

# 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

WJD  
Admin

February 17, 1971

Re: No. 324 - 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 HARLAN concurs in the judgment of the Court on the basis of the considerations set forth in his opinion concurring in the judgment in Williams v. Illinois, 399 U.S. 235, 259 (1970)."

Sincerely,

J. M. H.

Mr. Justice Brennan

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR

February 3, 1971

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."

*I am ready to  
form your memorandum  
if it becomes  
an opinion -  
✓ M*

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U.S. DEPARTMENT OF JUSTICE

- 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.

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SSSFCNOC JU ADVDA I N

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

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 indigency<sup>1</sup> and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,<sup>2</sup> committed him to the municipal prison farm according to the provisions of a state statute and municipal

<sup>1</sup> 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.

<sup>2</sup> 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.

Circuit

No. 324.—OCTOBER TERM, 1970

Received 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 indigency<sup>1</sup> and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,<sup>2</sup> committed him to the municipal prison farm according to the provisions of a state statute and municipal

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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.* } On Writ of Certiorari to  
 Herman Short, Chief of } the Court of Criminal  
 Police, Houston, Texas. } 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 indigency<sup>1</sup> and the Corporation Court, which otherwise has no jurisdiction to impose prison sentences,<sup>2</sup> committed him to the municipal prison farm according to the provisions of a state statute and municipal

<sup>1</sup> 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.

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"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."



BP JG R  
L

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT MANUSCRIPTS

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

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** <sup>FILED</sup>: Blackmun, J.

No. 324.—OCTOBER TERM, 1970

Circulated: 2/9/71

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

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

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U.S. DEPARTMENT OF JUSTICE