

The Burger Court Opinion Writing Database

Hunter v. Tennessee

403 U.S. 711 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



GVR

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May tenth
1971

5085

Dear John:

Please join me in your

Per Curiam covering the Tennessee
Capital Cases.

W. O. Douglas
William O. Douglas

Mr. Justice Harlan

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

May 3, 1971

CHAMBERS OF
JUSTICE JOHN M. HARLAN

Nos. 5085, 5098, 5099, 5100, 5101, 5103 - Tennessee Capital Cases

Dear Brethren:

In accordance with the instructions of the Conference, I am circulating a proposed per curiam vacatur of the judgments in the Tennessee rape cases. On looking into the cases further, I discovered that both petitioners and the State had, understandably, treated the Tennessee Supreme Court's failure to discuss Bruton on a par with its failure to consider petitioners' Witherspoon allegations. To vacate the judgment solely for consideration of the Witherspoon contentions seemed likely to produce confusion, as well as to invite a petition for rehearing from the two defendants sentenced to 99 years. To vacate on Bruton as well should have no untoward effect, for Nelson v. O'Neill will be decided before the Tennessee court turns its attention to these cases, and it will effectively dispose of petitioners' Bruton contentions. If the Conference would still prefer to remand solely for consideration of the Witherspoon claims, I shall of course acquiesce.

Sincerely,



cc: The Conference

(PLEASE DO NOT REMOVE
FROM FILE.)

1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

October Term, 1970

From: Harlan, J.

HUNTER ET AL. v. TENNESSEE

Circulated: MAY 3 1971

ON PETITION FOR WRIT OF CERTIORARI TO THE
COURT OF TENNESSEE, WESTERN DIVISION

No. 5085. Decided May —, 1971*

PER CURIAM.

After a joint trial in the state courts of Tennessee, petitioners were convicted of rape. Five were sentenced to death; the remaining two were sentenced to 99 years' imprisonment. While their appeals were pending in the Tennessee Supreme Court, this Court announced its decisions in *Bruton v. United States*, 391 U. S. 123 (1968), and *Witherspoon v. Illinois*, 391 U. S. 510 (1968). Petitioners sought to supplement their bills of exceptions to raise issues under those decisions, but they were precluded from doing so by the provisions of former Tennessee Code Annotated § 27-111 (1955), which as it then stood prohibited the filing of bills of exceptions more than 90 days after judgment. The Tennessee Supreme Court therefore affirmed petitioners' convictions and sentences without considering the possible effect of *Bruton* and *Witherspoon*. 222 Tenn. 672, 440 S. W. 2d 1 (1969). While the petitions for certiorari were pending in this Court, the Tennessee Legislature amended § 27-111 to authorize the state appellate courts to order the filing of bills of exceptions in criminal cases at any time, for good cause shown. Tenn. Code Ann. § 27-111 (Supp. 1970). With matters in this posture, we believe that sound judicial administration requires us to vacate the judgments below and remand the cases to the Tennessee Supreme

*Together with No. 5098, *Harris v. Tennessee*; No. 5099, *Williams v. Tennessee*; No. 5100, *Benton v. Tennessee*; No. 5101, *Houston et al. v. Tennessee*; and No. 5103, *Hunter et al. v. Tennessee*.

Court so as to afford petitioners an opportunity to apply to that court under the new Tennessee statute for leave to supplement their bills of exceptions. In so doing we of course intimate no view on the merits of petitioners' contentions or as to the applicability of the new Tennessee statute for these cases.

It is so ordered.

June 9, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5085 - Hunter v. Tennessee

Dear Brethren:

I have revised the attached per curiam so as to omit the remand on the Bruton issue, which now seems to me unnecessary in light of our recent Nelson v. O'Neil. This follows the suggestion originally made by Brother Stewart.

Sincerely,

J. M. H.

FILE COPY

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FROM FILE.)

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

October Term, 1970

HUNTER ET AL. v. TENNESSEE

Circulated: _____

Recirculated: JUN 9 1971

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF TENNESSEE, WESTERN DIVISION

No. 5085. Decided May —, 1971*

PER CURIAM.

After a joint trial in the state courts of Tennessee, petitioners were convicted of rape and sentenced to death. While their appeals were pending in the Tennessee Supreme Court, this Court announced its decision in *Witherspoon v. Illinois*, 391 U. S. 510 (1968). Petitioners sought to supplement their bills of exceptions to raise issues under that decision, but they were precluded from doing so by the provisions of former Tennessee Code Annotated § 27-111 (1955), which as it then stood prohibited the filing of bills of exceptions more than 90 days after judgment. The Tennessee Supreme Court therefore affirmed petitioners' convictions and sentences without considering the possible effect of *Witherspoon*. 222 Tenn. 672, 440 S. W. 2d 1 (1969). While the petitions for certiorari were pending in this Court, the Tennessee Legislature amended § 27-111 to authorize the state appellate courts to order the filing of bills of exceptions in criminal cases at any time, for good cause shown. Tenn. Code Ann. § 27-111 (Supp. 1970). With matters in this posture, we believe that sound judicial administration requires us to vacate the judgments below and remand the cases to the Tennessee Supreme Court so as to afford petitioners an opportunity to apply to that court under the new Tennessee statute for leave

*Together with No. 5098, *Harris v. Tennessee*; No. 5101, *Houston et al. v. Tennessee*; and No. 5103, *Hunter et al. v. Tennessee*.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

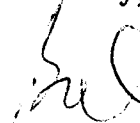
May 4, 1971

RE: No. 5085 - Hunter v. Tennessee

Dear John:

I agree with the per curiam you have
prepared in the above.

Sincerely,



W. J. B. Jr.

Mr. Justice Harlan

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1971

Re: Tennessee Capital Cases

Dear John,

I have no objection to your circulation of May 3. I suggest, however, that it might be simpler and less confusing to hold these cases for Nelson v. O'Neill, and then to deny certiorari in the two non-capital cases, and to remand the four capital cases for consideration only of the Witherspoon claims. I hope to have a proposed opinion in the O'Neill case in circulation sometime next week.

Sincerely yours,

P.S.
✓

Mr. Justice Harlan

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 9, 1971

No. 5085 - Hunter v. Tennessee

Dear John,

I am glad to join your revised Per
Curiam, as recirculated today.

Sincerely yours,

P.S.
✓

Mr. Justice Harlan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

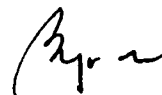
May 4, 1971

Re: Tennessee Capital Cases

Dear John:

Your disposition is satisfactory
to me.

Sincerely,



Mr. Justice Harlan

Copies to Conference