The Burger Court Opinion Writing Database

Mancusi v. Stubbs

408 U.S. 204 (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

June 15, 1972

CHAMBERS OF
THE CHIEF JUSTICE

No. 71-237 -- Mancusi v. Stubbs

Dear Bill:

Please join me in your opinion.

Regards,

WEB

Mr. Justice Rehnquist

Copies to Conference

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

June 15, 1972

CHAMBERS OF
THE CHIEF JUSTICE

No. 71-237 -- Mancusi v. Stubbs

Dear Bill:

Please join me in your opinion.

Regards,

WEB

Mr. Justice Rehnquist

Copies to Conference

P.S. Bill: I like your short and to the point opinion in this case, but I find that there may be a slight break in the narrative which has nothing to do with either the result or the validity of the opinion. As I read it, the first time that the opinion treats the question of the absurd arguments made by Stubbs, some metamorphosis in the relationship between himself and the Holms had occurred. It seems to me at some earlier point in the opinion, perhaps just preceding the paragraph on page 10 where this occurs, there should be some statement to the effect that in this case Stubbs makes the claim that after admittedly kidnapping Mr. and Mrs. Holms he struck up a friendship with them, and that the kidnapping criminality had vanished by the time of the alleged accidental shooting.

The validity of that bizarre claim has, of course, been evaluated by the jury, and the only claim Stubbs makes is that the jury's consideration was unaided by an adequate cross-examination of Mr. Holms.

My point is that with this subject first appearing in the opinion in the final sentence of the first full paragraph, page 10, it will not have the benefit of any prior recital of facts or explication of his absurd claim.

If this is covered in fact, and my hasty reading has missed it, please disregard all this.

WEB

B

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 13, 1972

Dear Bill:

In No. 71-237 - Mancusi v. Stubbs, I acquiesce in the opinion and will go along subject to reexamination as, if, and when a dissent is written.

W. O. D.

Mr. Justice Rehnquist

cc: Conference

B

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 21, 1972

Dear Justice Rehnquist:

Re: No. 71-237 - Mancusi v. Stubbs

Mr. Justice Douglas would like you to hold this case until next week so that he will have an opportunity to read Mr. Justice Marshall's dissent which he has not yet seen.

Kenneth R. Reed
Law Clerk

Mr. Justice Rehnquist

CC: The Conference

PRINTED

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-237

Vincent R. Mancusi, Warden, Petitioner, *v.* William C. Stubbs. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 22, 1972]

MR. JUSTICE MARSHALL, dissenting.

I

I would dismiss the writ in this case as improvidently granted. The question presented to the courts below concerns the constitutional validity of a 1964 Tennessee conviction. The New York courts had relied on that conviction to sentence respondent as a multiple offender, after his conviction in 1966 for a New York offense. It was conceded at oral argument, however, that New York has no present interest whatever in that Tennessee conviction. For after the United States Court of Appeals held that it was constitutionally defective, New York substituted for the Tennessee conviction an earlier Texas conviction, and reinstated precisely the same enhanced sentence it had previously imposed.[1]

[1] Under the then-applicable New York sentencing statute, former N. Y. Penal Law § 1941, one prior conviction was sufficient to trigger the recidivist sentencing provisions, and Stubbs received the maximum authorized recidivist sentence. New York has subsequently amended its law to increase the maximum recidivist sentence, and to provide that two prior convictions are necessary to trigger the recidivist statute, N. Y. Penal Law § 70.10. The new provisions do not, however, apply to this case, because the underlying New York conviction here was obtained before the effective date of the new statute. N. Y. Penal Law § 5.05.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 22, 1972

Dear Thurgood:

Please join me in Part II of your dissent in No. 71-237 - Mancusi v. Stubbs.

William O. Douglas

Mr. Justice Marshall

CC: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1972

RE: No. 71-237 - Mancusi v. Stubbs

Dear Bill:

You'll recall I thought in light of the resentencing that we didn't have to reach the basic question. Your opinion, however, persuades me and I am happy to join.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1972

71-237 - Mancusi v. Stubbs

Dear Bill,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1972

Re: No. 71-237 - Mancusi v. Stubbs

Dear Bill:

My vote was to dismiss, otherwise to affirm. But I am not inclined myself to dissent from what you have written. Subject to what others may write, I acquiesce.

Sincerely,

Mr. Justice Rehnquist

Copies to Conference

circ
6-16-72

No. 71-237 Mancusi v. Stubbs

Mr. Justice Marshall, dissenting.

I

I would dismiss the writ in this case as improvidently granted. The question presented to the courts below concerns the constitutional validity of a 1964 Tennessee conviction. The New York courts had relied on that conviction to sentence respondent as a multiple offender, after his conviction in 1966 for a New York offense. It was conceded at oral argument, however, that New York has no present interest whatever in that Tennessee conviction. For after the United States Court of Appeals held that it was constitutionally defective, New York substituted for the Tennessee conviction an earlier Texas conviction, and reinstated precisely the same enhanced sentence it had previously imposed.

The Court reasons that New York may in the future wish to rely on the Tennessee conviction again, if the Texas conviction should prove to have defects of its own. But that possibility is too remote and speculative to keep this controversy alive, and it is certainly too remote and speculative to warrant invoking the certiorari jurisdiction of this Court. This Court has regularly refused to adjudicate the claims of litigants who urge that illegal government action may in the future harm them. E.g., Laird v. Tatum, ___ US ___ (1972); SEC v. Medical Committee, ___ U.S. ___ (1972). Indeed, this case is virtually indistinguishable from SEC in that respect. The only explanation for the Court's contrary conclusion is that it regards the Texas conviction

pp. 1-3 & footnotes 1-4

No. 71-237 - Mancusi v. Stubbs

MR. JUSTICE MARSHALL, dissenting.

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: Marshall, J.

Circulated:

Recirculated: JUN 20 1972

I

I would dismiss the writ in this case as improvidently granted. The question presented to the courts below concerns the constitutional validity of a 1964 Tennessee conviction. The New York courts had relied on that conviction to sentence respondent as a multiple offender, after his conviction in 1966 for a New York offense. It was conceded at oral argument, however, that New York has no present interest whatever in that Tennessee conviction. For after the United States Court of Appeals held that it was constitutionally defective, New York substituted for the Tennessee conviction an earlier Texas conviction, and reinstated precisely the same enhanced sentence it had previously imposed.[1/]

In determining that this case is nevertheless appropriate for adjudication here, the Court seems to rely on two separate factors. First, it argues that the event that seems to moot the case--the resentencing--was merely the State's obedience to the unfavorable judgment below, and for that reason cannot moot the controversy. And second, it argues that the Texas conviction, and the resentencing based on it, may prove to have defects of its own, in which case New York may wish to rely once more on the Tennessee conviction.

The first proposition falls wide of the mark in this case. It is well established that an unsuccessful litigant does not moot his case by complying with an unfavorable judgment pending the disposition of his appeal. Thus, a debtor does not moot his case by paying the judgment against him pendente lite. Dakota County v. Glidden, 113 U.S. 222 (1885). And if a union is

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

From: Marshall, J.

Circulated: _____

Recirculated: JUN 2 1 1972

PRINTED

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-237

Vincent R. Mancusi, Warden, Petitioner, *v.* William C. Stubbs.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 22, 1972]

MR. JUSTICE MARSHALL, dissenting.

I

I would dismiss the writ in this case as improvidently granted. The question presented to the courts below concerns the constitutional validity of a 1964 Tennessee conviction. The New York courts had relied on that conviction to sentence respondent as a multiple offender, after his conviction in 1966 for a New York offense. It was conceded at oral argument, however, that New York has no present interest whatever in that Tennessee conviction. For after the United States Court of Appeals held that it was constitutionally defective, New York substituted for the Tennessee conviction an earlier Texas conviction, and reinstated precisely the same enhanced sentence it had previously imposed.[1]

[1] Under the then-applicable New York sentencing statute, former N. Y. Penal Law § 1941, one prior conviction was sufficient to trigger the recidivist sentencing provisions, and Stubbs received the maximum authorized recidivist sentence. New York has subsequently amended its law to increase the maximum recidivist sentence, and to provide that two prior convictions are necessary to trigger the recidivist statute, N. Y. Penal Law § 70.10. The new provisions do not, however, apply to this case, because the underlying New York conviction here was obtained before the effective date of the new statute. N. Y. Penal Law § 5.05.

P 8 + technical changes

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

From: Marshall, J.

Circulated: _____

Recirculated: JUN 23 1972

SUPREME COURT OF THE UNITED STATES

No. 71-237

Vincent R. Mancusi, Warden, Petitioner, v. William C. Stubbs. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June 26, 1972]

MR. JUSTICE MARSHALL, dissenting.

I

I would dismiss the writ in this case as improvidently granted. The question presented to the courts below concerns the constitutional validity of a 1964 Tennessee conviction. The New York courts had relied on that conviction to sentence respondent as a multiple offender, after his conviction in 1966 for a New York offense. It was conceded at oral argument, however, that New York has no present interest whatever in that Tennessee conviction. For after the United States Court of Appeals held that it was constitutionally defective, New York substituted for the Tennessee conviction an earlier Texas conviction, and reinstated precisely the same enhanced sentence it had previously imposed.[1]

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Wm Douglas
Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 16, 1972

Re: No. 71-237 - Mancusi v. Stubbs

Dear Bill:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 17, 1972

Re: No. 71-237 Mancusi v. Stubbs

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1972

MEMORANDUM TO THE CONFERENCE

Re: 71-237 - Mancusi v. Stubbs

I have tried to find some authority on the point regarding compliance with the judgment on the part of the State of New York that Bill Brennan raised in Conference. I have come across the case of Bakery Drivers Union v. Wagshal, 333 U.S. 437, which was an appeal by a union from an injunction issued by the United States District Court. The union contended that the injunction had been issued in violation of the Norris-LaGuardia Act. Dealing with a "preliminary claim" of mootness, the Court there said:

> "The claim of mootness is also based on an affidavit stating that after dismissal of the appeal by the Court of Appeals, the union lifted its boycott. Since the record does not show that the stay of the injunction was granted pending action in this Court, we must assume that the union's action was merely obedience to the judgment now here for review. We therefore turn to the merits." 333 U.S. at 442.

A much earlier decision of this Court, Dakota County v. Glidden, 113 U.S. 222, contains the following language in an opinion by Mr. Justice Miller:

> "There can be no question that a debtor against whom a judgment for money is recovered may pay

that judgment and bring a writ of error to reverse it, and if reversed can recover back his money. And a defendant in an action of ejectment may bring a writ of error, and failing to give a supersedeas bond, may submit to the judgment by giving possession of the land, which he can recover if he reverses the judgment by means of a writ of restitution. In both these cases the defendant has merely submitted to perform the judgment of the Court, and has not thereby lost his right to seek a reversal of that judgment by writ of error or appeal."

During our Conference discussion, I certainly thought it was quite arguable that the case was moot, and should be dismissed for that reason. I do not now think so, in the light of these authorities.

W.H.R.

1/8

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71–237

Vincent R. Mancusi, Warden, Petitioner, *v.* William C. Stubbs. | On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1972]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Respondent Stubbs was convicted of a felony in a New York State court and sentenced as a second offender under the laws of that State by reason of a prior Tennessee murder conviction obtained in 1964. He thereafter sought federal habeas corpus, claiming that the Tennessee conviction was had in violation of his Sixth Amendment right to confront witnesses against him, and thus could not be used by New York as the predicate for a stiffer punishment. The District Court denied habeas corpus, but the Court of Appeals reversed, 442 F. 2d 561 (CA2 1971). We granted certiorari, 404 U. S. 1014, and reverse for the reasons hereinafter stated.

I

Prior to our consideration of the merits it is necessary to deal with a suggestion that because the State did not seek a stay of the mandate of the Court of Appeals, but rather obeyed it and resentenced Stubbs, this case is therefore moot. The parties agreed at oral argument that Stubbs upon resentencing in New York had received the same sentence, based upon still another conviction in Texas. However, he was appealing from that sentence on grounds that the Texas conviction was constitutionally

I would wait until N.Y. resentences him on the Texas conviction

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 19, 1972

Re: Mancusi v. Stubbs, No. 71-237

MEMORANDUM TO THE CONFERENCE

I have sent a revision of my opinion to the printer today, and because there may be some delay in circulating it, I set forth below the substantive changes that are included:

(1) On pages 1 and 5 change "Sixth Amendment . . ." to "Sixth and Fourteenth Amendments. . ."

(2) On page 2, add footnote two from the sentence ending on line 11:

The dissenting opinion states that this case is "virtually indistinguishable from" SEC v. Medical Committee, ___ U.S. ___. In that case respondent committee had requested Dow-Jones to place the committee's proposed resolution on the proxy statement for the annual meeting of Dow-Jones stockholders. Dow-Jones initially refused the request, and the committee thereupon invoked the aid of the SEC to bring suit against Dow-Jones to compel inclusion of the proposal. The SEC refused to bring suit, and the committee then succeeded in having the agency's refusal set aside by the Court of Appeals. While review of this latter action was pending here, Dow-Jones acceded to the committee's request. The committee thereby accomplished the purpose for which it sought ancillary assistance from the SEC, not because of compliance by the SEC with the judgment under review, but because of the action of Dow-Jones, which was not required to do anything by that judgment.

There would be a rough parallel between our case and SEC v. Medical Committee if, pending review here of the ruling of the Court of Appeals in favor of Stubbs, the Governor of New York should pardon Stubbs. But on the facts we have before us now, the mootness issue is controlled by Bakery Drivers and Dakota County, infra, rather than by SEC v. Medical Committee.

Wm. Brennan

(3) On page 3, change and add to the last line before indented quote on the bottom of the page:

face. He testified that during the ride he apologized for forcing a ride; that the Holms then assured him they would let him out at Bristol, Tennessee, and would not cause him any trouble, and that he therefore laid the pistol on the front seat of the car. He also testified that near Bristol, Tennessee:

(4) On page 7, add footnote 2 from sentence ending ". . . designed for that purpose.[2]"

Stubbs argues that the 1964 amendment to 28 U.S.C. § 1783, authorizing a subpoena to bring a witness "before a person or body designated by" the District Court, sheds a different light on this case. That amendment was not available to the Tennessee authorities for Stubbs' 1964 trial, and therefore we have no occasion to decide whether it would afford assistance to state authorities on the facts represented by this case.