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United States v. Sweet

399 U.S. 517 (1970)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

Vote

SUPREME COURT OF THE UNITED STATES -lan, J.

October Term, 1969

Circulated: **JUN 25 1970**

UNITED STATES *v.* SWEET

Recirculated: _____

CERTIFIED APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

No. 577. Decided June —, 1970

PER CURIAM.

On September 30, 1968, a District Court in the District of Columbia dismissed, "with prejudice," an indictment charging appellee Sweet with various crimes under the D. C. Code, on a finding that the Government had not acted promptly enough in bringing the case to trial. The United States appealed this dismissal pursuant to D. C. Code § 23-105* to the Court of Appeals for the District of Columbia Circuit. That court, without making any determination of its jurisdiction under § 23-105, certified the case to this Court pursuant to 18 U. S. C. § 3731, the Federal Criminal Appeals Act.

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We conclude that certification under § 3731 was not proper in the circumstances of this case. Section 3731 provides in terms for certification only "[i]f an appeal shall be taken pursuant to this section to any court of appeals which, in the opinion of such court, should have been taken directly to the Supreme Court" The Government's appeal to the Court of Appeals in this case was not pursuant to § 3731 but instead expressly pursuant to D. C. Code § 23-105, which contains no provision allowing transfer to this Court. Moreover, as

*D. C. Code § 23-105 (a) (Supp. III, 1970) provides:

"In all criminal prosecutions the United States or the District of Columbia, as the case may be, shall have the same right of appeal that is given to the defendant, including the right to a bill of exceptions: *Provided*, That if on such appeal it shall be found that there was error in the rulings of the court during a trial, a verdict in favor of the defendant shall not be set aside."

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

CHAMBERS OF
JUSTICE JOHN M. HARLAN

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MEMORANDUM TO THE CONFERENCE
FROM MR. JUSTICE HARLAN

Re: No. 577 - United States v. Sweet (p. 6 of
current Conference list)
1155 - United States v. Vuitch (not listed
on current Conference list)

When the Sweet case first appeared on an earlier Conference list, I suggested that there might be a way of getting the case back to the Court of Appeals for the District of Columbia without bringing it here for plenary consideration. The attached per curiam reflects my views of how this might be done. The per curiam holds that because the appeal to the D. C. Circuit was pursuant to the special D. C. Code provision (§23-105), and not §3731 of the U. S. Code, the case was not a proper one for transfer to us by the certification provision of §3731.

The preparation of this per curiam has led me to suggest, in the Vuitch case which we have already noted with a postponement of the question of jurisdiction to the merits, that we ask the parties to brief the following two questions, in addition to the questions already propounded in our earlier order:

1. Could the District Court's holding in this case have been appealed to the Court of Appeals for the District of Columbia Circuit pursuant to D. C. Code §23-105?

2. If so, should this Court, as a matter of sound judicial administration, abstain from accepting jurisdiction pursuant to 18 USC §3731 because the case involves the validity of a statute the application of which is confined to the District of Columbia?

J. M. H.

June 25, 1970

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

SUPREME COURT OF THE UNITED STATES

FROM: [REDACTED], J.

October Term, 1969

Circulated: **JUN 25 1970**

UNITED STATES *v.* SWEET

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COURT FOR THE DISTRICT OF COLUMBIA

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We conclude that certification under § 3731 was not proper in the circumstances of this case. Section 3731 provides in terms for certification only "[i]f an appeal shall be taken pursuant to this section to any court of appeals which, in the opinion of such court, should have been taken directly to the Supreme Court" The Government's appeal to the Court of Appeals in this case was not pursuant to § 3731 but instead expressly pursuant to D. C. Code § 23-105, which contains no provision allowing transfer to this Court. Moreover, as

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 25, 1970

No. 577 - U. S. v. Sweet
No. 1155 - U. S. v. Vuitch

Dear John,

I agree with your proposed Per Curiam in No. 577, and further agree with your suggestion that we ask the parties in No. 1155 to brief the additional two questions you have framed.

Sincerely yours,

P.S.

Mr. Justice Harlan

Copies to the Conference