The Burger Court Opinion Writing Database

Milton v. Wainwright

407 U.S. 371 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

JMO

71 OT
70-5012

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

CHAMBERS OF
JUSTICE HUGO L. BLACK

February 18, 1971

Dear Potter,

Re: No. 5712 - Milton v. Wainwright.

Please add at the end of your Per Curiam in this case the following:

"MR. JUSTICE BLACK dissents."

Sincerely,

H.L.B.

H. L. B.

Mr. Justice Stewart

cc: Members of the Conference

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

1st DRAFT

From: Harlan, J.

Circulated: MAY 3 1971

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

October Term, 1970

GEORGE WILLIAM MILTON *v.* LOUIE L. WAINWRIGHT, FLORIDA DIVISIONS OF CORRECTIONS

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

No. 5712. Decided June —, 1971

MR. JUSTICE HARLAN, dissenting.

For the reasons stated in my separate opinion, filed earlier this Term, in *Mackey* v. *United States,* 401 U. S. —, — (1971), I would not open the federal courts to habeas corpus petitions, such as this, seeking to obtain a retrial of a state conviction upon the ground that the new rule announced by this Court six years later in *Massiah* v. *United States,* 377 U. S. 201 (1964), and subsequently applied to the States in *McLeod* v. *Ohio,* 381 U. S. 357 (1965), was violated at petitioner's original trial. In my opinion, *Massiah* and *McLeod* were clearly a departure from our prior decisions that confessions were constitutionally inadmissible in state trials only where an assessment of the totality of the circumstances revealed that they were obtained coercively or by practices "repellent to civilized standards of decency," Bator & Vorenberg, Arrest, Detention, Interrogation and the Right to Counsel, 66 Col. L. Rev. 62, 73 (1966). Nor do I believe that "fundamental fairness" requires the exclusion of such concededly probative and reliable evidence as the confession here involved. I think that no sound purpose would be served by requiring the State of Florida to retry petitioner 13 years after the fact. Cf. my concurring opinion in *Nelson* v. *O'Neil,* — U. S. —, — (1971).

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 8, 1971

RE: No. 5712 - Milton v. Wainwright

Dear Potter:

Will you please join me in your Per Curiam in the above.

Sincerely,

W.J.B. Jr.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 21, 1971

MEMORANDUM TO THE CONFERENCE

No. 5712 -- Milton v. Wainwright

It is my suggestion that this case be disposed of with a Per Curiam along the lines of the attached.

P.S.

P.S.

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

From: Stewart, J.

October Term, 1970

Circulated: JAN 21 1971

Recirculated: _____

GEORGE WILLIAM MILTON *v.* LOUIE L. WAINWRIGHT, FLORIDA DIVISIONS OF CORRECTIONS

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

No. 5712. Decided January —, 1971

PER CURIAM.

In June, 1958, petitioner Milton was indicted by a grand jury in Miami, Florida, for the crime of first-degree murder, carrying a possible death sentence. He was held in jail pending trial. He had a lawyer, who told him not to answer any questions. He was advised of his constitutional right to silence but made a confession of the crime which was tape recorded. Several weeks later, perhaps because of doubts as to the admissibility of the first confession, a police officer was placed in his two-man cell with instructions to tell Milton that he was a fellow prisoner being held for investigation of a murder charge. The officer remained in the cell one night, the following day, another night, and part of a second day. During that time, Milton was not told of his cellmate's connection with the police force. Under instructions from his superiors, the officer questioned Milton as opportunities presented themselves in an effort to elicit a confession. Milton eventually made an oral confession to the officer, and this was admitted in evidence at the trial. Milton's counsel objected that the confession was involuntary, but after a careful hearing out of the presence of the jury the trial judge ruled against him. The jury returned a verdict of guilty with recommendation of mercy, and Milton was sentenced to life imprisonment.

PS

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 19, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5712 - Milton v. Wainwright

On January 21 I circulated a suggested Per Curiam dealing with this case, which was subsequently joined by Mr. Justice Douglas, Mr. Justice Brennan, and Mr. Justice Marshall. The attached is quite similar to that draft Per Curiam, except that I have made deletions and modifications in an effort to meet the difficulties expressed by some with the previous circulation.

P.S.

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

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

October Term, 1970

Circulated: _____

Recirculated: MAY 19 1971

GEORGE WILLIAM MILTON *v.* LOUIE L. WAINWRIGHT, FLORIDA DIVISIONS OF CORRECTIONS

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

No. 5712. Decided May —, 1971

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE MARSHALL join.

In June, 1958, petitioner Milton was indicted by a grand jury in Miami, Florida, for the crime of first-degree murder, carrying a possible death sentence. He was held in jail pending trial. He had a lawyer, who told him not to answer any questions. He was advised of his constitutional right to silence but made a confession of the crime which was tape recorded. Several weeks later, perhaps because of doubts as to the admissibility of the first confession, a police officer was placed in his two-man cell with instructions to tell Milton that he was a fellow prisoner being held for investigation of a murder charge. The officer remained in the cell one night, the following day, another night, and part of a second day. During that time, Milton was not told of his cellmate's connection with the police force. Under instructions from his superiors, the officer questioned Milton as opportunities presented themselves in an effort to elicit a confession. Milton eventually made an oral confession to the officer, and this was admitted in evidence at the trial. Milton's counsel objected that the confession was involuntary, but after a careful hearing out of the presence of the jury the trial judge ruled against

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 19, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 5712 - Milton v. Wainwright

It was suggested at Conference that this case be summarily reversed on the authority of Massiah v. United States, 377 U.S. 201 (1964), and McLeod v. Ohio, 381 U.S. 357 (1965). In that event, I would file the attached dissent or something close to it.

Perhaps this case should be held for our current retroactivity cases.

B.R.W.

... summarily ruling as it does, the majority

No. 5712 - Milton v. Wainwright

Mr. Justice White, dissenting.

The majority today reverses petitioner's conviction summarily, thus holding that the rule announced in Massiah v. United States, 377 U.S. 201 (1964), is fully retroactive. It is true, as the majority indicates, that we held in McLeod v. Ohio, 381 U.S. 357 (1965), a case that was here on direct review, that reversal was required where a state prisoner's conviction was based on a confession obtained from the petitioner after he had been indicted and before he had been provided with counsel, in violation of Massiah.[1/] But in my view, that decision does not compel the result the majority reaches. At most, certiorari should be granted and the question of the retroactivity of Massiah examined as it was not in McLeod: with the benefit of briefing and argument of counsel. In summarily ruling as it does, the majority completely ignores the five years of experience this Court has had in dealing with retroactivity

BRW

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

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5-21-71

October Term, 1970

Recirculated: _____

GEORGE WILLIAM MILTON *v.* LOUIE L. WAINWRIGHT, FLORIDA DIVISIONS OF CORRECTIONS

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

No. 5712. Decided May —, 1971

MR. JUSTICE WHITE, dissenting.

The majority today reverses petitioner's conviction summarily, thus holding that the rule announced in *Massiah* v. *United States,* 377 U. S. 201 (1964), is fully retroactive. It is true, as the majority indicates, that we held in *McLeod* v. *Ohio,* 381 U. S. 357 (1965), a case that was here on direct review, that reversal was required where a state prisoner's conviction was based on a confession obtained from the petitioner after he had been indicted and before he had been provided with counsel, in violation of *Massiah.*[1] But in my view, that decision does not compel the result the majority reaches. At most, certiorari should be granted and the question of the retroactivity of *Massiah* examined as it was not in *McLeod:* with the benefit of briefing and argument of counsel. In summarily ruling as it does, the majority

[1] Petitioner McLeod had filed a petition for certiorari to review affirmance of his conviction by the Ohio Supreme Court, *State* v. *McLeod,* 173 Ohio St. 520, — N. E. 2d — (19—), while *Massiah* was before this Court for decision. Somewhat more than one month after *Massiah* was decided, we remanded to the Ohio Supreme Court "for consideration in light of" *Massiah. McLeod* v. *Ohio,* 377 U. S. 201 (1964). Subsequently, the Ohio Supreme Court determined that *Massiah* was distinguishable and again affirmed the conviction. *State* v. *McLeod,* 1 Ohio St. 2d 60, 203 N. E. 2d 349 (1964). This Court thereafter granted certiorari and reversed summarily, relying only on *Massiah. McLeod* v. *Ohio,* 381 U. S. 356 (1965).

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 29, 1971

Re: No. 5712 - Milton v. Wainwright

Dear Potter:

Please join me in your Per Curiam.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May file
on
Milton v.
Wainwright
70-5012
(See White's
Opinion)

June 1, 1971

Re: No. 5712 - Milton v. Wainwright

Dear Byron:

Like you, I would deny certiorari in this case. If, however, it is not denied, then I feel that certiorari should be granted and the case set for hearing rather than reversed without argument. Should Potter's opinion become a majority one, then I would like to have you join me in your dissent.

Sincerely,

Harry

Mr. Justice White

cc: The Conference