

The Burger Court Opinion Writing Database

Humphrey v. Cady

405 U.S. 504 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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W

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

CHAMBERS OF
THE CHIEF JUSTICE

March 10, 1972

Re: No. 70-5004 - Humphrey v. Cady

Dear Thurgood:

Please join me in the above.

Regards,

WBB

Mr. Justice Marshall

cc: The Conference

CD M

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 24, 1972

Dear Thurgood:

Kindly join me in your opinion
in No. 70-5004 - Humphrey v. Cady.

It was apparently circulated
February 18, but I have just seen it.

W.W
William O. Douglas

Mr. Justice Marshall
CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 22, 1972

RE: No. 70-5004 - Humphrey v. Cady

Dear Thurgood:

I agree.

Sincerely,



Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 24, 1972

70-5004 - Humphrey v. Cady

Dear Thurgood,

I am glad to join your opinion for the Court in this case. Please forgive my delay in responding, but I have been without a secretary.

Sincerely yours,

PS
P. J.

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 10, 1972

Re: No. 70-5004 - Humphrey v. Cady

Dear Thurgood:

Please join me in your
circulation of March 9, 1972.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

To: The Chief Justice
The Associate Justices
The Justices of the Supreme Court
The Justices of the Circuit Courts
The Justices of the State Courts
The Justices of the Territorial Courts
The Justices of the Federal Courts
The Justices of the State Courts
The Justices of the Territorial Courts
The Justices of the Federal Courts

From: [Redacted]

Circulated: 2/18/72

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5004

Donald Gilbert Humphrey, Petitioner, v. Elmer O. Cady, Warden. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[February —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioner was convicted of contributing to the delinquency of a minor, a misdemeanor punishable by a maximum sentence of one year. Wis. Stat. Ann. § 947.15 (1958). In lieu of sentence, he was committed to the "sex deviate facility," located in the state prison, for a potentially indefinite period of time, pursuant to the Wisconsin Sex Crimes Act. Wis. Stat. Ann. § 959.15 (1958), as amended, Wis. Stat. Ann. c. 675 (1971). In this petition for federal habeas corpus, he seeks to challenge the constitutional validity of the statutory procedures for commitment and the conditions of his confinement. The District Court dismissed his petition without an evidentiary hearing, on the ground that (1) his claims were for the most part lacking in merit as a matter of law, and (2) his claims had been waived by his failure to present them adequately to the state courts. The Court of Appeals refused to certify probable cause for an appeal, 28 U. S. C. § 2253, relying not on the ground of waiver but solely on the

pp 6, 7, 10

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 3/9/72

No. 70-5004

Donald Gilbert Humphrey, Petitioner, v. Elmer O. Cady, Warden. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[March —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Petitioner was convicted of contributing to the delinquency of a minor, a misdemeanor punishable by a maximum sentence of one year. Wis. Stat. Ann. § 947.15 (1958). In lieu of sentence, he was committed to the "sex deviate facility," located in the state prison, for a potentially indefinite period of time, pursuant to the Wisconsin Sex Crimes Act. Wis. Stat. Ann. § 959.15 (1958), as amended, Wis. Stat. Ann. c. 975 (1971). In this petition for federal habeas corpus, he seeks to challenge the constitutional validity of the statutory procedures for commitment and the conditions of his confinement. The District Court dismissed his petition without an evidentiary hearing, on the ground that (1) his claims were for the most part lacking in merit as a matter of law, and (2) his claims had been waived by his failure to present them adequately to the state courts. The Court of Appeals refused to certify probable cause for an appeal, 28 U. S. C. § 2253, relying not on the ground of waiver but solely on the

READY TO COME
DOWN
3/16/72

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-5004

Donald Gilbert Humphrey, Petitioner,
v.
Elmer O. Cady, Warden. On Writ of Certiorari to the
United States Court of Appeals for the Seventh
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 10, 1972

Re: No. 70-5004 - Humphrey v. Cady

Dear Thurgood:

Please join me also in your circulation
of March 9.

Sincerely,



H. A. B.

Mr. Justice Marshall

cc: The Conference