

# The Burger Court Opinion Writing Database

## *Hester v. Illinois*

397 U.S. 660 (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 20, 1970

No. 82 - Hester v. Illinois

MEMORANDUM TO THE CONFERENCE:

According to my records the above case was assigned to Justice Black on the Assignment List of November 29th. It was carried again on the Revised List of December 1st.

W.E.B.

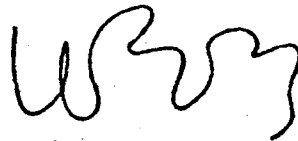
Supreme Court of the United States  
Washington, D. C. 20543

April 16, 1970

Re: No. 82 - Hester v. Illinois

Dear Potter:

I am prepared to join in your proposed disposition  
of the above.



W.E.B.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

April 16, 1970

Dear Potter,

Re: No. 82- Hester v.  
Illinois

I am writing to join in a  
dismissal as improvidently granted.

Sincerely,

  
Hugo

Mr. Justice Stewart

cc: Members of the Conference

April 16, 1970

Dear Potter:

Re No. 82 - Hester v. Illinois

I have thought all along that there should be a reversal because the confession was involuntary.

But I am in a very small minority and the thing turns upon a tangle of facts and the Court apparently will follow your recommendation and dismiss as improvidently granted.

Therefore I wonder if you would kindly note at the end of that sentence:

Mr. Justice Douglas dissents.

W. O. D.

Mr. Justice Stewart

April 15, 1970

Re: No. 82 - Hester v. Illinois

Dear Potter:

I agree with your memorandum proposing  
a dismissal of this case as improvidently granted.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

April 15, 1970

MEMORANDUM TO THE CONFERENCE

No. 82 - Hester v. Illinois

By affirmative vote of four members of the Court, certiorari was granted in this case on April 7, 1969. The case was argued on Tuesday, November 18, 1969. At the Conference on Friday, November 21, the tentative vote was 5-3 to affirm the judgment. I would now vote to dismiss the writ as improvidently granted.

Petitioner was convicted of murdering a teacher at the elementary school he attended. He was convicted by a jury and sentenced to 55 years imprisonment. At the time of the murder, in April, 1961, he was 14 years old. The case comes here on direct review.

The petitioner argues here (1) that his confession which was admitted against him at trial was involuntary under the totality of the circumstances; (2) that the Court should impose a per se rule barring the admission of confessions by people as young as he; (3) that the Court should apply the McNabb-Mallory rule to the States (this point was apparently raised for the first time in the petition for certiorari); (4) that the evidence was insufficient to establish guilt; (5) that In re Gault should be applied retroactively so as "to prevent the taking of secret and incommunicado confessions from very young children with severely limited intelligence"; (6) that the defendant was denied due process when a psychiatrist who examined the accused was not permitted to testify for him; (7) that the defendant should have been permitted to inspect police reports and test data that were made available to the prosecution; (8) that there was an unlawful search and seizure of the defendant's clothing.

The petitioner does not specifically argue that Miranda (or Escobedo) should be applied retroactively; however, he does stress the fact that counsel was not provided, and that warnings were not given. He cites Miranda many times and draws on its teachings in arguing involuntariness, while apparently recognizing that the decision itself is not controlling in light of Johnson v. New Jersey.

The facts of the case are fully and accurately summarized in the memorandum prepared in the office of the Chief Justice last year, and I refer you to that memorandum. The only apparent inaccuracy is with respect to when the petitioner's mother did finally see him. I read the state court opinion as indicating that she first saw him about 10 o'clock on the morning following his arrest.

In its brief on the merits the respondent treats petitioner's arguments (6), (7) and (8) at greater length than it did in its response to the petition for certiorari. I think each of these claims is without merit. But, in any event, there remain factual difficulties with respect to each of them which should be left to the processes of federal habeas corpus. The question of voluntariness and of whether a per se rule should be imposed, are presented as well here as they are likely to be on habeas. I think that in view of the state court's supportable findings of fact, the confession was voluntary and that a per se rule to the effect that nobody of 14 can make a voluntary confession should not be adopted.

Accordingly, I would favor dismissing the writ as improvidently granted, though I do not find any new factors in the case that were not known when we granted certiorari.

P.S.



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

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From: Stewart, J.

APR 22 1970

SUPREME COURT OF THE UNITED STATES

Regulated: \_\_\_\_\_

October Term, 1969

Recirculated: \_\_\_\_\_

HESTER v. ILLINOIS

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF ILLINOIS

No. 82. Decided April —, 1970

PER CURIAM.

The petition for certiorari is dismissed as improvi-  
dently granted. MR. JUSTICE DOUGLAS, MR. JUSTICE  
BRENNAN, and MR. JUSTICE MARSHALL dissent.

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