

# The Burger Court Opinion Writing Database

*Santobello v. New York*

404 U.S. 257 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



B

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

No. 70-98 - Santobello v. New York

From: The United States  
Date: Oct 3 1971  
Circumstances:

Releasable:

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether the state's failure to keep a commitment concerning the sentence recommendation on a guilty plea required a new trial.

The facts are not in dispute. The State of New York indicted petitioner in 1969 on two felony counts, Promoting Gambling in the First Degree, and Possession of Gambling Records in the First Degree, N.Y. Penal Law §§ 225.10, 225.20. Petitioner first entered a plea of not guilty to both counts. After negotiations, the Assistant District Attorney in charge of the case agreed to permit petitioner to plead guilty to a lesser included offense, Possession of Gambling Records in the Second Degree, N.Y. Penal Law §225.15, conviction of which would carry a maximum prison sentence of one year. The prosecutor agreed to make no recommendation as to the sentence.

On June 16, 1969, petitioner accordingly withdrew his plea of not guilty and entered a plea of guilty to the lesser charge. Petitioner

Wm Douglas

Oct 71

70-98

To: Mr. Justice Douglas  
Mr. Justice Frankfurter  
Mr. Justice Harlan  
Mr. Justice Black  
Mr. Justice Frank Murphy  
Mr. Justice Sutherland  
Mr. Justice Brandeis  
Mr. Justice Cardozo

*Printed*  
1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No 70-98

Recirculated;

DEC 12 1971

Rudolph Santobello, Petitioner,  
v.  
New York.

On Writ of Certiorari  
to Appellate Division  
of the Supreme Court  
of New York, First  
Judicial Department.

[December —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether the State's failure to keep a commitment concerning the sentence recommendation on a guilty plea required a new trial.

The facts are not in dispute. The State of New York indicted petitioner in 1969 on two felony counts, Promoting Gambling in the First Degree, and Possession of Gambling Records in the First Degree, N. Y. Penal Law §§ 225.10, 225.20. Petitioner first entered a plea of not guilty to both counts. After negotiations, the Assistant District Attorney in charge of the case agreed to permit petitioner to plead guilty to a lesser included offense, Possession of Gambling Records in the Second Degree, N. Y. Penal Law § 225.15, conviction of which would carry a maximum prison sentence of one year. The prosecutor agreed to make no recommendation as to the sentence.

On June 16, 1969, petitioner accordingly withdrew his plea of not guilty and entered a plea of guilty to the lesser charge. Petitioner represented to the sentencing judge that the plea was voluntary and that the facts of the case, as described by the Assistant District Attorney, were true. The court accepted the plea and set a date

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 16, 1971

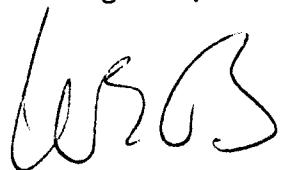
Re: No. 70-98 - Santobello v. New York

MEMORANDUM TO THE CONFERENCE:

I propose to substitute the enclosed for the two full paragraphs on page 6 of the above opinion -- those preceding the dispositive sentence.

This will give the state court an appropriate measure of choice and it may affect the partial dissents so far circulated.

Regards,

A handwritten signature in black ink, appearing to read "WBS".

Re: No. 70-98 - Santobello v. New York

We need not reach the question whether the sentencing Judge would or would not have been influenced had he known all the details of the negotiations for the plea. He stated that the prosecutor's recommendation did not influence him and we have no reason to doubt that. Nevertheless, we conclude that the interests of justice and appropriate recognition of the duties of the prosecution in relation to promises made in the negotiation of pleas of guilty will be best served by remanding the case to the state courts for further consideration. The ultimate relief to which petitioner is entitled is left to the discretion of the state court which is in a better position to decide whether the circumstances of this case require only that there be specific performance of the agreement on the plea, in which case petitioner should be resentenced before a different judge, or whether, in the view of the state court, the circumstances require granting the relief sought by petitioner, i.e., the opportunity to withdraw his plea of guilty. We emphasize that this is in no sense to question the fairness of the sentencing judge; the fault here rests on the prosecutor, not on the sentencing judge.

The case is remanded for reconsideration not inconsistent with this opinion.

To: Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Clark  
Mr. Justice Harlan  
Mr. Justice Clark  
Mr. Justice Harlan

3rd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

## **STATES** Chartered:

No 70-98

Recirculated: REF 17-571

Rudolph Santobello, Petitioner, v. New York, } On Writ of Certiorari to Appellate Division of the Supreme Court of New York, First Judicial Department.

[December —, 1971]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to determine whether the State's failure to keep a commitment concerning the sentence recommendation on a guilty plea required a new trial.

The facts are not in dispute. The State of New York indicted petitioner in 1969 on two felony counts. Promoting Gambling in the First Degree, and Possession of Gambling Records in the First Degree, N. Y. Penal Law §§ 225.10, 225.20. Petitioner first entered a plea of not guilty to both counts. After negotiations, the Assistant District Attorney in charge of the case agreed to permit petitioner to plead guilty to a lesser included offense, Possession of Gambling Records in the Second Degree, N. Y. Penal Law § 225.15, conviction of which would carry a maximum prison sentence of one year. The prosecutor agreed to make no recommendation as to the sentence.

On June 16, 1969, petitioner accordingly withdrew his plea of not guilty and entered a plea of guilty to the lesser charge. Petitioner represented to the sentencing judge that the plea was voluntary and that the facts of the case, as described by the Assistant District Attorney, were true. The court accepted the plea and set a date

②  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

December 17, 1971

Re: No. 70-98 - Santobello v. New York

MEMORANDUM TO THE CONFERENCE:

It seems desirable to add the following footnote to the penultimate sentence of the opinion as revised by yesterday's memo:

1 If the state court decides to allow withdrawal of the plea, the petitioner will, of course, plead anew to the original charge on two felony counts.

This will make clear what the options are.

Regards,

WEB

P. S. -- I am not undertaking to get this down for Monday necessarily. --WEB

9M  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 3, 1971

Dear Chief:

I join your opinion in No. 70-98 -

Santabell v. New York.

W. O. D.

The Chief Justice

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

December 9, 1971

Dear Thurgood:

In your opinion in No. 70-98 - Santobello v. New York, would you mind changing the last two lines of your opinion to read that the petitioner be "given an opportunity to replead to the original charges in the indictment or to ask for specific performance of the plea bargain."

Before us, he asked for a chance to replead and go to trial. But there are many slips between cup and lip and he or his counsel may in the end want a choice. I see no reason why he should not be given the option, do you?

William O. Douglas

Mr. Justice Marshall

To: The Chief Justice

Mr. and Mrs. E. B. Black

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 70-98

12-14

Rudolph Santobello, Petitioner,  
v.  
New York. } On Writ of Certiorari to Appellate Division  
of the Supreme Court of New York, First  
Judicial Department.

[December —, 1971]

MR. JUSTICE DOUGLAS.

I agree both with THE CHIEF JUSTICE and with MR. JUSTICE MARSHALL that New York did not keep its "plea bargain" with petitioner and that it is no excuse for the default merely because a member of the prosecutor's staff who was not a party to the "plea bargain" was in charge of the case when it came before the New York court. The staff of the prosecution is a unit and each member must be presumed to know the commitments made by any other member. If responsibility could be evaded that way, the prosecution would have designed another deceptive "contrivance," kin to those we condemned in *Mooney v. Holohan*, 294 U. S. 103, 112, and *Napue v. Illinois*, 360 U. S. 264.

These "plea bargains" are important in the administration of justice both at the state<sup>1</sup> and at the federal<sup>2</sup>

<sup>1</sup> In 1964, guilty pleas accounted for 95.5% of all criminal convictions in trial courts of general jurisdiction in New York. In 1965, the figure for California was 74.0%. President's Task Force on Law Enforcement, *The Courts* 9 (1967).

<sup>2</sup> In 1964, guilty pleas accounted for 90.2% of all criminal convictions in United States district courts. President's Task Force on Law Enforcement, The Courts 9 (1967). In fiscal 1970, of 28,178 convictions in the 89 United States district courts, 24,111 were by pleas of guilty or *nolo contendere*. Annual Report, Administrative Office of the United States Courts, Fiscal Year 1970.

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

# 5

3rd DRAFT

From: Douglas

SUPREME COURT OF THE UNITED STATES

No. 70-98

Recirculated 12-15

Rudolph Santobello, Petitioner, } On Writ of Certiorari  
v. } to Appellate Division  
New York. } of the Supreme Court  
of New York, First  
Judicial Department.

[December —, 1971]

MR. JUSTICE DOUGLAS.

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W  
M, 4  
12/17/71

Justice  
Justice Black  
Justice Harlan  
Justice Brennan  
Justice Stewart  
Justice White  
Chief Justice

# SUPREME COURT OF THE UNITED STATES

No. 70-98

Rudolph Santobello, Petitioner, v. New York. } On Writ of Certiorari to Appellate Division of the Supreme Court of New York, First Judicial Department.

[December 20, 1971]

MR. JUSTICE DOUGLAS, concurring.

I join the opinion of the Court and add only a word. I agree both with THE CHIEF JUSTICE and with MR. JUSTICE MARSHALL that New York did not keep its "plea bargain" with petitioner and that it is no excuse for the default merely because a member of the prosecutor's staff who was not a party to the "plea bargain" was in charge of the case when it came before the New York court. The staff of the prosecution is a unit and each member must be presumed to know the commitments made by any other member. If responsibility could be evaded that way, the prosecution would have designed another deceptive "contrivance," kin to those we condemned in *Mooney v. Holohan*, 294 U. S. 103, 112, and *Napue v. Illinois*, 360 U. S. 264.

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<sup>1</sup> In 1964, guilty pleas accounted for 93.5% of all criminal convictions in trial courts of general jurisdiction in New York. In 1965, the figure for California was 74.0%. President's Task Force on Law Enforcement, *The Courts* 9 (1967).

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

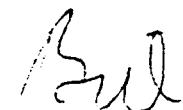
December 7, 1971

RE: No. 70-98 - Santobello v. New York

Dear Thurgood:

Please add me to your dissent in the  
above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

Wm Douglas Oct 71  
70-98

*B* *T*  
Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

December 7, 1971

70-98 - Santobello v. New York

Dear Thurgood,

Your separate opinion reflects the views I expressed about this case at the Conference, and I am glad to join it.

Sincerely yours,

*P.S.*  
*T.Y.*

Mr. Justice Marshall

Copies to the Conference

B A

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

December 3, 1971

Re: No. 70-98 - Santobello v. N.Y.

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No 70-98

Rudolph Santobello. Petitioner. } On Writ of Certiorari  
v. } to Appellate Division  
New York. } of the Supreme Court  
of New York, First  
Judicial Department.

[December —, 1971]

MR. JUSTICE MARSHALL, dissenting.

I agree with much of the majority's opinion, but conclude that petitioner must be permitted to withdraw his guilty plea. This is the relief petitioner requested, and, on the facts set out by the majority, it is a form of relief to which he is entitled.

There is no need to belabor the fact that the Constitution guarantees to all criminal defendants the right to a trial by judge or jury, or, put another way, the "right not to plead guilty," *United States v. Jackson*, 390 U. S. 570, 581 (1968). This and other federal rights may be waived through a guilty plea, but such waivers are not lightly presumed and, in fact, are viewed with the "utmost solicitude." *Boykin v. Alabama*, 395 U. S. 238, 243 (1969). Given this, I believe that where the defendant presents a reason for vacating his plea and the government has not relied on the plea to its disadvantage, the plea may be vacated and the right to trial regained, at least where the motion to vacate is made prior to sentence and judgment. In other words, in such circumstances I would not deem the earlier plea to have irrevocably waived the defendant's federal constitutional right to a trial.

Here, petitioner never claimed any automatic right to withdraw a guilty plea before sentencing. Rather, he

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No 70-98

Recirculated: 12/14

Rudolph Santobello, Petitioner, v. New York. } On Writ of Certiorari to Appellate Division of the Supreme Court of New York, First Judicial Department.

[December —, 1971]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join.

I agree with much of the majority's opinion, but conclude that petitioner must be permitted to withdraw his guilty plea. This is the relief petitioner requested, and, on the facts set out by the majority, it is a form of relief to which he is entitled.

There is no need to belabor the fact that the Constitution guarantees to all criminal defendants the right to a trial by judge or jury, or, put another way, the "right not to plead guilty." *United States v. Jackson*, 390 U. S. 570, 581 (1968). This and other federal rights may be waived through a guilty plea, but such waivers are not lightly presumed and, in fact, are viewed with the "utmost solicitude." *Boykin v. Alabama*, 395 U. S. 238, 243 (1969). Given this, I believe that where the defendant presents a reason for vacating his plea and the government has not relied on the plea to its disadvantage, the plea may be vacated and the right to trial regained, at least where the motion to vacate is made prior to sentence and judgment. In other words, in such circumstances I would not deem the earlier plea to have irrevocably waived the defendant's federal constitutional right to a trial.

SUPREME COURT OF THE UNITED STATES

No 70-98

Rudolph Santobello, Petitioner, v. New York. } On Writ of Certiorari to Appellate Division of the Supreme Court of New York, First Judicial Department.

[December 20, 1971]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN and MR. JUSTICE STEWART join, concurring in part and dissenting in part.

I agree with much of the majority's opinion, but conclude that petitioner must be permitted to withdraw his guilty plea. This is the relief petitioner requested, and, on the facts set out by the majority, it is a form of relief to which he is entitled.

There is no need to belabor the fact that the Constitution guarantees to all criminal defendants the right to a trial by judge or jury, or, put another way, the "right not to plead guilty." *United States v. Jackson*, 390 U. S. 570, 581 (1968). This and other federal rights may be waived through a guilty plea, but such waivers are not lightly presumed and, in fact, are viewed with the "utmost solicitude." *Boykin v. Alabama*, 395 U. S. 238, 243 (1969). Given this, I believe that where the defendant presents a reason for vacating his plea and the government has not relied on the plea to its disadvantage, the plea may be vacated and the right to trial regained, at least where the motion to vacate is made prior to sentence and judgment. In other words, in such circumstances I would not deem the earlier plea to have irrevocably waived the defendant's federal constitutional right to a trial.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

December 6, 1971

Re: No. 70-98 - Santobello v. New York

Dear Chief:

Please join me.

Sincerely,

*H. A. B.*

The Chief Justice:

cc: The Conference

December 17, 1971

Re: No. 70-98 - Santobello v. New York

Dear Chief:

The substitute material you propose for page 6 of your opinion certainly meets with my approval.

I have only one possible suggestion. In the fifth line from the bottom, after the words "to withdraw his plea of guilty" would it be advisable to add something like "and to plead again to the two felonies charged by the indictment"? I suggest this only because I would not want any misunderstanding, or later claim, that Santobello's choice now is only between pleading guilty or not guilty to the lesser misdemeanor offense. Perhaps all this is clear enough, but I am not so sure.

Sincerely,

HAB

The Chief Justice