

The Burger Court Opinion Writing Database

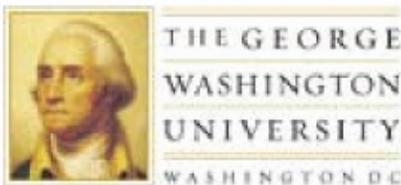
United States v. Marion

404 U.S. 307 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B
AM

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

CHAMBERS OF
THE CHIEF JUSTICE

December 6, 1971

Re: No. 70-19 - U. S. v. Marion and Cratch

Dear Byron:

Please join me.

Regards,



Mr. Justice White

cc: The Conference

3

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-19

J.
12/9/71

United States, Appellant, }
v. } On Appeal from the United
William R. Marion and } States District Court for
Samuel C. Cratch. } the District of Columbia.

[December —, 1971]

MR. JUSTICE DOUGLAS.

I assume that if the three-year delay in this case had occurred *after* the indictment had been returned, the right to a speedy trial would have been impaired and the indictment would have to be dismissed. I disagree with the Court that the guarantee does not apply if the delay was at the pre-indictment stage of a case.

From March 15, 1965, to February 6, 1967, appellees acting through Allied Enterprises, Inc., sold and installed home intercom, fire control, and burglar detection devices in the District of Columbia metropolitan area. Their business endeavors were soon met with a spate of lawsuits seeking recovery for consumer fraud and, on February 6, 1967, their brief career was ended by a cease-and-desist order entered by the Federal Trade Commission. Public notoriety continued to surround appellees' activities and, in a series of articles appearing in the Washington Post in September and October of 1967, their business was mentioned as being under investigation by the United States Attorney. The special grand jury that was empaneled on October 9, 1967, to investigate consumer fraud did not, however, return an indictment against appellees. Sometime between the summer of 1968 and January 1969, appellees delivered their business records to the United States Attorney, but an indictment was not returned against them until April 21, 1970. The

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

6/ P1

Please add
my name

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

5th DRAFT

SUPREME COURT OF THE UNITED STATES
from: Douglas, J.

No. 70-19

dated: _____

12/10/71

United States, Appellant, }
v. } On Appeal from the United
William R. Marion and } States District Court for
Samuel C. Cratch. } the District of Columbia.

[December —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN joins, concurring in result.

I assume that if the three-year delay in this case had occurred *after* the indictment had been returned, the right to a speedy trial would have been impaired and the indictment would have to be dismissed. I disagree with the Court that the guarantee does not apply if the delay was at the pre-indictment stage of a case.

From March 15, 1965, to February 6, 1967, appellees acting through Allied Enterprises, Inc., sold and installed home intercom, fire control, and burglar detection devices in the District of Columbia metropolitan area. Their business endeavors were soon met with a spate of lawsuits seeking recovery for consumer fraud and, on February 6, 1967, their brief career was ended by a cease-and-desist order entered by the Federal Trade Commission. Public notoriety continued to surround appellees' activities and, in a series of articles appearing in the Washington Post in September and October of 1967, their business was mentioned as being under investigation by the United States Attorney. The special grand jury that was empaneled on October 9, 1967, to investigate consumer fraud did not, however, return an indictment against appellees. Sometime between the summer of 1968 and January 1969, appellees delivered their business records to the United States Attorney, but an indictment was not returned against them until April 21, 1970. The

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 14, 1971

Dear Bill:

I have your suggestion in No. 70-19 -
U. S. v. Marion, and will recirculate with your
addition added.

W. O. D. *W*

Mr. Justice Brennan

*W. O. Brennan
OCT 11*

80
9/1/71

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

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-19

by: Douglas, J.

United States, Appellant,
v.
William R. Marion and
Samuel C. Cratch.

On Appeal from the United
States District Court for
the District of Columbia.

dated: _____
dated: 12/14/71

[December —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, concurring in result.

I assume that if the three-year delay in this case had occurred *after* the indictment had been returned, the right to a speedy trial would have been impaired and the indictment would have to be dismissed. I disagree with the Court that the guarantee does not apply if the delay was at the pre-indictment stage of a case.

From March 15, 1965, to February 6, 1967, appellees acting through Allied Enterprises, Inc., sold and installed home intercom, fire control, and burglar detection devices in the District of Columbia metropolitan area. Their business endeavors were soon met with a spate of lawsuits seeking recovery for consumer fraud and, on February 6, 1967, their brief career was ended by a cease-and-desist order entered by the Federal Trade Commission. Public notoriety continued to surround appellees' activities and, in a series of articles appearing in the Washington Post in September and October of 1967, their business was mentioned as being under investigation by the United States Attorney. The special grand jury that was empaneled on October 9, 1967, to investigate consumer fraud did not, however, return an indictment against appellees. Sometime between the summer of 1968 and January 1969, appellees delivered their business records to the United States Attorney, but an indictment was not returned against them until April 21, 1970. The

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

B
—
N

P. 10

To: The Chief Justice

7th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-19

Recirculated: 12-14

United States, Appellant,

v.

William R. Marion and
Samuel C. Cratch.

On Appeal from the United
States District Court for
the District of Columbia.

[December —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, concurring in result.

I assume that if the three-year delay in this case had occurred *after* the indictment had been returned, the right to a speedy trial would have been impaired and the indictment would have to be dismissed. I disagree with the Court that the guarantee does not apply if the delay was at the pre-indictment stage of a case.

From March 15, 1965, to February 6, 1967, appellees acting through Allied Enterprises, Inc., sold and installed home intercom, fire control, and burglar detection devices in the District of Columbia metropolitan area. Their business endeavors were soon met with a spate of lawsuits seeking recovery for consumer fraud and, on February 6, 1967, their brief career was ended by a cease-and-desist order entered by the Federal Trade Commission. Public notoriety continued to surround appellees' activities and, in a series of articles appearing in the Washington Post in September and October of 1967, their business was mentioned as being under investigation by the United States Attorney. The special grand jury that was empaneled on October 9, 1967, to investigate consumer fraud did not, however, return an indictment against appellees. Sometime between the summer of 1968 and January 1969, appellees delivered their business records to the United States Attorney, but an indictment was not returned against them until April 21, 1970. The

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. December 10, 1971

RE: No. 70-19 - United States v. Marion

Dear Bill:

Please join me.

Sincerely,

Bill

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 14, 1971

RE: No. 70-19 - United States v. Marion

Dear Bill:

I wonder if the point made in your opinion, which I've joined, might not be clearer if you added before the last sentence on page 10 something like the following:

"Unless appellees on remand demonstrate actual prejudice, I would agree that the prosecution might go forward."

I suggest this because I read your opinion as saying that for this crime the District Court should not have presumed prejudice from the delay and therefore that appellees must prove it. That's my view and my suggestion is made simply to reinforce it.

Sincerely,

Bill

Mr. Justice Douglas

70-19 Wm Douglas Oct 71
(Possibly missing Doc from 70-19)

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 6, 1971

70-19 - U.S. v. Marion

Dear Byron,

I am glad to join your opinion for the
Court in this case.

Sincerely yours,

P.S.
✓

Mr. Justice White

Copies to the Conference

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

1st DRAFT

From: White DEC 3 1971

SUPREME COURT OF THE UNITED STATES

Disseminated: _____

No. 70-19

Recirculated: _____

United States, Appellant, }
 v. } On Appeal from the United
William R. Marion and } States District Court for
Samuel C. Cratch. } the District of Columbia.

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal requires us to decide whether dismissal of a federal indictment was constitutionally required by reason of a period of three years between the occurrence of the alleged criminal acts and the filing of the indictment.

On April 19, 1970, the two appellees were indicted and charged in 19 counts with operating a business known as Allied Enterprises, Inc., which was engaged in the business of selling and installing home improvements such as intercom sets, fire control devices, and burglary detection system. Allegedly, the business was fraudulently conducted and involved misrepresentations, alterations of documents, and deliberate nonperformance of contracts. The period covered by the indictment was March 15, 1964, to February 6, 1967; the earliest specific act alleged occurred on September 3, 1965, the latest on January 19, 1966.

On May 5, 1970, appellees filed a motion to dismiss the indictment "for failure to commence prosecution of the alleged offenses charged therein within such time as to afford [them their] rights to due process of law and to a speedy trial under the Fifth and Sixth Amendments to the Constitution of the United States." No evidence

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

B
1/11/71

pp 11, 13, 14

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

No. 70-19

Filed: _____
Recirculated: 12-10-71

United States, Appellant, }
v. } On Appeal from the United
William R. Marion and } States District Court for
Samuel C. Cratch. } the District of Columbia.

[December —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

This appeal requires us to decide whether dismissal of a federal indictment was constitutionally required by reason of a period of three years between the occurrence of the alleged criminal acts and the filing of the indictment.

On April 19, 1970, the two appellees were indicted and charged in 19 counts with operating a business known as Allied Enterprises, Inc., which was engaged in the business of selling and installing home improvements such as intercom sets, fire control devices, and burglary detection systems. Allegedly, the business was fraudulently conducted and involved misrepresentations, alterations of documents, and deliberate nonperformance of contracts. The period covered by the indictment was March 15, 1964, to February 6, 1967; the earliest specific act alleged occurred on September 3, 1965, the latest on January 19, 1966.

On May 5, 1970, appellees filed a motion to dismiss the indictment "for failure to commence prosecution of the alleged offenses charged therein within such time as to afford [them their] rights to due process of law and to a speedy trial under the Fifth and Sixth Amendments to the Constitution of the United States." No evidence

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 13, 1971

Re: No. 70-19 - U. S. v. Marion and Cratch

Dear Bill:

Please add my name to your
concurrence.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 6, 1971

Re: No. 70-19 - U. S. v. Marion

Dear Byron:

Please join me.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference