

The Burger Court Opinion Writing Database

Barker v. Wingo

407 U.S. 514 (1972)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



30
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1972

Re: No. 71-5255 - Barker v. Wingo

Dear Lewis:

Please join me in your opinion.

Regards,



Mr. Justice Powell

Copies to the Conference

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THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

June 13, 1972

CHAMBERS OF
THE CHIEF JUSTICE

Personal

No. 71-5255 -- Barker v. Wingo

Dear Lewis:

To save time, I make this comment on the above opinion which I have already joined.

① 1 - On page 5, 6th line from the end, I wonder if the adjective, "paradoxically", does not leave a pejorative impact. Although plea "bargaining" is often abused, all the ABA reports, my own included, accept it as a necessary and desirable tool. We noted also that, realistically, prosecutors often overcharge as plaintiff's make excessive demands, and there is nothing magic in the "first demand." I fear the pejorative adjective followed by "otherwise manipulate the system" will be touted as a condemnation of the system as a whole and discourage pre-trial dispositions and "early diversion" of criminal cases.

② 2 - On page 8, I assume your "eagles" have caught the typo in the first quote - ("relative").

Regards,

RB

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 22, 1972

Dear Bill:

Would you take the lead and write
the dissents in No. 71-5255 - Barker v. Wingo
and No. 71-5445 - Shadwick v. Tampa?

W. O. D.

WOD

Mr. Justice Brennan

*Had already contemplated writing
in the above*

W. Brennan

OC 171

71-5445

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 12, 1972

Dear Lewis:

I told you orally that I agreed
with your No. 71-5255 - Barker v. Wingo.

This is confirmation.

William O. Douglas

Mr. Justice Powell

CC: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 26, 1972

71-5255

Dear Lewis:

I have your memorandum of June 21 relative to the cases which we are holding for Barker v. Wingo.

In each of the six cases I follow your recommendation - denying in No. 71-1214 and No. 71-5881, and reversing and remanding in the other four.

W. O. D.

Mr. Justice Powell

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 22, 1972

RE: Nos. 71-5255 - Barker v. Wingo
& No. 71-5445 - Shadwick v. Tampa

Dear Bill:

I had already contemplated writing
dissents in the above.

Sincerely,

Bill

Mr. Justice Douglas

Wm. O. Douglas
Oct 71

3

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

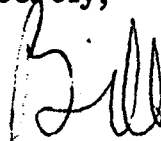
June 6, 1972

RE: No. 71-5255 - Barker v. Wingo

Dear Lewis:

I was the other way in the above but
you have certainly turned me around. I
am happy to join you.

Sincerely,



Mr. Justice Powell

cc: The Conference

3

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 6, 1972

71-5255 - Barker v. Wingo

Dear Lewis,

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

Sincerely yours,

P.S.
/

Mr. Justice Powell

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U.S. SUPREME COURT

No. 71-5255 - Barker v. Wingo

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

Mr. Justice White, concurring

in the judgment and opinion of the
Court.

From: White, J.

Circulated: 6-10-72

Although the Court rejects petitioner's

speedy trial claim and affirms denial of his

petition for habeas corpus, it is apparent

that had Barker not so clearly acquiesced in

the major delays involved in this case, the

result would have been otherwise. From the

State's point of view, it is fortunate that

the case was set for early trial and that post-

ponements took place only upon formal requests

to which Barker had opportunity to object.

Because the Court broadly essays the
factors going into constitutional judgments
under the speedy trial provision, it is appro-
priate to emphasize that one of the major
purposes of the provision is to guard against
inordinate delay between public charge and
trial, which, wholly aside from possible

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SECTION OF ADVANCE

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: _____

No. 71-5255

Recirculated: 6-20-72

Willie Mae Barker,
Petitioner,
v.
John W. Wingo, Warden.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[June 22, 1972]

MR. JUSTICE WHITE, with whom MR. JUSTICE BRENNAN joins, concurring in the judgment and opinion of the Court.

Although the Court rejects petitioner's speedy trial claim and affirms denial of his petition for habeas corpus, it is apparent that had Barker not so clearly acquiesced in the major delays involved in this case, the result would have been otherwise. From the State's point of view, it is fortunate that the case was set for early trial and that postponements took place only upon formal requests to which Barker had opportunity to object.

Because the Court broadly essays the factors going into constitutional judgments under the speedy trial provision, it is appropriate to emphasize that one of the major purposes of the provision is to guard against inordinate delay between public charge and trial, which, wholly aside from possible prejudice to a defense on the merits, may "seriously interfere with the defendant's liberty, whether he is free on bail or not, may disrupt his employment, drain his financial resources, curtail his associations, subject him to public obloquy and create anxiety in him, his family and friends." *United States v. Marion*, 404 U. S. 307, 320 (1971). These factors are more serious for some than for others, but they are inevitably present in every case to some extent, for every defendant will either be incarcerated pending trial

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1972

Re: No. 71-5255 - Barker v. Wingo

Dear Lewis:

Please join me.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 12, 1972

Re: No. 71-5255 - Barker v. Wingo

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

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OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: ~~10/11/72~~ 10/11/72

No. 71-5255

Recirculated: _____

Willie Mae Barker,
Petitioner,
v.
John W. Wingo, Warden. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[June —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

Although a speedy trial is guaranteed the accused by the Sixth Amendment to the Constitution,¹ this Court has dealt with that right on infrequent occasions. See *Beavers v. Haubert*, 198 U. S. 77 (1905); *Pollard v. United States*, 352 U. S. 354 (1957); *United States v. Ewell*, 383 U. S. 116 (1966); *United States v. Marion*, 404 U. S. 307 (1971). See also *Petition of Provo*, 17 FRD 183 (Md.), aff'd, 350 U. S. 857 (1955). The Court's opinion in *Klopfer v. North Carolina*, 380 U. S. 213 (1967), established that the right to speedy trial is "fundamental" and is imposed by Due Process Clause of the Fourteen Amendment on the States.² See *Smith v. Hooey*, 393 U. S. 374 (1969); *Dickey v. Florida*,

¹ The Sixth Amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

² "We hold that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." 286 U. S., at 223.

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5, 16, 18-19
X stylized

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackman
Mr. Justice Rehnquist

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 71-5255

Circulated: _____

Recirculate JUN 20 1972

Willie Mae Barker,
Petitioner,
v.
John W. Wingo, Warden. } On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[June —, 1972]

MR. JUSTICE POWELL delivered the opinion of the Court.

Although a speedy trial is guaranteed the accused by the Sixth Amendment to the Constitution,¹ this Court has dealt with that right on infrequent occasions. See *Beavers v. Haubert*, 198 U. S. 77 (1905); *Pollard v. United States*, 352 U. S. 354 (1957); *United States v. Ewell*, 383 U. S. 116 (1966); *United States v. Marion*, 404 U. S. 307 (1971). See also *United States v. Provoo*, 17 FRD 183 (D. Md.), aff'd, 350 U. S. 857 (1955). The Court's opinion in *Klopfer v. North Carolina*, 386 U. S. 213 (1967), established that the right to speedy trial is "fundamental" and is imposed by the Due Process Clause of the Fourteen Amendment on the States.² See *Smith v. Hoey*, 393 U. S. 374 (1969); *Dickey v. Florida*,

¹ The Sixth Amendment provides:

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense."

² "We hold here that the right to a speedy trial is as fundamental as any of the rights secured by the Sixth Amendment." 286 U. S., at 223.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 21, 1972

71-847- Held For 5255

MEMORANDUM TO THE CONFERENCE

Re: Holds for Barker v. Wingo 71-5255

Because the Court specifically adopts an ad hoc approach to speedy trial cases, it is difficult to dispose summarily of the "holds".

In No. 71-1214, Stein v. U. S., CA 2 went through an appropriate balancing test similar to that in Barker and concluded that the petitioner was not denied a speedy trial. Since the approach was proper, the only issue is factual. I would deny the petition for certiorari. ✓

In No. 71-5881, Molter v. Maryland, there was an extended delay but it was apparently caused by motions for continuances filed by counsel of record. Although petitioner claims that these actions were unauthorized and that he specifically requested the prosecuting attorney to proceed with his case, the court below did not find for him on the facts. Thus, I think the delay in this case is attributable to petitioner's strategy. I would deny. ✓

The remaining four cases are not so clear. In No. 71-847, Saglimbene v. U. S., CA 2 affirmed without an opinion, so there was no balancing of the factors we set out. I think this case should be granted, summarily reversed and remanded for further proceedings consistent with Barker. *vote* ✓

No. 71-1028, Campopiano v. U. S. concerns a 21 month delay between arrest and indictment. The petitioner moved to dismiss the indictment on speedy trial grounds within two weeks. He has some claims of prejudice, although they do not seem substantial. Again, I think this case cannot be disposed of here because there is no assurance that the court below in its brief memorandum of opinion, assessed the proper factors. It should be granted, reversed, and remanded for further proceedings in light of Barker. ✓

No. 71-6337, Fasanaro v. U. S. also concerned extensive delays and an affirmance without opinion. It too should be reversed and remanded for consideration of Barker. ✓

No. 71-6196, Kelly v. Kentucky, apparently concerned an application of the rigid demand-waiver rule and should be reversed for further proceedings in light of Barker. ✓

In the four cases in which I recommend reversal, it should be clear that the courts are not required to give the petitioner a new trial but only to reassess his speedy trial claim along the lines set out in Barker.

L. F. P.
L. F. P., Jr.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

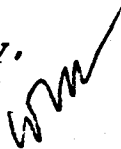
June 12, 1972

Re: No. 71-5255 - Barker v. Wingo

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

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