

The Burger Court Opinion Writing Database

Morrissey v. Brewer

408 U.S. 471 (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. 20542

June 12, 1972

CHAMBERS OF
THE CHIEF JUSTICE

No. 71-5103 -- Morrissey v. Brewer

MEMORANDUM TO THE CONFERENCE:

Enclosed is proposed opinion.

Please note that the "tentative" idea I mentioned at Conference has now "ripened" into a procedural step in terms of the "preliminary hearing." The experience under Hyser v. Reed for the Federal system, with a prompt hearing after arrest, has not been found administratively unmanageable.

Regards,

W.S.B.

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist ✓

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: JUN 12 1972

No. 71-5103

Recirculated: _____

John J. Morrissey and G. Donald
Booher, Petitioners, } On Writ of Certiorari
v. } to the United States
Lou B. Brewer, Warden, et al. } Court of Appeals for
} the Eighth Circuit.

[June —, 1972]

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

We granted certiorari in this case to determine whether the Due Process Clause of the Fourteenth Amendment requires that a State afford an individual some opportunity to be heard prior to revoking his parole.

Petitioner Morrissey was convicted of false drawing or uttering of checks in 1967 pursuant to his guilty plea, and was sentenced to not more than seven years' confinement. He was paroled from the Iowa State Penitentiary in June 1968. Seven months later, at the direction of his parole officer, he was arrested in his home town as a parole violator and incarcerated in the county jail. One week later, after review of the parole officer's written report, the Iowa Board of Parole revoked Morrissey's parole and he was returned to the penitentiary located about 100 miles from his home. Petitioner asserts he received no hearing prior to revocation of his parole.

The parole officer's report on which the Board of Parole acted shows that petitioner's parole was revoked on the basis of information that he had violated the conditions of parole by buying a car under an assumed name and operating it without permission, giving false statements to police concerning his address and insur-

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1972

No. 71-5103 -- Morrissey v. Brewer

Dear Byron:

I have deleted the last sentence -- note
page 17.

Regards,

W. B.

Mr. Justice White

Copies to Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1972

Re: No. 71-5103 - Morrissey and Booher v. Brewer

MEMORANDUM TO THE CONFERENCE:

Enclosed find draft of the above.

I now recall that at Conference we all more or less agreed that since Booher had admitted the violations to the parole officer and board we could "DIG" his case. On reflection I suggest that it is simpler to treat both cases the same. It imposes no burden on the state to give Booher what we direct for Morrissey.

Regards,

WSB

✓
Changes
stylistic
plus 11/9/72.

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

2nd DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

No. 71-5103

Recirculated: JUN 22 1972

John J. Morrissey and G. Donald
Booher, Petitioners, } On Writ of Certiorari
v. } to the United States
Lou B. Brewer, Warden, et al. } Court of Appeals for
the Eighth Circuit.

[June —, 1972]

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

We granted certiorari in this case to determine whether the Due Process Clause of the Fourteenth Amendment requires that a State afford an individual some opportunity to be heard prior to revoking his parole.

Petitioner Morrissey was convicted of false drawing or uttering of checks in 1967 pursuant to his guilty plea, and was sentenced to not more than seven years' confinement. He was paroled from the Iowa State Penitentiary in June 1968. Seven months later, at the direction of his parole officer, he was arrested in his home town as a parole violator and incarcerated in the county jail. One week later, after review of the parole officer's written report, the Iowa Board of Parole revoked Morrissey's parole and he was returned to the penitentiary located about 100 miles from his home. Petitioner asserts he received no hearing prior to revocation of his parole.

The parole officer's report on which the Board of Parole acted shows that petitioner's parole was revoked on the basis of information that he had violated the conditions of parole by buying a car under an assumed name and operating it without permission, giving false statements to police concerning his address and insur-

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

June 22, 1972

CHAMBERS OF
THE CHIEF JUSTICE

No. 51-5103 -- Morrissey v. Brewer

MEMORANDUM TO THE CONFERENCE:

Attached are substantive changes made on
pages 16, 18, and 19 of the above.

Regards,

WSB

20 /

To : 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. 71-5103

Opinion: Douglas; J.

Docket: 6/15/72

Filed:

John J. Morrissey and G. Donald Booher, Petitioners, } On Writ of Certiorari
v. } to the United States
Lou B. Brewer, Warden, et al. } Court of Appeals for
the Eighth Circuit.

[June —, 1972]

MR. JUSTICE DOUGLAS, dissenting in part.

Each petitioner was sentenced for a term in an Iowa penitentiary for forgery. Somewhat over a year later each was released on parole. About six months later each was arrested for a parole violation and confined in a local jail. In about a week the Iowa Board of Parole revoked their paroles and each was returned to the penitentiary. At no time during any of the proceedings which led to the parole revocations were they granted a hearing or the opportunity to know, question, or challenge any of the facts which formed the basis of their alleged parole violations. Nor were they given an opportunity to present evidence on their own behalf nor to confront and cross-examine those on whose testimony their paroles were revoked.

Each challenged the revocation in the state courts and, obtaining no relief, filed the present petitions in the Federal District Court which denied relief. Their appeals were consolidated in the Court of Appeals which, sitting *en banc*, in each case affirmed the District Court by a four-to-three vote, 443 F. 2d 942. The cases are here on a petition for a writ of certiorari, 404 U. S. 999, which we granted because there is a conflict between the decision below and *Hahn v. Burke*, 430 F. 2d 100, decided by the Court of Appeals for the Seventh Circuit.

June 14, 1972

RE: No. 71-5103 - Morrissey v. Brewer

Dear Chief:

My thoughts on your opinion in the above are these:

At page 14, in respect of the preliminary hearing, to add at the end of the full paragraph in the middle of the page, something to the effect that the parolee may confront and cross-examine the witnesses against him unless the hearing officer for good cause (for example, possible risk of harm to the witness) rules otherwise.

At page 16, in respect of the parole board hearing, to revise (b) to make clear that the parolee must be informed of the evidence upon which the state relies for the revocation, and to substitute for the sentence before the cite to Davis, a sentence to the effect that the parolee may confront and cross-examine the witnesses against him with the exception suggested in the preceding paragraph.

At page 17, first paragraph, to state expressly that the right to assistance applies at both hearings.

Sincerely,

WJB

The Chief Justice

Wm. B. BREWER
JUN 14 1972
JUN 14 1972

SUPREME COURT OF THE UNITED STATES

No. 71-5103

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Stewart
Mr. Justice White
Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]
Mr. Justice [redacted]

From: [redacted]

Circulated: 6-23-72

Recirculated: [redacted]

John J. Morrissey and
G. Donald Booher,
Petitioners

v.

Lou V. Brewer, Warden,
et al.

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

[June 1972]

MR. JUSTICE BRENNAN, concurring in the result.

I agree that a parole may not be revoked, consistently with the Due Process Clause, unless the parolee is afforded, first, a preliminary hearing at the time of arrest to determine whether there is probable cause to believe that he has violated his parole conditions and, second, a final hearing within a reasonable time to determine whether he has, in fact, violated those conditions and whether his parole should be revoked.

For each hearing the parolee is entitled to notice of the violations alleged and the evidence against him, opportunity to be heard in person and to present witnesses and documentary evidence, and the right to confront and cross-examine adverse witnesses, unless it is specifically found that the witness would thereby be exposed to a significant risk of harm. More-

p. 2

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

2nd DRAFT

From: —

SUPREME COURT OF THE UNITED STATES

Circulate

No. 71-5103

Recirculation: 6/26

John J. Morrissey and G. Donald
Booher, Petitioners, } On Writ of Certiorari
v. } to the United States
Lou B. Brewer, Warden, et al. } Court of Appeals for
} the Eighth Circuit.

[June 29, 1972]

MR. JUSTICE BRENNAN, concurring in the result.

I agree that a parole may not be revoked, consistently with the Due Process Clause, unless the parolee is afforded, first, a preliminary hearing at the time of arrest to determine whether there is probable cause to believe that he has violated his parole conditions and, second, a final hearing within a reasonable time to determine whether he has, in fact, violated those conditions and whether his parole should be revoked. For each hearing the parolee is entitled to notice of the violations alleged and the evidence against him, opportunity to be heard in person and to present witnesses and documentary evidence, and the right to confront and cross-examine adverse witnesses, unless it is specifically found that the witness would thereby be exposed to a significant risk of harm. Moreover, in each case the decisionmaker must be impartial, there must be some record of the proceedings, and the decisionmaker's conclusions must be set forth in written form indicating both the evidence and the reasons relied upon. Because the Due Process Clause requires these procedures, I agree that the case must be remanded as the Court orders.

The Court, however, states that it does not now decide whether the parolee is also entitled at each hearing to the assistance of retained counsel or of appointed counsel if he is indigent. *Goldberg v. Kelly*, 397 U. S. 254 (1970),

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 22, 1972

71-5103 - Morrissey v. Warden

Dear Chief,

I am glad to join your opinion as recirculated today, with the understanding reached at our Conference that the last full paragraph on page 18 and its footnotes will be deleted or substantially modified.

Sincerely yours,

P.S.
P.

The Chief Justice

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. 71-5103 - Morrissey v. Brewer

Dear Chief:

Subject to what others may have in mind, I join your opinion in this case, with the suggestion, however, that you eliminate or modify the last sentence of footnote 17 in view of the fact that the circuits are in conflict on the question and we once granted a case to decide the issue.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1972

Re: No. 71-5103 - Morrissey v. Brewer

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

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. 71-5103 Morrissey v. Brewer

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

cc: The Conference

(7)
A have joined Chief
Just. W. H. Rehnquist
CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
IN TRIBUTE TO JUDGE ROBERT H. COOPER

June 20, 1972

Re: No. 71-5103 - Morrissey and Booher v. Brewer

Dear Chief:

Please join me.

Sincerely,

W.H.R.

The Chief Justice

Copies to the Conference