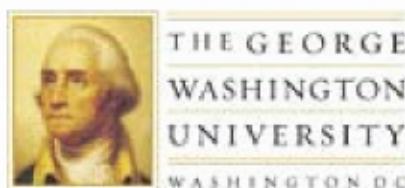


The Burger Court Opinion Writing Database

McNeil v. Director, Patuxent Institution
407 U.S. 245 (1972)

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



D
Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1972

No. 71-5144 -- McNeil v. Director Patuxent Institution

Dear Thurgood:

Please join me.

Regards,

WEB

Mr. Justice Marshall

Copies to Conference

P.S. This is an excellent job -- short, sweet, and to the point, and leaving no doubt as to what the states must do in these circumstances.

346

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-5144

Edward Lee McNeil, Petitioner, } On Writ of Certiorari to
v. } the Court of Special
Director, Patuxent Institution. } Appeals of Maryland.

[May —, 1972]

MR. JUSTICE DOUGLAS, concurring.

This is an action in the Maryland courts for post-conviction relief which was denied, with no court making a report of its decision. The case is here on a petition for writ of certiorari which we granted. 404 U. S. 999. We reverse the judgment below.

McNeil was tried and convicted in a Maryland court for assault on a public officer and for assault with intent to rape. He took the stand and denied he had committed the offenses. He had had no prior criminal record. The sentencing judge asked for a psychiatric evaluation of the accused, though neither side at the trial had raised or suggested any psychiatric issues. A medical officer examined him and recommended that he be considered for evaluation and treatment at Patuxent Institution, a state psychiatric agency.

The court sentenced McNeil to "not more than five years" to prison in Hagerstown¹ and without modifying or suspending that sentence ordered him referred to

¹ Under Maryland law that sentence was subject to statutory reductions for good behavior, industrial or agricultural work, and satisfactory progress in education and vocational courses. Md. Ann. Code Art. 27, § 700 (1971).

McNeil would have been eligible for parole after one-fourth of the term or a little over one year.

(3)
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 14, 1972

RE: No. 71-5144 - McNeil v. Patuxent
Institute

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 15, 1972

71-5144 - McNeil v. Director

Dear Thurgood,

I shall be glad to join your opinion in this case if you can see your way clear to making two very minor changes:

(1) Delete the words "Fifth and" in the next to last line of the first paragraph of the opinion.

(2) Reword the first sentence of the first full paragraph on page 6 as follows:

"Petitioner claims that he has a constitutional right to withhold cooperation, a claim we need not consider here."

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

6
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 14, 1972

Re: No. 71-5144 - McNeil v.
Director, Patuxent Inst.

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to Conference

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

1st DRAFT

From: Marshall, J.

Circulated

JUN 13 1972

Recirculated:

No. 71-5144

Edward Lee McNeil, Petitioner, | On Writ of Certiorari to
v. | the Court of Special
Director, Patuxent Institution. | Appeals of Maryland.

[June —, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Edward McNeil was convicted of two assaults in 1966, and sentenced to five years' imprisonment. Instead of committing him to prison, the sentencing court referred him to the Patuxent Institution for examination, to determine whether he should be committed to that institution for an indeterminate term under Maryland's Defective Delinquency Law. Md. Code Ann., Art. 3.3. No such determination has yet been made, his sentence has expired, and his confinement continues. The State contends that he has refused to cooperate with the examining psychiatrists, that they have been unable to make any valid assessment of his condition, and that consequently he may be confined indefinitely until he cooperates and the institution has succeeded in making its evaluation. He claims that when his sentence expired, the State lost its power to hold him, and that his continued detention violates his rights under the Fifth and Fourteenth Amendments. We agree.

I

The Maryland Defective Delinquency Law provides that a person convicted of any felony, or certain misdemeanors, may be committed to the Patuxent Institution for an indeterminate period, if it is judicially deter-

p. 1 and postscript

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.

2nd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Recirculated: SUN 16 1972

No. 71-5144

Edward Lee McNeil, Petitioner, } On Writ of Certiorari to
v. } the Court of Special
Director, Patuxent Institution. } Appeals of Maryland.

[June 19, 1972]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

Edward McNeil was convicted of two assaults in 1966, and sentenced to five years' imprisonment. Instead of committing him to prison, the sentencing court referred him to the Patuxent Institution for examination, to determine whether he should be committed to that institution for an indeterminate term under Maryland's Defective Delinquency Law. Md. Code Ann., Art 31B. No such determination has yet been made, his sentence has expired, and his confinement continues. The State contends that he has refused to cooperate with the examining psychiatrists, that they have been unable to make any valid assessment of his condition, and that consequently he may be confined indefinitely until he cooperates and the institution has succeeded in making its evaluation. He claims that when his sentence expired, the State lost its power to hold him, and that his continued detention violates his rights under the Fourteenth Amendment. We agree.

I

The Maryland Defective Delinquency Law provides that a person convicted of any felony, or certain misdemeanors, may be committed to the Patuxent Institution for an indeterminate period, if it is judicially deter-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1972

Re: No. 71-5144 - McNeil v. Director

Dear Thurgood:

Please join me.

Sincerely,

h.a.b.

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 15, 1972

Re: No. 71-5144 McNeil v. Patuxent

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 14, 1972

Re: No. 71-5144 - McNeil v. Director, Patuxent

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference