

The Burger Court Opinion Writing Database

Tate v. Short

401 U.S. 395 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



February third
1971

Dear Bill:

In No. 324 -- Tate v. Short,
please join me in your Memorandum which
I trust will become the Court's opinion.

William O. Douglas

Mr. Justice Brennan

6/17
Adm.

February 17, 1971

Re: No. 824 - Tate v. Short

Dear Bill:

Understanding from the returns that your memorandum of February 3 will now become the opinion for the Court, I write to ask you kindly to add the following addendum to the proposed opinion:

"Mr. JUSTICE MARSHAL concurs
in the intent of the Court, on the basis of the
considerations set forth in his opinion concerning
in the instant case in Williams v. Illinois, 390 U.S.
235, 250 (1970)."

Sincerely,

J. M. H.

Mr. Justice BRENNAN

CC: The Conference

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

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

February 3, 1971

Q
V
I am ready to
fix your memorandum
at leisure.
Opinion

MEMORANDUM TO THE CONFERENCE

RE: No. 324 - TATE v. SHORT

We did not take a formal vote on this case pending information requested at the oral argument bearing on the possibility that Houston provided an alternative procedure under which the defendant could work part of the day at the prison farm and return home at night. This was prompted by the representation of Houston's Attorney that "we have an Ordinance that provides that if he will voluntarily go to what we call our P Farm, he can work that out at \$7.50 per day. Tate refused to go to the P Farm, incidentally." (Transcript, page 27)

This was to put it mildly an overstatement. Petitioner had no choice to go to the P Farm. The record contains an explicit stipulation that "the judge who heard evidence . . . sentenced and committed Relator after his arrest . . . to the City Prison Farm in custody of the Chief of Police of the City of Houston, Texas until he shall have paid fines totalling \$425.00 . . ."

We have also received a letter from the Houston City Attorney, a copy of which was distributed to each of us on January 25, to which is attached the provisions of the Houston Ordinance bearing on imprisonment for nonpayment of fines. It is clear from § 35-9 that the credit of \$7.50 per day is simply an enhanced credit "against the fine of each prisoner" when he merits it for "good conduct, industry and obedience."

- 2 -

Since I had to study the case in detail I decided to prepare and submit to the Conference a memorandum of my views of how the case should be decided. The memorandum is attached.

W. J. B. Jr.

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: *2/3/71*

No. 324.—OCTOBER TERM, 1970

Recirculated:

Preston A. Tate, Petitioner,
v.
Herman Short, Chief of
Police, Houston, Texas. } On Writ of Certiorari to
the Court of Criminal
Appeals of Texas.

[February —, 1971]

Memorandum of MR. JUSTICE BRENNAN.

Petitioner accumulated fines of \$425 on nine convictions in the Corporation Court of Houston, Texas, for traffic offenses. He was unable to pay the fines because of indigency¹ and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,² committed him to the municipal prison farm according to the provisions of a state statute and municipal

¹ At the habeas hearing the assistant district attorney appearing for the State stipulated: "We would stipulate he is poverty stricken, and that his whole family has been for all periods of time therein, and probably always will be." Petitioner's uncontradicted testimony at the hearing was that, prior to his imprisonment, he earned between \$25 and \$60 a week in casual employment. He also received a monthly Veterans' Administration check of \$104.00. He has a wife and two children dependent on him for support. We were advised on oral argument that under Texas law his automobile was not subject to execution to collect the fines.

² Texas Code of Criminal Procedure, Article 4.14 provides:

"The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits."

Page 1.

✓ Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: P. J. J.

Circul.

No. 324.—OCTOBER TERM, 1970

Recd.

2-22-71

Preston A. Tate, Petitioner,
v.
Herman Short, Chief of
Police, Houston, Texas. } On Writ of Certiorari to
the Court of Criminal
Appeals of Texas.

[February —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the
Court.

Petitioner accumulated fines of \$425 on nine convictions in the Corporation Court of Houston, Texas, for traffic offenses. He was unable to pay the fines because of indigency¹ and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,² committed him to the municipal prison farm according to the provisions of a state statute and municipal

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² Texas Code of Criminal Procedure, Article 4.14 provides:

"The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits."

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated:

No. 324.—OCTOBER TERM, 1970

Recirculated: 2-24-71

Preston A. Tate, Petitioner,
 v.
 Herman Short, Chief of Police, Houston, Texas. } On Writ of Certiorari to the Court of Criminal Appeals of Texas.

[March —, 1971]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner accumulated fines of \$425 on nine convictions in the Corporation Court of Houston, Texas, for traffic offenses. He was unable to pay the fines because of indigency¹ and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,² committed him to the municipal prison farm according to the provisions of a state statute and municipal

¹ At the habeas hearing the assistant district attorney appearing for the State stipulated: "We would stipulate he is poverty stricken, and that his whole family has been for all periods of time therein, and probably always will be." Petitioner's uncontradicted testimony at the hearing was that, prior to his imprisonment, he earned between \$25 and \$60 a week in casual employment. He also received a monthly Veterans' Administration check of \$104.00. He has a wife and two children dependent on him for support. We were advised on oral argument that under Texas law his automobile was not subject to execution to collect the fines.

² Texas Code of Criminal Procedure, Article 4.14 provides:

"The corporation court in each incorporated city, town or village of this State shall have jurisdiction within the corporate limits in all criminal cases arising under the ordinances of such city, town or village, and shall have concurrent jurisdiction with any justice of the peace in any precinct in which said city, town or village is situated in all criminal cases arising under the criminal laws of this State, in which punishment is by fine only, and where the maximum of such fine may not exceed two hundred dollars, and arising within such corporate limits."

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 3, 1971

Re: No. 324, Tate v. Short

Dear Bill:

I agree with your memorandum circulated today on this case.

Sincerely yours,

P. S.

Mr. Justice Brennan

cc: The Conference

February 4, 1971

Re: No. 324 - Tate v. Short

Dear Bill:

I agree with your memorandum,
which I hope will become the opinion
of the Court.

Sincerely,

B. R. W.

Mr. Justice Brennan

cc: the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

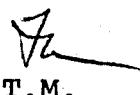
February 8, 1971

Re: No. 324 - Tate v. Short

Dear Bill:

I am ready to join your memorandum
if it becomes an opinion.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 23, 1971

Re: No. 324 - Tate v. Short

Dear Bill:

As indicated in my note of
February 8, please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

February 9, 1971

Re: No. 324 - Tate v. Short

Dear Bill:

I agree with your opinion but, perhaps presumptuously, I would like to add this comment on a matter about which I have always had strong feelings. Incidentally, is the reference to footnote 4 missing on page 3 of the body of the opinion?

Sincerely,

HAB

Mr. Justice Brennan

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES: Blackmun, J.

No. 324.—OCTOBER TERM, 1970

Circulated: 2/9/71

Recirculated: _____

Preston A. Tate, Petitioner,
v.
Herman Short, Chief of
Police, Houston, Texas. } On Writ of Certiorari to
the Court of Criminal
Appeals of Texas.

[February —, 1971]

MR. JUSTICE BLACKMUN, concurring in the opinion
and judgment of the Court.

The Court's opinion is couched in terms of being constitutionally protective of the indigent defendant. I merely add the observation that the reversal of this Texas judgment may well encourage state and municipal legislatures to do away with the fine and to have the jail term as the only punishment for a broad range of traffic offenses. Eliminating the fine whenever it is prescribed as alternative punishment avoids the equal protection issue that indigency occasions and leaves only possible Eighth Amendment considerations. If, as a nation, we ever reach that happy point where we are willing to set our personal convenience to one side and we are really serious about resolving the problems of traffic irresponsibility and the frightful carnage it spews upon our highways, a development of that kind may not be at all undesirable.