

# The Burger Court Opinion Writing Database

*Smith v. Florida*

405 U.S. 172 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



122  
Supreme Court of the United States  
Washington, D. C. 20543

December 20, 1971

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

Re: No. 70-5055 -- Smith v. Florida

The above case logically should have been assigned to Bill Douglas who is writing in No. 70-5030 - Papachristou v. City of Jacksonville, and a new assignment is so made.

At Conference we voted on Smith v. Florida first and there were six votes cast to dismiss as improvidently granted, two of those with question marks.

I will leave it to Bill whether it can be a P. C. or otherwise.

Regards,

WBB



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

From: Douglas, J.

*Planned Vagrancy*  
*fact*  
 3rd DRAFT

*Recirculated: 1-2*

**SUPREME COURT OF THE UNITED STATES**

No. 70-5055

Raymond Smith and Melvin  
 McClain, Petitioners. } On Writ of Certiorari to  
 v. } the Supreme Court of  
 Florida. } Florida.

[January —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Florida's vagrancy statute<sup>1</sup> includes in the term "vagrants," who can be criminally charged and convicted, "persons wandering or strolling around from place to place without any lawful purpose or object."<sup>2</sup> The defendants were so charged and pleaded not guilty, waived trial by jury, and were tried by a judge.

There are no findings of fact. From the testimony it appears that one defendant was walking along a street about 7:30 or 8 p. m. en route to see his girl friend. He did not know the codefendant who was also walking along the same street en route with a friend to a warehouse to help the friend collect money owed him. Both defendants were employed. They were walking on a street bordering railroad yards. A special agent of a railroad saw them; and according to his testimony they crossed the street and disappeared behind some freight cars. The special agent got out of his car and approached the vicinity of the men. While he could not see them, he testified he heard noises like the clanking of metal, a scraping and squeaking sound which made him think that a freight car door was

<sup>1</sup> Fla. Stat. § 856.02. See No. 70-5030, *Papachristou v. Jacksonville*, decided this day, *ante*, — n. —.

<sup>2</sup> Section 856.02.

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4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 70-5055

Raymond Smith and Melvin  
McClain, Petitioners, } On Writ of Certiorari to  
v. } the Supreme Court of  
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<sup>1</sup> Fla. Stat. § 856.02. See No. 70-5030, *Papachristou v. Jacksonville*, decided this day, *ante*, — n. —.

<sup>2</sup> Section 856.02.

5th DRAFT

## 100. Musical Director

SUPREME COURT OF THE UNITED STATES

No. 70-5055

Recirculation: 2-18

Raymond Smith and Melvin McClain, Petitioners, v. Florida. } On Writ of Certiorari to the Supreme Court of Florida.

[January —, 1972]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Florida's vagrancy statute<sup>1</sup> includes in the term "vagrants," who can be criminally charged and convicted, "persons wandering or strolling around from place to place without any lawful purpose or object."<sup>2</sup> The defendants were so charged and pleaded not guilty, waived trial by jury, and were tried by a judge, who denied a motion to dismiss. The Florida Supreme Court affirmed, two judges dissenting. 239 So. 2d 250. The case is here on a petition for a writ of certiorari which we granted. 402 U. S. —.

We have this day decided *Papachristou v. Jacksonville, ante*, —. We therefore vacate and remand the judgment in the instant case for reconsideration in light of *Papachristou*.

*So ordered.*

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.

<sup>1</sup> Fla. Stat. § 856.02. See No. 70-5030, *Papachristou v. Jacksonville*, decided this day, *ante*, — n. —.

**2 Section S56.02.**

December 17, 1971

Dear Chief:

I note that you have assigned me a Per Curiam in No. 70-5055 - Smith v. Florida for a tentative disposition of dismissal as improvidently granted.

My notes indicate that since that statute tracks the Jacksonville ordinance in No. 70-5030 - Papachristou v. City of Jacksonville, which was assigned to Bill Douglas, the thought was that the No. 70-5055 case should be handled by the author of No. 70-5030. I think the idea was that if the ordinance was struck down the statute would suffer the same fate.

Sincerely,

WJB

The Chief Justice

Wm. Brew  
O.C.

Wm. Brew  
O.C.

(3)

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

January 31, 1972

RE: No. 70-5055 - Smith v. Florida

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc; The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 18, 1972

Re: No. 70-5055 - Smith v. Florida

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Douglas

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 1, 1972

Re: No. 70-5055 - Smith and McClain v. Florida

Dear Bill:

Please join me.

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

February 21, 1972

Re: No. 70-5055 - Smith, et al. v. Florida

Dear Bill:

Please join me in your recirculation of

February 18.

Sincerely,

*h.a.l.*

1

Mr. Justice Douglas

cc: The Conference