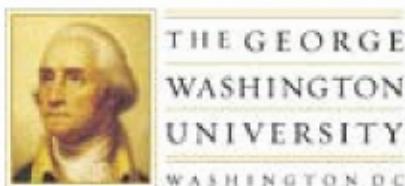


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In re Little

404 U.S. 553 (1972)

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





1st DRAFT

SUPREME COURT OF THE UNITED STATES

IN THE MATTER OF LARRY LITTLE

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR
COURT, GENERAL COURT OF JUSTICE, COUNTY OF
FORSYTH, NORTH CAROLINA

No. 71-244. Decided January —, 1972

MR. CHIEF JUSTICE BURGER, dissenting.

I dissent from a summary treatment of this conviction when we do not have all the facts and without briefs and argument. The Court's lack of attention to the facts of the case is pointedly illustrated by its bland reliance, for example, on language from *Craig v. Harney*, 331 U. S. 367 (1947), and *Brown v. United States*, 356 U. S. 148, 153 (1958), neither of which has any bearing on what occurred here.

A contempt holding depends in a very special way on the setting, and such elusive factors as the tone of voice, the facial expressions, and the physical gestures of the contemnor; these cannot be dealt with except on full ventilation of the facts. Those present often have a totally different impression of the events from what would appear even in a faithful transcript of the record. Some measure of the flavor of what really occurred in this episode, and of the petitioner's attitude and demeanor, how his spoken words impressed those present, may be gleaned from the events and utterances described in the first footnote of the Court's *per curiam* opinion.

The North Carolina court is, of course, free to promptly summon this petitioner before it and, observing the strictures of *Mayberry v. Pennsylvania*, 400 U. S. 455 (1971), issue process requiring him to show cause why he should not be held in contempt for the conduct and utterances set forth in footnote 1 of the Court's opinion.

To: The Chief Justice
Mr. Justice [redacted]
Mr. Justice [redacted]

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: [redacted]

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IN THE MATTER OF LARRY LITTLE

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ON PETITION FOR WRIT OF CERTIORARI TO THE SUPERIOR
COURT, GENERAL COURT OF JUSTICE, COUNTY OF
FORSYTH, NORTH CAROLINA

No. 71-244—Decided January —, 1972

PER CURIAM.

Petitioner was convicted of committing a direct contempt of a judge of the District Court Division of the Forsythe County, North Carolina, General Court of Justice. He was sentenced to 30 days in jail as summary punishment authorized by General Statutes of North Carolina §§ 5-1 (1) and 5-6. He sought habeas corpus in the Superior Court Division of the General Court. That court denied relief after hearing oral argument but without receiving evidence. Both the North Carolina Court of Appeals and the North Carolina Supreme Court denied review by certiorari.

Neither the Order of the District Court nor the judgment of the Superior Court details the events leading to the conviction. The petition recites these events, however, and the State's response does not challenge the accuracy of the recital. Petitioner's trial on a charge of carrying a concealed weapon was scheduled for March 8, 1971, in the District Court at Winston-Salem. Petitioner appeared and filed a written motion for continuance by reason of another trial engagement of his retained counsel in Charlotte. The trial judge denied the motion and proceeded with the trial. Without benefit of counsel petitioner attempted to defend himself. In summation following the close of the evidence petitioner made statements that the court was biased and had prejudged the case and that petitioner was a political prisoner. The trial judge adjudged petitioner in con-

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