into one of possible constitutional dimensions. This case should not have gone beyond its first stages."

W. E. B.

Mr. Justice Brennan
cc: The Conference

WESB

SUPREME COURT OF THE UNITED STATES

No. 55.—OCTOBER TERM, 1969

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

Willie Wade, Jr., Petitioner, }
v. }
Lawrence E. Wilson, }
Warden, et al. }
On Writ of Certiorari to
the United States Court
of Appeals for the Ninth
Circuit.

From: Black, J.

[January —, 1970]

Circulated: **DEC 23 1969**

MR. JUSTICE BLACK, dissenting.

Recirculated: _____

Petitioner and one Pollard were convicted of murder in 1960 and sentenced to life imprisonment. Pollard received a trial transcript and when he refused to turn it over to petitioner for his use in preparing an appeal, the State Attorney General loaned one to petitioner's appellate counsel. The State District Court of Appeal affirmed in 1961, 194 Cal. App. 2d 830, 15 Cal. Rptr. 214. Five years later in 1966 petitioner took steps in the state courts to try to obtain a trial transcript. Failing there, he filed a petition in the United States District Court for the Northern District of California in 1967 asking to be released because of the State's refusal to provide him a copy of the transcript. The United States District Court held petitioner was entitled to a copy of the trial record but the United States Court of Appeals reversed, holding that since petitioner did not allege any trial error which might warrant post-conviction relief he was "not entitled to demand a transcript merely to enable him to comb the record in the hope of discovering some flaw." 390 F. 2d 632, 634 (1968).

This Court today says the petitioner thus raises a constitutional question of first impression, that is "whether there are circumstances in which the Constitution requires that a State furnish an indigent state prisoner free of cost a trial transcript to aid him to prepare a petition for collateral relief." *Ante*, at 4. It may be conceivable that the Constitution would under

SUPREME COURT OF THE UNITED STATES

No. 55.—OCTOBER TERM, 1969

Willie Wade, Jr., Petitioner, } On Writ of Certiorari to
v. } the United States Court
Lawrence E. Wilson, } of Appeals for the Ninth
Warden, et al. } Circuit.

[January 12, 1970]

MR. JUSTICE BLACK, dissenting.

Petitioner and one Joe Pollard were convicted of murder in 1960 and sentenced to life imprisonment. Pollard received a trial transcript and when he refused to turn it over to petitioner for his use in preparing an appeal, the State Attorney General's Office loaned a copy to petitioner's appellate counsel. The California District Court of Appeal affirmed in 1961. 194 Cal. App. 2d 830, 15 Cal. Rptr. 214. Five years later, in 1966, petitioner tried in the state courts to obtain a trial transcript. Failing there, he filed a petition in the United States District Court for the Northern District of California in 1967 asking to be released because of the State's refusal to provide him a copy of the transcript. The United States District Court held petitioner was entitled to a copy of the trial record but the United States Court of Appeals reversed, holding that since petitioner did not allege any trial error which might warrant post-conviction relief he was "not entitled to demand a transcript merely to enable him to comb the record in the hope of discovering some flaw." 390 F. 2d 632, 634 (1968).

This Court today says the petitioner thus raises a constitutional question of first impression, "whether there are circumstances in which the Constitution requires that a State furnish an indigent state prisoner free of

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

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See Page 5.

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SUPREME COURT OF THE UNITED STATES

No. 55.—OCTOBER TERM, 1969

From: Brennan, J.

Circulated: _____

Recirculated: 12-18-69

Willie Wade, Jr., Petitioner, } On Writ of Certiorari to
v. } the United States Court
Lawrence E. Wilson, } of Appeals for the Ninth
Warden, et al. } Circuit.

[January —, 1970]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In 1961, petitioner and one Pollard appealed to the California District Court of Appeal from murder convictions upon which the California Superior Court had sentenced each of them to life imprisonment. California Rules of Court 35 (c) and 10 (c) required that the appellants be furnished with one free copy of the trial transcript to be shared by them for the purposes of the appeal. Pollard received the free copy but would not share it with petitioner. However, the State Attorney General loaned petitioner's appellate counsel his copy. The District Court of Appeal affirmed the convictions, 194 Cal. App. 2d 830, 15 Cal. Rptr. 214 (1961).

Five years later, in 1966, petitioner wished to pursue a collateral remedy and sought the transcript from Pollard but Pollard "refused to communicate on the subject." Petitioner's inquiry of his appellate lawyer elicited the response that the copy borrowed from the Attorney General had been returned. Petitioner then turned to the California courts seeking, however, not temporary use of a copy but to be furnished with a copy of his own. He applied initially to the trial court and was advised that the original of the transcript was in the District Court of Appeal. He thereupon filed a *pro se* motion for a copy in the District

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

January 8, 1970

Re: No. 55 - Wade v. Wilson

Dear Bill:

While I would have preferred to see the writ in this case dismissed as improvidently granted, I am content with your disposition, and am therefore prepared to join your opinion.

Sincerely,

J.M.H.
J. M. H.

Wade v. Wilson

Mr. Justice Brennan

CC: The Conference

December 15, 1969

MEMORANDUM TO THE CONFERENCE

RE: No. 55 - Wade v. Wilson, et al.

The vote in this case was five to Affirm (TM, WJB, JMH, WOD & WEB) and three to dismiss as improvidently granted (BW, PS & HLB).

The approach I've taken in the enclosed circulation lends itself to either disposition. However, the circulation comes out to vacate and remand to the District Court, there to be retained pending petitioner's efforts to obtain a copy of the transcript by either of the means suggested. Since the copies are in existence, I would hope that this disposition would result in the California Attorney General again loaning petitioner his copy and thus make unnecessary any decision of the constitutional question.

W. J. B. Jr.

12/15/69

SUPREME COURT OF THE UNITED STATES

No. 55.—OCTOBER TERM, 1969

Willie Wade, Jr., Petitioner, v. Lawrence E. Wilson, Warden, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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[December —, 1969]

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December 18, 1969

RE: No. 55 - Wade v. Wilson

Dear Chief:

I've revised the opinion to incorporate the first suggestion in your letter of December 15. Thank you very much for the suggestion. I don't think the District Court can mistake its thrust.

As regards your comment in concurrence, I wonder if the implication that counsel might have worked this out is too harsh. You will recall that Wade had no lawyer until we appointed Marshall Small after we had granted certiorari. Mr. Small was a former law clerk of Bill Douglas and I don't think he was too wrong in believing that we wanted argument on the validity of the distinction made by the California Rules.

I am a bit vague about what happened when we voted on the petition, but have some recollection that we did think this was the issue presented. The fault, therefore, may be ours in taking the case when in fact, as the opinion says, the validity of the Rules is not involved. Mr. Small may well have thought he should explore borrowing a copy but have decided not to thinking we wanted him to argue the Rules.

Sincerely,

The Chief Justice.

SUPREME COURT OF THE UNITED STATES

No. 55.—OCTOBER TERM, 1969

Willie Wade, Jr., Petitioner, <i>v.</i> Lawrence E. Wilson, Warden, et al.	}	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 17, 1969

No. 55, Wade v. Wilson, et al.

Dear Bill,

Although, as you have noted in your memorandum, my tentative vote was to dismiss as improvidently granted, I am agreeable to joining the opinion you have written for the Court, on the assumption that this reflects the view of the majority.

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1970

Re: No. 55 - Wade v. Wilson

Dear Bill:

Please join me.

Sincerely,



B.R.W.

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 17, 1969

Re: No. 55 - Willie Wade, Jr. v. Lawrence E. Wilson

Dear Bill:

Please join me.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference