

The Burger Court Opinion Writing Database

Molinaro v. New Jersey

396 U.S. 365 (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

January 15, 1970

Re: No. 663 - Molinaro v. New Jersey

Dear John:

I join in your Per Curiam in this case.


W.E.B.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 13, 1970

Dear John,

Re: No. 663- Molinaro v. New Jersey

I agree to your proposed Per Curiam
in this case.

Sincerely yours,

HLB
H. L. B.

Mr. Justice Harlan

cc: Members of the Conference

SUPREME COURT OF THE UNITED STATES

[January 13, 1970]

MEMORANDUM TO THE CONFERENCE

From MR. JUSTICE HARLAN

Re: No. 663—*Molinaro v. New Jersey*

I asked THE CHIEF JUSTICE to remove this case from yesterday's Order List for the reason that it seemed to me desirable that we should explicate our dismissal of the appeal. I now submit for consideration of the Conference the following proposed *per curiam*:

"This case comes to the Court on appeal from the New Jersey state courts, which have affirmed appellant Molinaro's conviction for abortion and conspiracy to commit abortion. We are informed by both appellant's counsel and counsel for the State that Molinaro, who was free on bail, has failed to surrender himself to state authorities. His bail has been revoked, and the State considers him a fugitive from justice. Under these circumstances we decline to adjudicate his case.

"The Court has faced such a situation before, in *Smith v. United States*, 94 U. S. 97 (1877), and *Bonahan v. United States*, 125 U. S. 692 (1887). In each of those cases, which were before the Court on writs of error, the Court ordered the case removed from the docket upon receiving information that the plaintiff in error had escaped from custody. In *Smith*, the case was dismissed at the beginning of the following Term. See 18 Geo. Wash. L. Rev. 427, 430 (1950). In *Bonahan*, the case was stricken from the docket on the last day of the Term in

which it arose. See also *National Union v. Arnold*, 348 U. S. 37, 43 (1954); *Eisler v. United States*, 338 U. S. 189, 883 (1949); *Allen v. Georgia*, 166 U. S. 138 (1897). No persuasive reason exists why this Court should proceed to adjudicate the merits of a criminal case after the convicted defendant who has sought review escapes from the restraints placed upon him pursuant to the conviction. While such an escape does not strip the case of its character as an adjudicable case or controversy, we believe it disentitles the defendant to call upon the resources of the Court for determination of his claims. In the absence of specific provision to the contrary in the statute under which Molinaro appeals, 28 U. S. C. § 1257 (2) (1964), we conclude, in light of the *Smith* and *Bonahan* decisions, that the Court has the authority to dismiss the appeal on this ground. The dismissal need not await the end of the Term or the expiration of a fixed period of time, but should take place at this time.

It is so ordered."

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 13, 1970

No. 663 - Molinaro v. New Jersey

Dear John,

Your proposed Per Curiam is satisfactory with me.

Sincerely yours,

PS
✓

Mr. Justice Harlan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 14, 1970

Re: No. 663 - Molinaro v. New
Jersey

Dear John:

Please join me in your per
curiam in this case.

Sincerely,


B.R.W.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 16, 1970

Re: No. 663 - Molinaro v. New Jersey

Dear John:

Please join me in your per curiam.

Sincerely,


T.M.

Mr. Justice Harlan

cc: The Conference