

The Burger Court Opinion Writing Database

Johnson v. United States
401 U.S. 846 (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
JUSTICE HUGO L. BLACK

March 30, 1971

Dear Bill,

Per Curiam
Re: No. 5247 - Johnson v. U. S.

I agree.

Sincerely,



H. L. B.

Mr. Justice Brennan

0.8

March 30, 1971

Dear Bill:

In No. 5247 - Johnson v. U. S., I
sent you a note saying it was OK with me
to dismiss the writ as improvidently granted.

Since then Potter Stewart has
circulated his dissent. As I indicated
in Conference reversal on the Jackson ground
was permissible in my view.

Since he has exposed the problem,
I will join him rather than those who dismiss
as improvidently granted.

W. O. D.

Mr. Justice Brennan

Wm
Adm

March 31, 1971

Re: No. 8247 - Johnson v. United States

Dear Bill:

I join your letter sent earlier.

Sincerely,

J. M. H.

Mr. Justice Brennan

CC: The Conference

PR ✓

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

From: Brennan, J.

Serialized: 3-29-71

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 5247.—OCTOBER TERM, 1970

Barrington Joseph Johnson, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia.

[April —, 1971]

PER CURIAM.

The petition for writ of certiorari is dismissed as improvidently granted.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 5247.—OCTOBER TERM, 1970

Circulated: MAR 30 1971

Barrington Joseph Johnson,) On Writ of Certiorari to the State of Massachusetts:

Recd. [redacted]

Petitioner,
v.
United States. } United States Court of Appeals for the District of Columbia.

[April —, 1971]

MR. JUSTICE STEWART, dissenting.

In the petitioner's trial on a charge of rape, the District Judge instructed the jury that it could return a verdict of guilty with the death penalty. Yet that verdict was constitutionally impermissible in light of this Court's decision in *United States v. Jackson*, 390 U. S. 570. See *Bailey v. United States*, 405 F. 2d 1352, 1356 and n. 3 (CADC). I think the extreme prejudice arising from this erroneous instruction requires reversal of the judgment of conviction and a remand of this case for a new trial. Cf. *Price v. Georgia*, 398 U. S. 323, 331-332.

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2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 5247.—OCTOBER TERM, 1970 From: Stewart, J.

Barrington Joseph Johnson, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia. Circulated: _____
Recirculated MAR 30 1971

[April —, 1971]

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS joins, dissenting.

In the petitioner's trial on a charge of rape, the District Judge instructed the jury that it could return a verdict of guilty with the death penalty. Yet that verdict was constitutionally impermissible in light of this Court's decision in *United States v. Jackson*, 390 U. S. 570. See *Bailey v. United States*, 405 F. 2d 1352, 1356 and n. 3 (CADC). I think the extreme prejudice arising from this erroneous instruction requires reversal of the judgment of conviction and a remand of this case for a new trial. Cf. *Price v. Georgia*, 398 U. S. 323, 331-332.

March 30, 1971

Re: No. 5247 - Johnson v. U.S.

Dear Bill:

I agree.

Sincerely,

B.R.W.

Mr. Justice Brennan

cc: The Conference

B.M.J.

Re: *97*
March 30, 1971

Re: No. 5247 - Johnson v. United States

Dear Bill:

I am content with the proposed *Per Curiam*
disposal of this case.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference