

The Burger Court Opinion Writing Database

Dickey v. Florida

398 U.S. 30 (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

March 26, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 728 - Dickey v. Florida

Enclosed is draft of opinion in the above. I

invite comment, as usual.

W.E.B.

W. E. B.

386 US 213 (1967)

*Presented initially before Burger
in 1967. Circumstances of case showing
proper remedy. Is it still
necessary to have a separate
rule for this? I suppose
we will, unless we decide
not to decide whether pursuing
of proper remedy is the
presenting initial after Kluge
therefore as understanding &
you*

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

No. 728 - Dickey v. Florida

From: The Chief Justice
MR. CHIEF JUSTICE BURGER delivered the opinion of the Court. Circulated: 3/26/70
Recirculated: _____

We granted the writ in this case to consider the petitioner's claims that he had been denied his right to a speedy trial.

Prior to the commencement of his jury trial in 1968 for armed robbery allegedly committed in 1960 the petitioner, Robert Dickey, moved to quash the information against him, alleging, inter alia, that if he were tried he would be denied his right to a speedy trial, as guaranteed by Section 11 of the Declaration of Rights of the Florida Constitution ^{1/} and the Sixth Amendment to the United States Constitution. ^{2/}

^{1/}
The Declaration of Rights, Florida Constitution, reads in pertinent part:

"Section 11. Rights of Accused; speedy trial; etc. --
In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed"

^{2/}
The Sixth Amendment to the United States Constitution provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial. . . ."

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

CHAMBERS OF
THE CHIEF JUSTICE

April 27, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 728 - Dickey v. Florida

Minor stylistic changes as marked

in red.

W.E.B.

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

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

1

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 728.—OCTOBER TERM, 1969

Recirculated: 4/27/70

Robert Dean Dickey, Petitioner, } On Writ of Certiorari
v. } to the District Court
State of Florida. } of Appeal of Florida,
First District.

[May —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider the petitioner's claim that he had been denied his Sixth Amendment right; he was tried in 1969 on charges of alleged criminal acts committed in 1960.¹

Prior to the commencement of his jury trial in 1968 for armed robbery petitioner, Robert Dickey, moved to quash the information against him, alleging, *inter alia*, that if he were tried he would be denied his right to a speedy trial, as guaranteed by § 11 of the Declaration of Rights of the Florida Constitution¹ and the Sixth Amendment to the United States Constitution.² The motion was denied. Dickey was subsequently tried and convicted. He appealed to the Florida District Court

¹ The Declaration of Rights, Florida Constitution, reads in pertinent part:

Section 11. Rights of Accused; speedy trial; etc.—

1. "In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed"

² The Sixth Amendment to the United States Constitution provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"

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

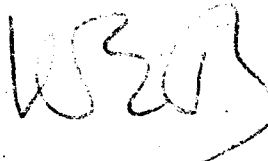
CHAMBERS OF
THE CHIEF JUSTICE

April 28, 1970

MEMORANDUM TO THE CONFERENCE

Re: No. 728 - Dickey v. Florida

I intend to include the attached in my opinion for the Court in No. 728, Dickey v. Florida. It will be inserted on the final page of that opinion immediately before the second full paragraph.



W. E. B.

WB
4/28/70No. 728 - Dickéy v. Florida

The right to a speedy trial is not a theoretical or abstract right but one rooted in hard reality on the need to have charges promptly exposed. If the case for the prosecution calls on the accused to meet charges rather than rest on the infirmities of the prosecution's case, as is the defendant's right, the time to meet them is when the case is fresh. Stale claims have never been favored by the law, and far less so in criminal cases. Although a great many accused persons seek to put off the confrontation as long as possible, the right to a prompt inquiry into criminal charges is fundamental and the duty of the charging authority is to provide a prompt trial. This is brought sharply into focus when, as here, the accused presses for an early confrontation with his accusers and with the state. Crowded dockets, the lack of judges or lawyers, and other factors no doubt make some delays inevitable. Here, however, no valid reason for the delay existed; it was exclusively for the convenience of the state. In these circumstances delay is intolerable as a matter of fact and impermissible as a matter of law.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 7, 1970

Re: No. 728 - Dickey v. Florida

Dear Bill:

A small detail in your concurring opinion at note 3, page 4: By action at the 1969 Annual Meeting of the American Bar Association (August 16, 1969) the official name of the Criminal Justice Project Standards was amended to drop the word "Minimum." No doubt counsel were relying as you were on the paperback tentative draft bearing the old description. When issued in hardback volumes the title on all Reports will be "Standards for Criminal Justice."


W.E.B.

Mr. Justice Brennan

cc: The Conference

To: Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Fortas
Mr. Justice Marshall

From: The Chief Justice

Changes p. 8
3
22

SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

Circulated: _____
Recirculated: 5/15/70

Robert Dean Dickey, Petitioner,
v.
State of Florida.

On Writ of Certiorari
to the District Court
of Appeal of Florida,
First District.

[May —, 1970]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted the writ in this case to consider the petitioner's claim that he had been denied his Sixth Amendment right; he was tried in 1968 on charges of alleged criminal acts committed in 1960.

Prior to the commencement of his jury trial in 1968 for armed robbery petitioner, Robert Dickey, moved to quash the information against him, alleging, *inter alia*, that if he were tried he would be denied his right to a speedy trial, as guaranteed by § 11 of the Declaration of Rights of the Florida Constitution¹ and the Sixth Amendment to the United States Constitution.² The motion was denied. Dickey was subsequently tried and convicted. He appealed to the Florida District Court

¹ The Declaration of Rights, Florida Constitution, reads in pertinent part:

Section 11. Rights of Accused; speedy trial; etc.—

1. "In all criminal prosecutions, the accused shall have the right to a speedy and public trial, by an impartial jury, in the county where the crime was committed"

² The Sixth Amendment to the United States Constitution provides in pertinent part:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial"

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

MEMBERS OF
CHIEF JUSTICE

May 22, 1969

MEMORANDUM TO THE CONFERENCE

Re: No. 728 - Dickey v. Florida

As per our discussion, Dickey v. Florida will
be handed down on Monday.

My circulation #3 of May 15 will be the opinion
of the Court, with the following language on page 8 deleted:

" . . . whether tested by the due process
standards of the Fourteenth Amendment
or by the speedy trial provision of the
Sixth Amendment. "

W.E.B.

W. E. B.

March 31, 1970

Dear Chief,

Re: No. 728 - Dickey v. Florida

I agree.

Sincerely,

Wago

The Chief Clerk

U.S. Department of the Interior

March 27, 1970

Re: No. 728 - Dickey v. Florida

Dear Chief:

I agree with your opinion.

Sincerely,

J. M. H.

The Chief Justice

CC: The Conference

SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

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

Robert Dean Dickey, Petitioner,
v.
State of Florida.

On Writ of Certiorari
to the District Court
of Appeal of Florida,
First District

MAY 6 1970

[May —, 1970]

Recirculated: _____

MR. JUSTICE HARLAN, concurring.

I join the Court's opinion with the following reservation and comment.

I think that claims such as those of the petitioner in this case, arising out of a state proceeding, should be judged by the principles of procedural fairness required by the Due Process Clause of the Fourteenth Amendment, and not by "incorporating" or "absorbing" into the Fourteenth Amendment the "speedy trial" provision of the Sixth Amendment. See my concurring opinion in *Klopfer v. North Carolina*, 386 U. S. 213, 226 (1967), and my separate opinion in *Smith v. Hooey*, 393 U. S. 374, 383 (1969). This reservation reflects the hope that some day the Court will return to adjudicating state criminal cases in accordance with the historic meaning of the Due Process Clause of the Fourteenth Amendment, see *e. g.*, my dissenting opinion in *Duncan v. Louisiana*, 391 U. S. 145, 171 (1968).

However, whether it be the Due Process Clause or the Sixth Amendment that is deemed to apply, I fully agree that petitioner's federal constitutional rights were violated by Florida's actions in this instance.

SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

Robert Dean Dickey, Petitioner,	} On Writ of Certiorari	
v.		to the District Court
State of Florida.		of Appeal of Florida, First District.

[April —, 1970]

MR. JUSTICE BRENNAN, concurring.

Although petitioner's trial did not begin until 1969, his arrest occurred in July 1960, over seven years before *Klopper v. North Carolina*, 386 U. S. 213 (1967), held that the Sixth Amendment guarantee of a speedy trial applies to the States. Thus, assuming that *Klopper* is not retroactive, I agree that petitioner must show that his defense was prejudiced by the lengthy delay between his arrest and trial. Cf. *Stovall v. Denno*, 388 U. S. 293 (1967). Since I understand that the Court does not decide the different question whether a showing of prejudice is necessary when arrest occurs after March 13, 1967, the date of our decision in *Klopper*, I join the Court's opinion.

SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

Robert Dean Dickey, Petitioner,	} On Writ of Certiorari	
v.		to the District Court
State of Florida.		of Appeal of Florida, First District.

[April —, 1970]

MR. JUSTICE BRENNAN, concurring.

Although petitioner's trial did not begin until 1969, his arrest occurred in July 1960, nearly seven years before this Court in *Klopper v. North Carolina*, 386 U. S. 213 (1967), applied to the States the Sixth Amendment guarantee of a speedy trial. Thus, assuming that *Klopper* is not retroactive, the question here is whether petitioner was denied due process of law by the lengthy delay between his arrest and trial. This is a recognized ground of attack upon a conviction independent of any Sixth Amendment right to a speedy trial. Cf. *Stovall v. Denno*, 388 U. S. 293 (1967). Petitioner has established his due process claim by showing that he was substantially prejudiced by the delay. Since I understand that the Court does not decide the question whether any showing of prejudice is necessary when arrest occurs after March 13, 1967, the date of our decision in *Klopper*, I join the Court's opinion.

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SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

Robert Dean Dickey, Petitioner,	} On Writ of Certiorari	
v.		to the District Court
State of Florida.		of Appeal of Florida, First District.

[April —, 1970]

MR. JUSTICE BRENNAN, concurring.

I

In *Klopfers v. North Carolina*, 386 U. S. 213 (1967), this Court held that the Sixth Amendment standards governing speedy trial are made obligatory on the States by the Fourteenth Amendment Due Process Clause. Petitioner's prosecution, however, began in July 1960, nearly seven years before our decision in *Klopfers*. Accordingly, assuming arguendo that *Klopfers* is not retroactive, the question here is whether petitioner's trial was unconstitutionally delayed under the test of due process applicable to the States prior to *Klopfers*. See, e. g., *Beasley v. Pitchess*, 358 F. 2d 706 (9th Cir. 1966); *United States ex rel. Von Cseh v. Fay*, 313 F. 2d 620 (C. A. 2d Cir. 1963); *Germany v. Hudspeth*, 209 F. 2d 15, 18-19 (C. A. 10th Cir. 1954).¹ Petitioner has established his claim by showing that he affirmatively demanded a speedy trial as early as 1962, and that he was substantially prejudiced by a delay which resulted from the State's deliberate refusal to bring him to trial. Thus, I join the Court's opinion.

¹ Cf. *In re Oliver*, 333 U. S. 257 (1948), where the Court held that a State violates the Due Process Clause by denying an accused a public trial. The Sixth Amendment, of course, links the rights of speedy and public adjudication, guaranteeing in one phrase "a speedy and public trial."

SUPREME COURT OF THE UNITED STATES

No. 728.—OCTOBER TERM, 1969

Robert Dean Dickey, Petitioner,	} On Writ of Certiorari	
v.		
State of Florida.		
		to the District Court of Appeal of Florida, First District.

[May —, 1970]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL joins, concurring.

I

In *Klopfer v. North Carolina*, 386 U. S. 213 (1967), this Court held that the Sixth Amendment standards governing speedy trial are made obligatory on the States by the Fourteenth Amendment Due Process Clause. Petitioner's prosecution, however, began in July 1960, nearly seven years before our decision in *Klopfer*. Accordingly, assuming arguendo that *Klopfer* is not retroactive, the question here is whether petitioner's trial was unconstitutionally delayed under the test of due process applicable to the States prior to *Klopfer*. See, e. g., *Beasley v. Pitchess*, 358 F. 2d 706 (9th Cir. 1966); *United States ex rel. Von Cseh v. Fay*, 313 F. 2d 620 (C. A. 2d Cir. 1963); *Germany v. Hudspeth*, 209 F. 2d 15, 18-19 (C. A. 10th Cir. 1954).¹ Petitioner has established his claim. He was arrested in 1960 but not tried until 1969; he demanded a speedy trial as early as 1962; he has shown that he was substantially prejudiced by the delay; and the State, it appears, was deliberately slow in prosecuting him. Thus, I join the Court's opinion.

¹ Cf. *In re Oliver*, 333 U. S. 257 (1948), where, without reliance on the Sixth Amendment, the Court held that a State violates the Due Process Clause by denying an accused a public trial. The Sixth Amendment, of course, links the rights of speedy and public adjudication, guaranteeing in one phrase "a speedy and public trial."

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 27, 1970

No. 728 - Dickey v. Florida

Dear Chief,

I am glad to join your opinion in this case.

Sincerely yours,

P.S.
✓

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1970

Re: No. 728 - Dickey v. Florida

Dear Bill:

Please add my name to your
concurrence in this case.

Sincerely,


B.R.W.

Mr. Justice Brennan

cc: Conference

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

April 28, 1970

Re: No. 728 - Dickey v. Florida

Dear Chief:

I join your circulation of
April 27, 1970.

Sincerely,

B.R.W.

The Chief Justice

Re: The Conference



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 30, 1970

Re: No. 728 - Dickey v. Florida

Dear Chief:

Please join me.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 1, 1970

Re: No. 728 - Dickey v. Florida

Dear Bill:

Please join me in your concurrence.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

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