

The Burger Court Opinion Writing Database

Adams v. Illinois

405 U.S. 278 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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You joined work

To: Mr. Justice Douglas
Mr. Justice E. B. Tamm
Mr. Justice M. F. Hart
Mr. Justice C. C. Wallace
Mr. Justice W. C. Van denburgh
Mr. Justice C. C. Van Dusen
Mr. Justice C. C. Wallace
Mr. Justice C. C. Van Dusen

1st DRAFT

From: [Mike](#) - Justice

SUPREME COURT OF THE UNITED STATES. Argued: MAR 2 1972

No. 70-5038

Recirculated: _____

John Adams, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of Illinois.
State of Illinois.

[March —, 1972]

MR. CHIEF JUSTICE BURGER, concurring in the result.

I concur in the result but maintain the view expressed in my dissent in *Coleman* that while counsel should be provided at preliminary hearings, there is no *constitutional* requirement that it be done. As I noted in *Coleman*, the constitutional command applies to "criminal prosecutions," not to the shifting notion of "critical stages." Nor can I join in the view that it is a function of constitutional adjudication to assure that defense counsel can "fashion a vital impeachment tool for use in cross-examination of the State's witnesses at trial" or "discover the case the State has against his client." 399 U. S., at 9. Nothing could better illustrate the extra-constitutional scope of *Coleman* than its interpretation now to explain why we do not make it "retroactive."

*Please give me
PL*

1st DRAFT

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

SUPREME COURT OF THE UNITED STATES

No. 70-5038

From: Douglas, J.

John Adams, Petitioner, } On Writ of Certiorari to the ~~the~~ *1/1/72* *✓*
v. } Supreme Court of Illinois.
State of Illinois. } ~~regulated:~~

[January —, 1972]

MR. JUSTICE DOUGLAS, dissenting.

Until *Linkletter v. Walker*, 381 U. S. 618 (1965), the Court traditionally applied new constitutional criminal procedure standards to cases finalized and police practices operative before the promulgation of the new rules.¹ *Linkletter*, however, was the cradle of a new doctrine of nonretroactivity which exempts from relief the earlier victims of unconstitutional police practices. I have disagreed on numerous occasions with applications of various brands of this doctrine and I continue my dissent in this case.² My own view is that even-handed justice requires either prospectivity only or complete retroactivity. *To me there is something inherently invidious* in the Court's, as Justice Harlan phrased it, "Simply fishing one case from the stream of appellate review, using it as a vehicle for pronouncing new constitutional standards, and the permitting a stream of similar cases subsequently to flow by unaffected by that new rule...."

¹ *E. g., Eskridge v. Washington Prison Board*, 357 U. S. 214 (1958); *Gideon v. Wainwright*, 372 U. S. 335 (1963); *Jackson v. Denno*, 378 U. S. 368 (1964), (see also *Desist v. United States*, 394 U. S. 244, 250 n. 15 (1969)); *Reck v. Pate*, 367 U. S. 433 (1961).

² *Linkletter v. Walker*, 381 U. S. 618, 640 (1965); *Tehan v. Shott*, 382 U. S. 406, 419 (1966); *Johnson v. New Jersey*, 384 U. S. 719, 736 (1966); *Stovall v. Denno*, 388 U. S. 293, 302 (1967); *DeStafano v. Woods*, 392 U. S. 631, 635 (1968); *Desist v. United States*, 394 U. S. 244, 255 (1969); *Halliday v. United States*, 394 U. S. 831 (1969); *Mackey v. United States*, 401 U. S. 667, 713 (1971).

By
A. M. Bryant
Chair

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 70-5038

John Adams, Petitioner,
v.
State of Illinois. } On Writ of Certiorari to the
Supreme Court of Illinois.

2/2/72

[January —, 1972]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE MARSHALL concurs, dissenting.

Until *Linkletter v. Walker*, 381 U. S. 618 (1965), the Court traditionally applied new constitutional criminal procedure standards to cases finalized and police practices operative before the promulgation of the new rules.¹ *Linkletter*, however, was the cradle of a new doctrine of nonretroactivity which exempts from relief the earlier victims of unconstitutional police practices. I have disagreed on numerous occasions with applications of various brands of this doctrine and I continue my dissent in this case.² My own view is that even-handed justice requires either prospectivity only³ or complete retro-

¹ E. g., *Eskridge v. Washington Prison Board*, 357 U. S. 214 (1958); *Gideon v. Wainwright*, 372 U. S. 335 (1963); *Jackson v. Denno*, 378 U. S. 368 (1964), (see also *Desist v. United States*, 394 U. S. 244, 250 n. 15 (1969)); *Reck v. Pate*, 367 U. S. 433 (1961).

² *Linkletter v. Walker*, 381 U. S. 618, 640 (1965); *Tehan v. Shott*, 382 U. S. 406, 419 (1966); *Johnson v. New Jersey*, 384 U. S. 719, 736 (1966); *Stovall v. Denno*, 388 U. S. 293, 302 (1967); *DeStafano v. Woods*, 392 U. S. 631, 635 (1968); *Desist v. United States*, 394 U. S. 244, 255 (1969); *Halliday v. United States*, 394 U. S. 831 (1969); *Mackey v. United States*, 401 U. S. 667, 713 (1971).

³ It was suggested in *Stovall v. Denno*, 388 U. S. 293, 301 (1967), that a prospective only holding would violate the Art. III requirement of case or controversy. But see *England v. Louisiana State Board of Medical Examiners*, 375 U. S. 411, 472 (1964), where the Court exempted the petitioner from its holding. See also *Johnson v. New Jersey*, 384 U. S. 719, 733 (1966).

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

1st DRAFT

From: Brennan, J.

Originalated: 1/4/72

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 70-5038

John Adams, Petitioner,
 v.
 State of Illinois. } On Writ of Certiorari to the
 Supreme Court of Illinois.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In *Coleman v. Alabama*, 399 U. S. 1 (1970), decided June 22, 1970, we held that a preliminary hearing is a critical stage of the criminal process at which the accused is constitutionally entitled to the assistance of counsel. This case presents the question whether that constitutional doctrine applies retroactively to preliminary hearings conducted prior to June 22, 1970.

The Circuit Court of Cook County, Illinois, conducted a preliminary hearing on February 10, 1967, on a charge against petitioner of selling heroin. Petitioner was not represented by counsel at the hearing. He was bound over to the grand jury, which indicted him. By pretrial motion he sought dismissal of the indictment on the ground that it was invalid because of the failure of the court to appoint counsel to represent him at the preliminary hearing. The motion was denied on May 3, 1967, on the authority of *People v. Morris*, 30 Ill. 2d 406, 197 N. E. 2d 433 (1964), where the Illinois Supreme Court held that the Illinois preliminary hearing did not constitute a critical stage so as to give the accused a constitutional right to the assistance of counsel. Petitioner's conviction was affirmed by the Illinois Supreme Court which rejected petitioner's argument that the later

by Page 7.

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

From: Breman, J.

2nd DRAFT

Circulated: _____

Recirculated: 1-25-1 ✓

SUPREME COURT OF THE UNITED STATES^{REG.}

No. 70-5038

John Adams, Petitioner, } On Writ of Certiorari to the
v. } Supreme Court of Illinois.
State of Illinois.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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The Circuit Court of Cook County, Illinois, conducted a preliminary hearing on February 10, 1967, on a charge against petitioner of selling heroin. Petitioner was not represented by counsel at the hearing. He was bound over to the grand jury, which indicted him. By pretrial motion he sought dismissal of the indictment on the ground that it was invalid because of the failure of the court to appoint counsel to represent him at the preliminary hearing. The motion was denied on May 3, 1967, on the authority of *People v. Morris*, 30 Ill. 2d 406, 197 N. E. 2d 433 (1964), where the Illinois Supreme Court held that the Illinois preliminary hearing did not constitute a critical stage so as to give the accused a constitutional right to the assistance of counsel. Petitioner's conviction was affirmed by the Illinois Supreme Court which rejected petitioner's argument that the later

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

From: Brennan, J.

3rd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Filed and Circulated: 1-26-72

No. 70-5038

John Adams, Petitioner,
v.
State of Illinois. } On Writ of Certiorari to the
Supreme Court of Illinois.

[January —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

In *Coleman v. Alabama*, 399 U. S. 1 (1970), decided June 22, 1970, we held that a preliminary hearing is a critical stage of the criminal process at which the accused is constitutionally entitled to the assistance of counsel. This case presents the question whether that constitutional doctrine applies retroactively to preliminary hearings conducted prior to June 22, 1970.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 28, 1972

MEMORANDUM TO THE CONFERENCE

RE: Cases Held for Decision in No. 70-5038 Adams v. Illinois
and No. 70-26 - Gooding v. Wilson

The Conference List for March 31 at page 10 lists eleven cases which were held for No. 70-5038, Adams v. Illinois, in which we held that Coleman v. Alabama, requiring assistance of counsel at a preliminary hearing, was not to be applied retroactively.

I would deny all eleven petitions. While some raise other questions, usually of identification under Stovall, I don't think any have merit.

Listed at page 12 is No. 70-5323, Lewis v. New Orleans, that was held for Gooding v. Wilson, which invalidated Georgia's "opprobrious words" statute. The ordinance in this case also punishes "opprobrious words." I would therefore vacate and remand for reconsideration in light of Gooding v. Wilson.

W.J.B. Jr.

Wm. Brennan

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 25, 1972

70-5038 - Adams v. Illinois

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

By

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 5, 1972

Re: No. 70-5038 - Adams v. Illinois

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 1, 1972

Re: No. 70-5038 - Adams v. Illinois

Dear Bill:

Please join me in your dissent.

Sincerely,



T.M.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 24, 1972

Re: No. 70-5038 - Adams v. Illinois

Dear Bill:

At the moment I am inclined to ask that you add the following at the conclusion of your opinion:

"Mr. Justice Blackmun concurring in the result.

Inasmuch as I feel that Coleman v. Alabama, 391 U.S. 1 (1970), was wrongly decided, I concur in the result."

Three of the others, however, have not yet voted, so please regard what I say here as subject to such writings as may be forthcoming from them.

Sincerely,

H. A. B.

Mr. Justice Brennan

cc: The Conference