

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,

A handwritten signature in cursive script, appearing to read 'H. L. B.', written in dark ink.

H. L. B.

Mr. Justice Brennan

008

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

WJD
Adm. 2

March 31, 1971

Re: No. 5247 - Johnson v. United States

Dear Bill:

I join your per curiam.

Sincerely,

J. M. H.

Mr. Justice Brennan

CC: The Conference

BR ✓

87P
[Handwritten initials and marks]

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.

Revised: 3-29-71

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 5247.—OCTOBER TERM, 1970

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

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SECRET OF ADVANCE

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

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	Recirculated: _____		
Petitioner,			United States Court of	
v.				Appeals for the District
United States.				

[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 (CA DC). 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.

LM

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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

Barrington Joseph Johnson, On Writ of Certiorari to the
Petitioner, United States Court of
v. Appeals for the District
United States. 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 (CA DC). 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

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

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