

The Burger Court Opinion Writing Database

Schilb v. Kuebel

404 U.S. 357 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

December 2, 1971

Re: No. 70-90 - Schilb v. Kuebel

Dear Harry:

Please join me in your opinion.

Regards,
W. B.

Mr. Justice Blackmun

cc: The Conference

11
Cir

3rd

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12/1/71

SUPREME COURT OF THE UNITED STATES

No. 70-90

John Schilb et al., Appellants.
 v.
 Vincent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

Memorandum from MR. JUSTICE DOUGLAS.

Appellant John Schilb brought this class action on behalf of all criminal defendants against whom the Clerk of the Circuit Court of St. Clair County, Illinois, had assessed fees of 10% of the amounts deposited as bail bonds. At issue was Ill. Stat. Ann. c. 38, § 100-7 (a) (Supp. 1971), which allowed a defendant to be released from custody upon "deposit with the clerk of the court . . . a sum of money equal to 10% of the bail" which had been set by the court. Appellant challenged, under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, the provision that "the clerk of the court . . . retain as bail bond costs 10% of the amount [so] deposited." *Id.* § 110-7 (f). He argued that this was an unconstitutional discrimination because bail bond costs were not imposed upon those who were released on their personal recognizance, *id.* § 110-2 (1970), or those who deposited cash or other security in the full amount of the bail bond. *Id.* § 110-8.

The Circuit Court found the statute constitutional and dismissed the complaint. The Supreme Court of Illinois affirmed the judgment, 46 Ill. 2d 538, 264 N. E. 2d 377; we noted probable jurisdiction, 402 U. S. 928.

The commercial bailbondsman has long been an anathema to the criminal defendant seeking to exercise his right to pretrial release. In theory, courts were to set such amounts and conditions of bonds as were necessary

70-90
Wm. Douglas
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12/7/71

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-90

John Schilb et al., Appellants.
v.
Vinecent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

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70-90
Wm. Douglas
Oct 71

31-7-89
4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-90

John Schilb et al., Appellants.
v.
Vincent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

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in

12/16/71

SUPREME COURT OF THE UNITED STATES

No. 70-90

John Schilb et al., Appellants.
v.
Vincent P. Kuebel, Etc. } On Appeal from the Su-
preme Court of Illinois.

[December 20, 1971]

MR. JUSTICE DOUGLAS, dissenting.

Appellant John Schilb brought this class action on behalf of all criminal defendants against whom the Clerk of the Circuit Court of St. Clair County, Illinois, had assessed fees of 10% of the amounts deposited as bail bonds. At issue was Ill. Stat. Ann. c. 38, § 100-7 (a) (Supp. 1971), which allowed a defendant to be released from custody upon "deposit with the clerk of the court . . . a sum of money equal to 10% of the bail" which had been set by the court. Appellant challenged, under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, the provision that "the clerk of the court . . . retain as bail bond costs 10% of the amount [so] deposited." *Id.* § 110-7 (f). He argued that this was an unconstitutional discrimination because bail bond costs were not imposed upon those who were released on their personal recognizance, *id.* § 110-2 (1970), or those who deposited cash or other security in the full amount of the bail bond. *Id.* § 110-8.

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Douglas
Dec 21

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 1, 1971

RE: No. 70-90 - Schilf, et al. v. Kuebel, etc.

Dear Potter:

Your memorandum expresses my view,
both of result and rationale.

Sincerely,



Mr. Justice Stewart

cc: The Conference

13
To: The Clerk Supreme
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Mr. Stewart, J.

No. 70-90

Argued, 11/30/71

John Schilb et al., Appellants.
v.
Vincent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

Memorandum of MR. JUSTICE STEWART.

In 1963, Illinois enacted new provisions governing bail in criminal cases. Ill. Rev. Stat. 1963, c. 38, Art. 110. These enactments provide that a person charged with a criminal offense may obtain pretrial release in one of four ways.

(1) The accused may be released on his own recognizance. Persons in this class do not pay any costs to cover the administration of their release. Art. 110, § 2.

(2) The accused may deposit 10% of the full amount of the bail that has been set. Art. 110, § 7. When bail is made in this manner, the clerk of the court ultimately retains as bail costs 1% of the full amount of bail (10% of the amount actually deposited). Art. 110, § 7 (f).

(3) The accused may offer cash, stocks or bonds in an amount equivalent to the required bail. No administrative costs are imposed. Art. 110, § 8 (a)(1).

(4) The accused may secure double the amount of required bail in unencumbered real estate. Again, no administrative costs are imposed. Art. 110, §§ 8 (a)(2) and 8 (f).

A person must satisfy a judge that he meets certain criteria to be eligible for release on his own recognizance. Otherwise the State allows individuals to choose freely among the three other methods of obtaining pretrial release (assuming the individual has the wherewithal to make a choice).

PP. 3,6

To: The Chief Justice
 Mr. Justice Black
 Mr. Justice Brennan
 Mr. Justice White
 Mr. Justice Douglas
 Mr. Justice Marshall
 Mr. Justice Brandeis
 Mr. Justice Harlan
 Mr. Justice Frankfurter

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

No. 70-90

Circulated: _____

John Schilb et al., Appellants,
 v.
 Vincent P. Kuebel, Etc. } On Appeal from the Su-
 preme Court of Illinois.

Recirculated: 12/17/71

[December 20, 1971]

MR. JUSTICE STEWART, with whom MR. JUSTICE BRENNAN concurs, dissenting.

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(1) The accused may be released on his own recognizance. Persons in this class do not pay any costs to cover the administration of their release. Art. 110, § 2.

(2) The accused may deposit 10% of the full amount of the bail that has been set. Art. 110, § 7. When bail is made in this manner, the clerk of the court ultimately retains as bail costs 1% of the full amount of bail (10% of the amount actually deposited). Art. 110, § 7 (f).

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(4) The accused may secure double the amount of required bail in unencumbered real estate. Again, no administrative costs are imposed. Art. 110, §§ 8 (a)(2) and 8 (f).

A person must satisfy a judge that he meets certain criteria to be eligible for release on his own recognizance. Otherwise the State allows individuals to choose freely among the three other methods of obtaining pretrial release (assuming the individual has the wherewithal to make a choice).

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 13, 1971

Re: No. 70-90 - Schilb v. Kuebel

Dear Harry:

I am inclined to be with you in this case. I don't have too much trouble distinguishing between those putting up 10% and those putting up the full amount of the bail. Those released on personal recognizance are harder, but it was my understanding that the charges were imposed to reimburse the State for the extra work imposed by the bail reform legislation as compared to the State's burden under the old law. People released on personal recognizance file bonds which the State must take, hold and attempt to recover on in case of default. This obviously is a burden but it is no more a burden than what the State assumed under the old law where a person was released on his personal bond. If this is so, this category represents no extra expense to the State but the 10% group does.

Sincerely,



Mr. Justice Blackmun

⑤
NW
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 15, 1971

Re: No. 70-90 - Schilb v. Kuebel

Dear Harry:

Please join me in your
memorandum recirculated December 15,
1971.

Sincerely,

Byron

Mr. Justice Blackmun

Copies to Conference

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

1st DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 12/16/71

No. 70-90

Recirculated: _____

John Schilb et al., Appellants.
v.
Vincent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

MR. JUSTICE MARSHALL, concurring.

I join the opinion of the Court with a few additional words.

All agree that the central purpose of the statute was to restrict severely the activities of professional bail bondsmen who had customarily collected 10% of the amount of each bond as a fee and retained all of it regardless of what happened. All agree that the new scheme is, in general, an admirable attempt to reduce the cost of liberty for those awaiting trial.

The new scheme dealt only with the class of which petitioner was a member—those persons charged with crimes who under the old system were relegated to professional bondsmen who along with other requirements charged a 10% fee for the bond regardless of the outcome of the case. This is the only class affected by the new scheme. Members of this class now pay 1% instead of 10%. In the evolving struggle for meaningful bail reform I cannot find the present Illinois move toward that objective to be unconstitutional.

Wm Douglas Oct 71

70-90

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

 No. 70-90

From: Blackmun, J.

circulated: 11/30/71

John Schilb et al., Appellants, *v.* _____

 Vincent P. Kuebel, Etc. } On Appeal from the Supreme Court of Illinois.

[December —, 1971]

Memorandum by MR. JUSTICE BLACKMUN.

John Schilb of Belleville, Illinois, was arrested on January 16, 1969, and charged (a) with leaving the scene of an automobile accident and (b) with obstructing traffic. In order to gain his liberty pending trial, and in accord with the Illinois bail statutes hereinafter described, Schilb deposited \$75 in cash with the clerk of the court. This amount was 10% of the aggregate bail fixed on the two charges (\$500 on the first and \$250 on the second). At his ensuing trial Schilb was acquitted on the charge of leaving the scene, but was convicted of traffic obstruction. When he paid his fine, the amount Schilb had deposited was returned to him decreased, however, by \$7.50 retained as "bail bond costs" by the court clerk pursuant to the statute. The amount so retained was 1% of the specified bail and 10% of the amount actually deposited.

Schilb, by this purported state class action against the court clerk, the county, and the county treasurer, attacks the statutory 1% charge on Fourteenth Amendment due process and equal protection grounds.¹ The Circuit Court of Saint Clair County upheld the statute and dismissed the complaint. The Supreme Court of

¹ Schilb also attacked the statute as violative of Article II, §§ 2 and 19, of the Illinois Constitution of 1870 (now Article I, §§ 2 and 12, respectively of the State's 1970 Constitution).

Wm Douglas Oct 71

70-90

S-1
P-9
*and stylistic
changes throughout*

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

2nd DRAFT

From: Blackmun, J.

No. 70-90

Circulated:

Recirculated: 12/15/71

John Schilb et al., Appellants,
v.
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