

The Burger Court Opinion Writing Database

Mayberry v. Pennsylvania
400 U.S. 455 (1971)

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

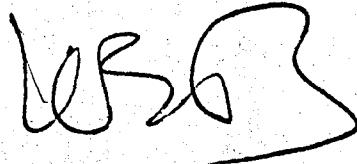
January 7, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

I cannot join in your proposed opinion. If no one else writes, I will probably write a separate partial concurrence.

Regards,



Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

January 12, 1971

CHAMBERS OF
THE CHIEF JUSTICE

No. 121 - Mayberry v. Penna.

PERSONAL

Dear Bill:

My problem is not that I disagree with your revised draft so much as that the tone of it really tends to take the Judges to task even though I don't think you intend to do so.

I would agree that even given perfect conduct of a trial judge, the really grave and offensive contempt meriting penalties measured in years should go to another judge for trial.

To do this we need not say that the judge is "embroiled" or that he is biased or unfair but simply that a contempt meriting punishment comparable to that for a serious crime requires that a judge not subjected to abuse be the trier.

I would make it clear that the contempt case can be tried on the record and that the abused judge need not be called as a witness and cannot be called by the Defendant.

Since my ideas would lead to a great deal of deletion of your draft, I do not ask you to use the blue pencil unless you wish. What I fear is the encouragement of the rascals who could well see in this opinion the idea that a small contempt is dangerous but a sustained, massive, shocking attack renders him beyond reach of the Trial Judge. This could be escalated into a total frustration of a trial until the witnesses were unavailable.

My view would lead to elimination of virtually the last eight lines of Page 8 through the first full paragraph of Page 9, and to substitute on

WJD

-2-

Page 10 for the word "unbiased" something like

"A judge other than the one reviled by the contemnor,"

and adding at the end

"on the conduct of Petitioner as shown by the record."

Regards,

W. B.

Mr. Justice Douglas

U
CHAMBERS OF
THE CHIEF JUSTICE

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

January 18, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

Here is about what I will add.

I will get it to the printer so that it will be ready for
Wednesday announcement.

Regards,



Mr. Justice Douglas

cc: The Conference

to. Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart

From: _____ Justice
Circulated: JAN 18 1971

Recirculated: _____

No. 121 - Mayberry v. Pennsylvania

MR. CHIEF JUSTICE BURGER, concurring.

I concur in the Court's opinion and add these additional observations chiefly for emphasis. Certain aspects of the problem of maintaining in courtrooms the indispensable atmosphere of quiet orderliness are crucial. Without order and quiet, the adversary process must fail. Three factors should be noted: (1) as Mr. Justice Douglas has said, the trial was conducted without the guidance afforded by Mr. Justice Black's opinion for the Court in Illinois v. Allen; (2) although the accused had counsel at his trial he also asserted a right to act as his own counsel and the court permitted him to do so; (3) we are not informed whether Pennsylvania has a statute covering obstruction of justice that would reach the conduct of the accused shown by this record.

(1)

As the Court's opinion suggests, the standards of Illinois v. Allen, supra, would have enabled the trial judge to remove the accused

To: Mr. Chairman, House of Representatives
Mr. Chairman, Senate
Mr. Chairman, House of Representatives
Mr. Chairman, Senate
Mr. Chairman, House of Representatives
Mr. Chairman, Senate
Mr. Chairman, House of Representatives
Mr. Chairman, Senate

SUPREME COURT OF THE UNITED STATES

No. 121.—OCTOBER TERM, 1970

Circulated:

JUL 10 1971

Recirculated:

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

[January 20, 1971]

MR. CHIEF JUSTICE BURGER, concurring.

I concur in the Court's opinion and add these additional observations chiefly for emphasis. Certain aspects of the problem of maintaining in courtrooms the indispensable atmosphere of quiet orderliness are crucial. Without order and quiet, the adversary process must fail. Three factors should be noted: (1) as MR. JUSTICE DOUGLAS has said, the trial was conducted without the guidance afforded by MR. JUSTICE BLACK's opinion for the Court in *Illinois v. Allen*; (2) although the accused was afforded counsel at his trial he asserted a right to act as his own counsel and the court permitted him to do so; (3) we are not informed whether Pennsylvania has a statute covering obstruction of justice that would reach the conduct of the accused shown by this record.

(1)

As the Court's opinion suggests, the standards of *Illinois v. Allen, supra*, would have enabled the trial judge to remove the accused from the courtroom after his first outrageous actions and words, and to summarily punish him for contempt. The contempt power, however, is of limited utility in dealing with an incorrigible, a cunning psychopath, or an accused bent on frustrating the particular trial or undermining the processes of justice. For such as these, summary removal from the courtroom is

6

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 6, 1971

Dear Bill:

Re: No. 121 - Mayberry v. State of Penna.

I agree, but -- unless you prefer that I not --
I would like to have added at the end that I com-
pletely agree with the judgment and opinion but
would add that a new trial be heard by a jury.
If you object to such an addition, I shall not
withdraw my agreement, however.

Sincerely,


H. L. B.

Mr. / Justice Douglas

WIO

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

January 6, 1971

Dear Bill,

Re: No. 121 - Mayberry v. State of Penna.

I agree but in view of the combined length
of the sentences would direct that the Petitioner
be given a jury trial if he requests it.

Sincerely,

H. L. B.

Mr. Justice Douglas

cc: Members of the Conference

Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE HUGO L. BLACK

January 18, 1971

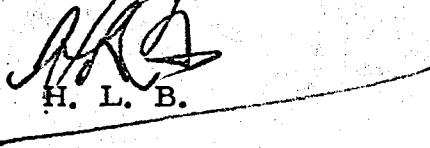
Dear Bill,

Re: No. 121 - Mayberry v. Pennsylvania

As you know I would prefer to have your opinion say that Mayberry was entitled to a jury trial. This, of course, would mean that he could not have been instantaneously held guilty of contempt. I was willing to leave out my suggestion about a jury trial in your opinion as it stood before your last change. In the change there, however, you have said on page 8 that the Court "could with propriety have instantaneously acted, holding petitioner in contempt" In one or two other parts of the last circulation you have also indicated the same thing. I regret that I cannot agree to the opinion with these statements about the instantaneous trials by the juries alone in it. If, therefore, you find it absolutely necessary to keep these statements in the opinion, I would like to have you add at the end:

"MR. JUSTICE BLACK concurs in the judgment and with all of the opinion except that part which indicates that the judge, without a jury, could have convicted Mayberry of contempt instantaneously with the outburst."

Sincerely,


H. L. B.

Mr. Justice Douglas

cc: Members of the conference.

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

1

SUPREME COURT OF THE UNITED STATES, J.

No. 121.—OCTOBER TERM, 1970

Argued: 1/15/71

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania.

On Writ of Certiorari to the
Supreme Court of Pennsyl-
vania, Western District.

[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him for not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 398 U. S. —.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

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

2

From: Douglas, J.

1/5/71

SUPREME COURT OF THE UNITED STATES

No. 121.—OCTOBER TERM, 1970

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him for not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

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(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

17.8.10
116/71

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

3

Ernest Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 121.—OCTOBER TERM, 1970

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 397 U. S. 1020.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

3, 4, 10
 To: The Hon. Mr. Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

4

SUPREME COURT OF THE UNITED STATES

No. 121.—OCTOBER TERM, 1970

Richard Mayberry,
 Petitioner,
 v.
 State of Pennsylvania. } On Writ of Certiorari to the
 Supreme Court of Pennsyl-
 vania, Western District.

1/6/71

[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 397 U. S. 1020.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

10
5

•: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Justice Blackmun

SUPREME COURT OF THE UNITED STATES

108, J.

No. 121.—OCTOBER TERM, 1970

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

1/8/71
[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 397 U. S. 1020.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

January 12, 1971

Dear Chief:

I enclose herewith print #6 in
No. 121 - Mayberry v. Pennsylvania, which
I have not shown anyone else.

It has an inclusion on pages
8 to 10 designed to meet the point which
you raise, which I thought was very relevant.

W. O. D.

The Chief Justice

WD

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

8-10, 11, 12

7

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Entered: 6-14
No. 121.—OCTOBER TERM, 1970
Recirculated: 7

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

[January —, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 397 U. S. 1020.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

111 ✓

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

Mr. Douglas, J.

SUPREME COURT OF THE UNITED STATES

No. 121.—OCTOBER TERM, 1970

Circulated:

1/19/71

Recirculated:

Richard Mayberry,
 Petitioner,
 v.
 State of Pennsylvania. } On Writ of Certiorari to the
 Supreme Court of Pennsyl-
 vania, Western District.

[January 20, 1971]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Petitioner and two codefendants were tried in a state court for prison breach and holding hostages in a penal institution. While they had appointed counsel as advisers, they represented themselves. The trial ended with a jury verdict of guilty of both charges on the 21st day, which was a Friday. The defendants were brought in for sentencing on the following Monday. Before imposing sentence on the verdicts the judge pronounced them guilty of criminal contempt. He found that petitioner had committed one or more contempts on 11 of the 21 days of trial and sentenced him to not less than one nor more than two years for each of the 11 contempts or a total of 11 to 22 years.

The Supreme Court of Pennsylvania affirmed by a divided vote. 434 Pa. 478, 255 A. 2d 131. The case is here on a petition for writ of certiorari. 397 U. S. 1020.

Petitioner's conduct at the trial comes as a shock to those raised in the western tradition that considers a courtroom a hallowed place of quiet dignity as far removed as possible from the emotions of the street.

(1) On the first day of the trial petitioner came to the side bar to make suggestions and obtain rulings on trial

January 20, 1971

MEMORANDUM TO THE CONFERENCE:

In No. 121 - Mayberry v. Pennsylvania, it is suggested that on page 8 where I first mention Illinois v. Allen I drop the following footnote to show that the events in the Pennsylvania courts reflected in this case took place long before our decision came down.

*Petitioner was sentenced for contempt December 12, 1966. The Pennsylvania Supreme Court affirmed on April 23, 1969. We decided Illinois v. Allen on March 31, 1970.

W. O. D.

The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

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

1

SUPREME COURT OF THE UNITED STATES

Mr. Justice Harlan, J.

Circulated: JAN 8 1971

No. 121.—OCTOBER TERM, 1970

Recirculated:

Richard Mayberry,
Petitioner,
v.
State of Pennsylvania. } On Writ of Certiorari to the
Supreme Court of Pennsylvania, Western District.

[January —, 1971]

MR. JUSTICE HARLAN, concurring.

I concur in the judgment of reversal solely on the ground that these contempt convictions must be regarded as infected by the fact that the unprecedented long sentence of 22 years which they carried was imposed by a judge who himself had been the victim of petitioner's shockingly abusive conduct. That circumstance seems to me to deprive the contempt proceeding of the appearance of evenhanded justice which is at the core of due process. For this reason I think the contempt convictions must be set aside, leaving the State free to try the contempt specifications before another judge or to proceed otherwise against this petitioner.

It is unfortunate that this Court's decision in *Allen v. Illinois*, 397 U. S. 337 (1970), was not on the books at the time the criminal case against this petitioner was on trial. The courses which that decision lays open to trial judges for coping with outrageous courtroom tactics of the sort engaged in by this petitioner would doubtless have enabled Judge Fiok to deal with the petitioner in a manner that would have obviated the regrettable necessity for setting aside this contempt conviction.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 6, 1971

RE: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

I agree with your opinion in the above
case.

Sincerely,


W. J. B. Jr.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 5, 1971

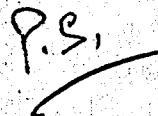
121 - Mayberry v. Pennsylvania

Dear Bill,

I am glad to join your opinion for
the Court in this case.

Although the precedents upon
which you rely, particularly In re Oliver,
perhaps make it sufficiently clear, would it
not be well to give specific mention to the
Due Process Clause of the Fourteenth
Amendment?

Sincerely yours,



Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 7, 1971

121 - Mayberry v. Pennsylvania

Dear Bill,

I can no longer subscribe to your opinion, in view of the paragraph you have added in your circulation No. 4. Bloom v. Illinois was expressly held to be not retroactive in De Stefano v. Woods, 392 U.S. 631, at 634-635. Moreover, counsel for Mayberry did not even claim the right to a jury trial, recognizing that he is not entitled to one under our decisions. (See Brief for the Petitioner, p. 26, note 2.)

Sincerely yours,

P.S.

Mr. Justice Douglas

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

Please join me.

Sincerely,


B.R.W.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

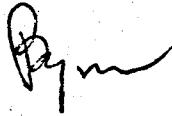
January 7, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

For the reasons that Potter has stated, I cannot join the last paragraph of your opinion in this case. Even if this were a post-Bloom trial, under Cheff v. Schnackenberg and Bloom v. Illinois a jury would be required only if the sentence on a count was more than six months--that is, only if the judge wished to preserve the power to impose a sentence on any count of more than six months would he be required to try the case to a jury. At least this is my view.

Sincerely,



Mr. Justice Douglas

Copies to the Conference.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 11, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

January 6, 1971

Re: No. 121 - Mayberry v. State of Pennsylvania

Dear Bill:

Please join me in your proposed opinion for this case. The issue as to the necessity of a jury trial is, I suspect, lurking in the background. I shall leave to your good judgment the choice between saying something about it or depending on counsel and the new judge to resolve it on the remand.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference

January 15, 1971

Re: No. 121 - Mayberry v. Pennsylvania

Dear Bill:

This will supplement my letter of January 6, and I perhaps write further out of an excess of caution. Please, however, join me in draft No. 7, which you circulated on January 14.

Sincerely,

H. A. B.

Mr. Justice Douglas

cc: The Conference