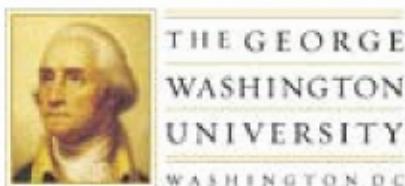


The Burger Court Opinion Writing Database

Bell v. Kentucky

407 U.S. 924 (1972)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

CHAMBERS OF
JUSTICE POTTER STEWART

January 10, 1972

70-5304 - Bell v. Kentucky

Dear Byron,

I acquiesce in the Per Curiam you propose in this case.

Sincerely yours,

PSI

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 10, 1972

MEMORANDUM TO THE CONFERENCE

Re: No. 70-5304 - Bell v. Kentucky

In the above case, I suggest a per curiam in
the following form:

The petition for certiorari is denied
for want of a final judgment "rendered by
the highest court of the State in which a
decision could be had . . ." 28 U.S.C.
§ 1258.

Sincerely,



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ON WAR, REVOLUTION AND PEACE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 18, 1972

Re: No. 70-5304 - Bell v. Kentucky

Dear Byron:

Please join me in your per curiam.

Sincerely,


T.M.

Mr. Justice White

cc: The Conference

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94936-0000



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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackman, J.

JAMES THOMAS BELL v. STATE OF KENTUCKY: 1/12/72

ON PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT
COURT OF FAYETTE COUNTY, KENTUCKY

No. 70-5304. Decided January —, 1972

MR. JUSTICE BLACKMUN, whom MR. JUSTICE DOUGLAS
joins, dissenting.

I dissent from the Court's denial of the petition for certiorari on the grounds stated, namely, for want of a final judgment rendered by the Court of Appeals of Kentucky. I do so because I conclude that any defect in the proceedings here is, at most, a minor procedural defect of the kind that does not qualify as an adequate state ground for decision barring review by the Court, and that the case is controlled by the unanimous *per curiam* holding in *Parrot v. City of Tallahassee*, 381 U. S. 129 (1965).

Apparently three steps are prescribed for the discretionary review, provided by Ky. Rev. Stat. § 21.140 (2), of a circuit court judgment that imposes a sentence of less than 12 months. The litigant first must file a timely notice of appeal in the lower court. Cr. R. 12.52 (1), (2). This was done here. Then he must timely file the record with the Court of Appeals. Cr. R. 12.58. This, too, was done here, together with a statement of appeal.* Lastly, a "motion for appeal" shall be made with the Court of Appeals at the time the record on appeal is filed. Cr. R. 12.52 (2). Because of counsel's conceded inadvertence, the formal motion for appeal in this case did not accompany the timely filing of the record on appeal. It was filed, however, six days later and before the case was considered by the Court of Appeals. The

*The same rule provides for discretionary extension of the time to file the record by the circuit court for not more than 120 days, or by the Court of Appeals itself.

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