

# The Burger Court Opinion Writing Database

## *Thompson v. United States*

400 U.S. 17 (1970)

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

GVR

CHAMBERS OF  
THE CHIEF JUSTICE

October 21, 1970

Dear Potter:

Re: No. 5272 - Thompson v. United States

I am willing to join in the disposition proposed.

Reynolds  
WSG

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

September 30, 1970

MEMORANDUM TO THE CONFERENCE

Re: Thompson v. United States, No. 5272 O. T.  
1970.

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Petitioner was convicted of bank robbery in Louisiana State Court and sentenced to 50 years in prison. The robbed bank was a national bank and petitioner was subsequently indicted, tried, and convicted in a federal court for precisely the same offense. The Solicitor General, although not conceding that the Double Jeopardy Clause of the Constitution bars consecutive state and federal prosecutions for the same offense, see Abbate v. United States, 359 U. S. 186; Bartkus v. Illinois, 359 U. S. 121, admits that the Department of Justice has a policy against such consecutive prosecutions. Since that policy was violated in this case, the Solicitor General requests that certiorari be granted, the judgment vacated and the case remanded to the United States District Court with instructions to dismiss the charges.

I believe that the Double Jeopardy Clause bars consecutive state and federal prosecutions for the same offense and would grant certiorari and reverse the judgment below. At the very least the recommendation of the Solicitor General should be followed. See Ashe v. Swenson, 397 U. S. 436. In any event, I ask that this case be discussed at the Conference on October 5, 1970.

H. L. B.

To: The Chief Justice  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice Souter  
Mr. Justice Ginsburg

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From: Black, J.

# SUPREME COURT OF THE UNITED STATES

Circulated: OCT 1 1970

October Term, 1970

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## THOMPSON v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5272. Decided October —, 1970

MR. JUSTICE BLACK would grant certiorari and reverse the decision below for the reasons stated in his dissenting opinions in *Abbate v. United States*, 359 U. S. 187, 201 (1959), and *Bartkus v. Illinois*, 359 U. S. 121, 150 (1959).

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

From: Black, J.

Circulated: \_\_\_\_\_

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# SUPREME COURT OF THE UNITED STATES

October Term, 1970

THOMPSON *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5272. Decided October —, 1970

MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, would grant certiorari and reverse the decision below for the reasons stated in his dissenting opinions in *Abbate v. United States*, 359 U. S. 187, 201 (1959), and *Bartkus v. Illinois*, 359 U. S. 121, 150 (1959).

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

1

SUPREME COURT OF THE UNITED STATES, J.

October Term, 1970 Circulated: OCT 15 1970

THOMPSON v. UNITED STATES, J. Circulated:

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5272. Decided October —, 1970

MR. JUSTICE BLACK would grant certiorari and reverse  
the decision below for the reasons stated in his dissenting  
opinions in *Abbate v. United States*, 359 U. S. 187, 201  
(1959), and *Bartkus v. Illinois*, 359 U. S. 121, 150 (1959).

Dear Hugo  
O dear  
from me  
aW  
✓

October 20, 1970

Re: No. 5272 - Thompson v. United States

Dear Potter:

I am content, debitante, to go along with  
your per curiam.

Sincerely,

J. M. H.

Mr. Justice Stewart

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 20, 1970

RE: No. 5272 - Thompson v. United States

Dear Potter:

I agree with your Per Curiam in the  
above case.

Sincerely,



W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference



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

1

**SUPREME COURT OF THE UNITED STATES**

rem: Stewart, J.

Circulated: OCT 20 1970

October Term, 1970

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

**THOMPSON v. UNITED STATES**

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5272. Decided October —, 1970

PER CURIAM.

The motion for leave to proceed *in forma pauperis* and the petition for a writ of certiorari are granted. The judgment is vacated and the case is remanded to the United States District Court for the Eastern District of Louisiana for consideration of the request contained in the memorandum filed in this Court by the Solicitor General.

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

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**SUPREME COURT OF THE UNITED STATES**: Stewart, J.

October Term, 1970

Circulated: \_\_\_\_\_  
OCT 20 1970 (z)

THOMPSON v. UNITED STATES

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

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED  
STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 5272. Decided October —, 1970

PER CURIAM.

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MR. JUSTICE BLACK, with whom MR. JUSTICE DOUGLAS joins, would grant certiorari and reverse the decision below for the reasons stated in his dissenting opinions in *Abbate v. United States*, 359 U. S. 187, 201 (1959), and *Barthkus v. Illinois*, 359 U. S. 121, 150 (1959).

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October 20, 1970

Re: No. 5272 - Thompson v. United  
States

Dear Potter:

I agree.

Sincerely,

B.R.W.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 21, 1970

Re: No. 5272 - Thompson v. United States

Dear Potter:

Please join me in your per curiam.

Sincerely,

  
T.M.

Mr. Justice Stewart

cc: The Conference

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October 21, 1970

Re: No. 5272 - Thompson v. United States

Dear Potter:

I suspect I share the same mild doubts expressed by Mr. Justice Harlan, but I am content to go along with the proposed Per Curiam.

Sincerely,

H. A. B.

Mr. Justice Stewart

cc: The Conference