

# The Burger Court Opinion Writing Database

## *Kitchens v. Smith*

401 U.S. 847 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



*Summary*

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

CHAMBERS OF  
THE CHIEF JUSTICE

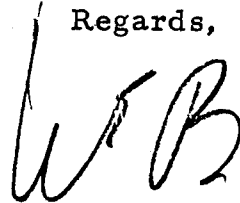
April 2, 1971

Re: No. 6131 - Kitchens v. Smith

Dear Byron:

Please join me in your per curiam.

Regards,

A handwritten signature in dark ink, consisting of the letters 'W' and 'B' joined together in a stylized, cursive-like fashion.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE HUGO L. BLACK

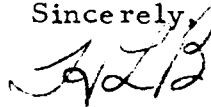
March 31, 1971

Dear Byron:

I agree to your per curiam in No.  
6131 - Kitchens v. Smith, Warden.

In No. 92, Whitcomb v. Chavis, I  
agree to your opinion in this case, although I  
do hope before it is over that it will be possible  
for you to shorten it a little.

Sincerely,



H. L. B.

Mr. Justice White

cc: Members of the Conference

March 31, 1971

Re: No. 6131 - Kitchens v. Smith

Dear Byron:

I join your per curiam.

Sincerely,

J. M. H.

Mr. Justice White

CC: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

March 31, 1971

RE: No. 6131 - Kitchens v. Smith

Dear Byron:

Please join me in your per curiam  
in the above.

Sincerely,

A handwritten signature in cursive script, appearing to read "WJB", is written over the typed name.

W.J.B. Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

March 31, 1971

No. 6131 - Kitchens v. Smith

Dear Byron,

I am glad to join the Per Curiam  
you have prepared in this case.

Sincerely yours,

P.S.  
/

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 9, 1971

Dear Bob:

I request that you call for the record in No. 6131, Kitchens v. Smith, and that the case not be relisted until the conference after the record arrives.

Sincerely yours,



Mr. E. Robert Seaver

Clerk

Copies to the Conference

BN  
**FILE COPY**

**(PLEASE DO NOT REMOVE  
FROM FILE.)**

**SUPREME COURT OF THE UNITED STATES**

October Term, 1970.

**JAMES MELVIN KITCHENS v. S. LAMONT SMITH,  
WARDEN**

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF GEORGIA

No. 6131. Decided April 5, 1971

PER CURIAM.

Petitioner pleaded guilty to robbery in a Georgia state court in 1944. He was not represented by counsel at any time. While serving his sentence, petitioner escaped and did not return to Georgia until 1969, when he was returned to finish the remainder of his sentence. He then brought this habeas corpus action in county court, alleging that his conviction was void under *Gideon v. Wainwright*, 372 U. S. 335 (1963). The county court denied relief because *Gideon* was "recent law and under the law at the time of his sentence, the sentence met the requirements of the law at that time." This was error since as we have often noted, *Gideon* is fully retroactive. See, e. g., *Linkletter v. Walker*, 381 U. S. 618, 639 (1965); *Desist v. United States*, 394 U. S. 244, n. 15; *McConnell v. Rhay*, 393 U. S. 2, 3 (1968); *Stovall v. Denno*, 388 U. S. 293, 297-298 (1967).

On appeal, the Georgia Supreme Court affirmed the denial of habeas corpus on different grounds, saying that petitioner did not testify at the habeas corpus hearing that he "wanted a lawyer, asked for one, or made any effort to get one" or that "because of his poverty, or any other reason, he was unable to hire a lawyer."

As this Court has said, however, "[I]t is settled that where the assistance of counsel is a constitutional requisite, the right to be furnished counsel does not depend on



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

March 31, 1971

Re: No. 6131 - Kitchens v. Smith

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

  
T.M.

Mr. Justice White

cc: The Conference

March 31, 1971

Re: No. 6131 - Kitchens v. Smith

Dear Byron:

Please join me in your proposed Per Curiam. I still wonder why Georgia doesn't try him for escape (unless, of course, for reasons unknown to me, the statute of limitations has expired).

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference