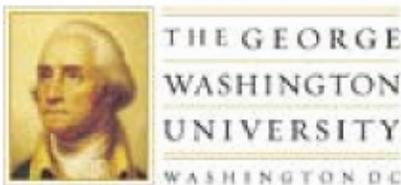


The Burger Court Opinion Writing Database

Dukes v. Warden, Connecticut State Prison
406 U.S. 250 (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

CHAMBERS OF
THE CHIEF JUSTICE

May 2, 1972

PERSONAL

No. 71-5172 -- Charles O. Dukes, Petitioner v. Warden,
Connecticut State Prison

Dear Bill:

I am prepared to join in your April 26 proposed opinion with a single exception.

In the final paragraph, page 8, you refer to "the principle 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 . . .'" citing Santobello, 404 U.S. 257 at 268 (Marshall, J., concurring).

The reference is, of course, to the concurring and dissenting opinion and while I do not have any great quarrel with the statement, I do not feel it can be accurately described as a legal "principle" on the basis of a concurring opinion.

I can join readily if this "pregnant negative" dictum as to "principle" is deleted since it appears to state a Court position.

Regards,



Mr. Justice Brennan

Wm Brennan
20571

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

CHAMBERS OF
THE CHIEF JUSTICE

May 3, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

Your May 2 memo suggestion is a sound solution and you may surely show me as "joining".

Thank you for the accommodation. Would that all mankind were as flexible as the stern Brennan clan!

Regards,



Mr. Justice Brennan

*It deserves no more than
a DIG but an affirm is
OK*

*Wm Brennan
Oct 71*

13
My

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 10, 1972

Dear Thurgood:

In No. 71-5172 - Dukes v.

Warden, please join me in your dissent.

W. O. D. *WOD*

Mr. Justice Marshall

cc: The Conference

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U.S. DEPARTMENT OF CONGRESS

5

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES
Earl Warren, J.

No. 71-5172

Circulated: 

Recirculated: 4/18/72

Charles O. Dukes, Petitioner, }
v. } On Writ of Certiorari to
Warden, Connecticut State } the Supreme Court of
Prison. } Connecticut.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (19—), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

Wm. Douglas
2-71

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B

Pages 2, 6-7 + 9

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: Brennan, J

SUPREME COURT OF THE UNITED STATES

Circulated: _____
 Recirculated: 4-20-72

No. 71-5172

Charles O. Dukes, Petitioner, v. Warden, Connecticut State Prison.	}	On Writ of Certiorari to the Supreme Court of Connecticut.
---	---	--

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (1969), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

Wm. Douglas
 Oct 71

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3
M

Page 7.

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

From: Brennan, J.

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 4-24-72

No. 71-5172

Charles O. Dukes, Petitioner, }
 v. } On Writ of Certiorari to
Warden, Connecticut State } the Supreme Court of
Prison. } Connecticut.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (1969), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 25, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 71-5172 - Dukes v. Warden

The Conference vote was 8 to 1 to dismiss this case as improvidently granted and I was assigned to prepare a Per Curiam to that effect. When Thurgood circulated his dissent, however, I thought an opinion was required and therefore circulated a signed opinion coming out to Affirm. Potter has suggested that the disposition should nevertheless be a dismissal as improvidently granted. I agree with him since I am confident we would never have taken the case had we appreciated that the facts were as outlined in my circulation. The enclosure, therefore, substitutes for "Affirmed" a new line at the end of the opinion dismissing as improvidently granted. However, since Potter, Byron, Harry, Lewis and Bill Rehnquist joined the previous circulation, I'll be guided by their views.

W. J. B. Jr.

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RECORDS OF THE SUPREME COURT

Pages 2, 6 & 8

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

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 71-5172

Recirculated: 4-25-72

Charles O. Dukes, Petitioner,
v.
Warden, Connecticut State
Prison. } On Writ of Certiorari to
the Supreme Court of
Connecticut.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (1969), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

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U.S. SUPREME COURT RECORDS

20 / Page 1.

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
✓ Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice Rehnquist

6th DRAFT

From: [illegible]

SUPREME COURT OF THE UNITED STATES

No. 71-5172

Received 4-26-72

Charles O. Dukes, Petitioner,
v.
Warden, Connecticut State
Prison. } On Writ of Certiorari to
the Supreme Court of
Connecticut.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (1969), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

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May 2, 1972

RE: No. 71-5172 - Dukes v. Warden, Connecticut State Prison

Dear Chief:

Thank you for your note of May 2 in the above. I think some recognition must be given to Thurgood's concurring opinion in Santobello since his entire dissent rests on it. Would it meet your difficulty if I change the last paragraph at page 8 to read as follows:

We fully agree with this reasoning and conclusion of the Connecticut Supreme Court. Since there is thus no merit in petitioner's sole contention in this proceeding - that Mr. Zaccagnino's conflict of interest affected his plea - that conflict of interest is not "a reason for vacating his plea." Santobello v. New York, 404 U.S. 257, 267 (1971) (Marshall, J. concurring).

affirmed
Incidentally, I am caught between Potter and Byron whether the disposition should be to dismiss as improvidently granted or to affirm. This is surely a "peewee" case and a "DIG" for that reason seems particularly appropriate. But Byron will want a separate statement that he would affirm and Potter doesn't press too hard for "DIG." I am content to affirm if everyone else is.

Sincerely,

WJB

The Chief Justice

Wm Brown
Oct 11

3

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 3, 1972

MEMORANDUM TO THE CONFERENCE

RE: No. 71-5172 - Dukes v. Warden, Connecticut State
Prison

Only Byron seems strongly to prefer "Affirm"
rather than "DIG." I've therefore changed back to
"Affirm" to avoid separate writing on the disposition
of this pip-squeak case.

W. J. B. Jr.

Your dissent
was joined by Wood

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OF THE MANUSCRIPT DIVISION
OF THE FEDERAL BUREAU OF INVESTIGATION

— Page 8.

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

7th DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 5-3-72

No. 71-5172

Charles O. Dukes, Petitioner, }
v. } On Writ of Certiorari to
Warden, Connecticut State } the Supreme Court of
Prison. } Connecticut.

[April —, 1972]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

On May 16, 1967, petitioner, on advice of counsel, pleaded guilty in Superior Court of Hartford County, Connecticut, to charges of narcotics violation and larceny of goods. On June 16, 1967, before being sentenced, he informed the court that he had retained new counsel and desired to withdraw his plea and stand trial. The court refused to permit him to withdraw his plea and sentenced him to a term of five to 10 years on the narcotics charge, and to a term of two years on the larceny charge. The Connecticut Supreme Court affirmed this conviction on his direct appeal challenging the voluntariness of his plea, *State v. Dukes*, 157 Conn. 498, 255 A. 2d 614 (1969), and the United States District Court for the District of Connecticut denied his application for federal habeas corpus relief sought in Civil Action No. 13029. He then brought this state habeas corpus action in the Superior Court for Hartford County, and attacked the voluntariness of his plea under the Federal Constitution on a ground not raised either on his direct appeal or in his action for federal habeas corpus relief. He alleged that a conflict of interest arising from his lawyer's representation of two girls

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3
M

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 24, 1972

71-5172 - Dukes v. Warden

Dear Bill,

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

Sincerely yours,

P.S.
✓

Mr. Justice Brennan

Copies to the Conference

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U.S. LIBRARY OF CONGRESS

BS
TJ

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 25, 1972

71-5172 - Dukes v. Warden

Dear Bill,

Although I joined your previous circulation, I much prefer the disposition embodied in your circulation of today.

Sincerely yours,

PS
←

Mr. Justice Brennan

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B
M

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES Stewart, J.

No. 71-5172

Circulated: MAY 4 1972

Recirculated: _____

Charles O. Dukes, Petitioner,
v.
Warden, Connecticut State
Prison. } On Writ of Certiorari to
the Supreme Court of
Connecticut.

[May —, 1972]

MR. JUSTICE STEWART, concurring in the result.

In *Santabello v. New York*, 404 U. S. 257, 267, I joined MR. JUSTICE MARSHALL'S concurring opinion because I agree 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." *Id.*, at 267-268.

If a defendant moves to vacate a guilty plea before judgment and if he states a reason for doing so, I think that he need not shoulder a further burden of proving the "merit" of his reason at that time. Before judgment, the courts should show solicitude for a defendant who wishes to undo a waiver of all the constitutional rights that surround the right to trial—perhaps the most devastating waiver possible under our Constitution. Any requirement that a defendant prove the "merit" of his reason for undoing this waiver would confuse the obvious difference between the withdrawal of a guilty plea before the government has relied on the plea to its disadvantage, and a later challenge to such a plea, on appeal or collaterally, when the judgment is final and the government clearly has relied on the plea.

But I do not believe that these problems are presented in this case. Certiorari was granted to consider the peti-

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated: _____

No. 71-5172

Recirculated: MAY 5 1972

Charles O. Dukes, Petitioner, }
v. } On Writ of Certiorari to
Warden, Connecticut State } the Supreme Court of
Prison. } Connecticut.

[May —, 1972]

MR. JUSTICE STEWART, concurring.

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But I do not believe that these problems are presented in this case. Certiorari was granted to consider the peti-

B
M

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 20, 1972

Re: No. 71-5172 - Dukes v. Warden,
Connecticut State Prison

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

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2

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

I would prefer that this case be affirmed
in view of your analysis and approval of the
Connecticut Supreme Court's decision.

Sincerely,



Mr. Justice Brennan

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OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 26, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

Would you please add the following note
at the foot of your opinion in this case:

Mr. Justice White, agreeing
with the Court's opinion, would
affirm the judgment of the Supreme
Court of Connecticut.

Sincerely,

Byron

Mr. Justice Brennan

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U.S. SUPREME COURT RECORDS

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-5172

Charles O. Dukes, Petitioner, <i>v.</i> Warden, Connecticut State Prison.	}	On Writ of Certiorari to the Supreme Court of Connecticut.
--	---	--

[April —, 1972]

MR. JUSTICE MARSHALL, dissenting.

I do not think that there was any improvidence in granting this petition. Before sentencing, petitioner stated that he was innocent, and sought to vacate his guilty plea so that he could proceed to trial with new counsel in whom he had confidence. He claims, with ample support in the record, that he was advised to plead guilty—and indeed pressured to do so—by lawyers who did not devotedly represent his interests. Having studied the papers and heard argument, I agree with petitioner that he should have been permitted to withdraw his guilty plea, and I would decide this case to vindicate the important constitutional principle it involves.

I

Petitioner, Charles Dukes, was arrested on March 14, 1967, and charged by Hartford, Connecticut, authorities with a violation of the Uniform State Narcotic Drug Act and with receiving stolen goods. From the beginning, there was a sharp conflict between petitioner and his lawyers over whether he should plead guilty. Two partners from the law firm that petitioner retained, each of whom handled the case on different occasions, tried to convince petitioner to plead guilty to both charges. They argued that because there were several other outstanding charges against him, petitioner's best hope was

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

2nd DRAFT

From: Marshall, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 71-5172

Recirculated **APR 21 1972**

Charles O. Dukes, Petitioner,
v.
Warden, Connecticut State
Prison. } On Writ of Certiorari to
the Supreme Court of
Connecticut.

[April —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS joins, dissenting.

I dissent. Before sentencing, petitioner stated that he was innocent, and sought to vacate his guilty plea so that he could proceed to trial with new counsel in whom he had confidence. His claims, with ample support in the record, that he was advised to plead guilty—and indeed pressured to do so—by lawyers who did not devotedly represent his interests. I agree with petitioner that he should have been permitted to withdraw his guilty plea.

I

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changes as indicated
STYLISTIC CHANGES THROUGHOUT.

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-5172

Charles O. Dukes, Petitioner,
v.
Warden, Connecticut State
Prison. } On Writ of Certiorari to
the Supreme Court of
Connecticut.

[April —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS joins, dissenting.

I dissent. Before sentencing, petitioner stated that he was innocent, and sought to vacate his guilty plea so that he could proceed to trial with new counsel in whom he had confidence. He claims, with ample support in the record, that he was advised to plead guilty—and indeed pressured to do so—by lawyers who did not devotedly represent his interests. I agree with petitioner that he should have been permitted to withdraw his guilty plea.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

Since your memorandum of today changes again from "DIG" to "Affirm" I think I'd better wait a day or so, until a final decision has been made, before revising my dissent. I hope this will be satisfactory with you.

Sincerely,


T.M.

Mr. Justice Brennan

cc: The Conference

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MANUSCRIPT DIVISION

SECTION OF CONFERENCE

M // P 8, 13

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-5172

Charles O. Dukes, Petitioner, <i>v.</i> Warden, Connecticut State Prison.	}	On Writ of Certiorari to the Supreme Court of Connecticut.
--	---	--

[April —, 1972]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS joins, dissenting.

I dissent. Before sentencing, petitioner stated that he was innocent, and sought to vacate his guilty plea so that he could proceed to trial with new counsel in whom he had confidence. He claims, with ample support in the record, that he was advised to plead guilty—and indeed pressured to do so—by lawyers who did not devotedly represent his interests. I agree with petitioner that he should have been permitted to withdraw his guilty plea.

I

Petitioner, Charles Dukes, was arrested on March 14, 1967, and charged by Hartford, Connecticut, authorities with a violation of the Uniform State Narcotic Drug Act and with receiving stolen goods. From the beginning, there was a sharp conflict between petitioner and his lawyers over whether he should plead guilty. Two partners from the law firm that petitioner retained, each of whom handled the case on different occasions, tried to convince petitioner to plead guilty to both charges. They argued that because there were several other outstanding charges against him, petitioner's best hope was to secure an agreement to consolidate all the charges for disposition together, so that he could receive reason-

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OFFICE OF THE CLERK OF THE SUPREME COURT

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 19, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

Please join me.

Sincerely,

HAJ.

Mr. Justice Brennan

cc: The Conference

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OF THE MANUSCRIPT DIVISION

OF THE SUPREME COURT OF THE UNITED STATES

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 26, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

I am in accord with your recirculation
of April 25.

Sincerely,

H.A.B.

Mr. Justice Brennan

cc: The Conference

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SECRET

5
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 25, 1972

Re: No. 71-5172 Dukes v. Warden

Dear Bill:

Please join me.

Sincerely,

L. F. P.

Mr. Justice Brennan

cc: The Conference

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OF THE LIBRARY OF CONGRESS

B
M

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 2, 1972

Re: No. 71-5172 Dukes v. Warden

Dear Bill:

Your memorandum of April 25 was lost sight of in my chambers.

I am entirely content to accept Potter's suggestion that the disposition should be dismissal as improvidently granted.

Sincerely,

Lewis

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 19, 1972

Re: No. 71-5172 - Dukes v. Warden, Connecticut State Prison

Dear Bill:

Please join me in your opinion in this case.

Sincerely,

WM

Mr. Justice Brennan

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1972

Re: No. 71-5172 - Dukes v. Warden

Dear Bill:

If given my druthers with respect to your opinion, I think I would agree with Byron that I would prefer affirmance rather than dismissal. On the basis of my limited experience I had thought that dismissal was basically a device to avoid discussing the merits; since you do discuss the merits, in a manner in which I am in complete agreement, I would think affirmance warranted. Nonetheless, in view of your own preference, I am agreeable to voting to dismiss if four others will do likewise.

Sincerely, *WHR*

Mr. Justice Brennan

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Byron
Since writing the above, I have received your
circulation favoring affirmance, with which I concur.
WHR

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