

The Burger Court Opinion Writing Database

Parisi v. Davidson

405 U.S. 34 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



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

CHAMBERS OF
THE CHIEF JUSTICE

January 21, 1972

Dear Potter:

Re: No. 70-91 - Parisi v. Davidson

Please join me.

Regards,

WSB

Mr. Justice Stewart

cc: The Conference

31/2
The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice ~~Rehnquist~~

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-91

Joseph Parisi, Petitioner,
v.
Philip B. Davidson,
Etc., et al. } On Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit.

[February —, 1972]

MR. JUSTICE DOUGLAS, concurring.

I agree with the Court's view that habeas corpus is an overriding remedy to test the jurisdiction of the military to try or to detain a person. The classic case is *Ex parte Milligan*, 4 Wall. 2, where habeas corpus was issued on behalf of a civilian tried and convicted in Indiana by a military tribunal. During the Civil War all civil courts in that State were open and federal authority had always been unopposed. While the President and the Congress had "suspended" the writ, *id.*, at 115, the suspension, said the Court, went no further than to relieve the military from producing in the habeas corpus court the person held or detained. "The Constitution goes no further. It does not say after a writ of habeas corpus is denied a citizen, that he should be tried otherwise than by the course of the common law; if it had intended that result, it was easy by the use of direct words to have accomplished it." *Id.*, at 126.

Chief Justice Taney in *Ex parte Merryman*, 17 Fed. Cas. 144, decided in 1861, held that the President alone had no authority to suspend the writ, a position that Lincoln did not honor. Today, the question has never been resolved, and its decision is not relevant to the present case. I mention the matter because of the constitutional underpinning of the writ of habeas corpus. Article I of the Constitution in describing the powers

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. January 11, 1972

RE: No. 70-91 - Parisi v. Davidson, et al.

Dear Potter:

I'm very happy to join the fine opinion
you have written in this case.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

(2)
Please return 2/1
To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Blackman
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

FRANCIS P. DURR, J.

No. 70-91

Circulated: JAN 10 1972

Joseph Parisi, Petitioner,

v.

Philip B. Davidson,
Etc., et al.

Recirculated: _____

On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

[January —, 1972]

MR. JUSTICE STEWART delivered the opinion of the Court.

When a member of the armed forces has applied for a discharge as a conscientious objector and has exhausted all avenues of administrative relief, it is now settled that he may seek habeas corpus relief in a federal district court on the ground that the denial of his application had no basis in fact. The question in this case is whether the district court must stay its hand when court-martial proceedings are pending against the serviceman.

The petitioner, Joseph Parisi, was inducted into the Army as a draftee in August 1968. Nine months later he applied for discharge as a conscientious objector, claiming that earlier doubts about military service had crystallized into a firm conviction that any form of military activity conflicted irreconcilably with his religious beliefs. He was interviewed by the base chaplain, the base psychiatrist, and a special hearing officer. They all attested to the petitioner's sincerity and to the religious content of his professed beliefs. In addition, the commanding general of the petitioner's Army training center and the commander of the Army hospital recommended that the petitioner be discharged as a conscientious

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated:

No. 70-91

Recirculated: JAN 11 1972

Joseph Parisi, Petitioner. }
v. } On Writ of Certiorari to the
Philip B. Davidson, } United States Court of Ap-
Etc., et al. } peals for the Ninth Circuit.

[January —, 1972]

Mr. JUSTICE STEWART delivered the opinion of the Court.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

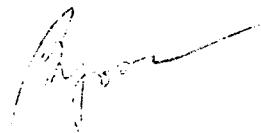
January 12, 1972

Re: No. 70-91 - Parisi v. Davidson

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 18, 1972

Re: No. 70-91 - Parisi v. Davidson

Dear Potter:

Please join me.

Sincerely,


T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

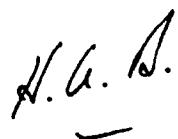
January 20, 1972

Re: No. 70-91 - Parisi v. Davidson

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference