

The Burger Court Opinion Writing Database

Bradley v. United States

404 U.S. 567 (1972)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

January 21, 1972

Re: No. 71-5431 - Bradley v. U. S.

Dear Bill:

Please show me as dissenting for the reasons stated
in the dissent in Durham v. U. S. 401 U. S. 481 (1971).

I have no desire to write. Someday we will get one of
these cases with significant collateral consequences
(e.g., rights to insurance proceeds or to inherit) flowing
from vacating the convictions. When we do I suspect
we will need to take a fresh look at Durham.

Regards,

WJB

Mr. Justice Douglas

cc: The Conference

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AMM

1st DRAFT

SUPREME COURT OF THE UNITED STATES

GEORGE MARTIN BRADLEY v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 71-5431. Decided January —, 1972

MR. JUSTICE DOUGLAS.

The question presented in this case is whether we abandon precedent which is squarely in point, which is less than one year old and which has no constitutional dimensions. As in *Durham v. United States*, 401 U. S. 481 (1971), the instant petitioner, a federal defendant whose conviction was affirmed by the Court of Appeals, has died after filing his petition for writ of certiorari for further direct review. Under such circumstances, *Durham* holds that because of mootness all aspects of a prosecution are to be abated and the District Court should vacate all counts of the indictment. The Solicitor General suggests that that procedure be followed here. It is now suggested, however, that the Court should merely dismiss the petition.

Although in *Durham* we admitted that the "cases where a petitioner dies while a review is pending are not free of ambiguity," *id.*, 482, now that we have set a definite course, we should be guided by the principle of *stare decisis*. The Government does not suggest any prejudice to its interests from the operation of the *Durham* rule. We should therefore heed the admonition of Justice Holmes to imitate "the past, until we have a clear reason for change."¹ O. W. Holmes, Holdworth's Eng-

¹ As respects practices and precedents hoary with age:

"In 1731, a Parliament of George II did permanently what a Parliament of Cromwell had done only temporarily, and made English the language of our law. An Act of that year recited the mischiefs arising from the use in the courts of a language unintelligi-

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

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To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Kennedy

Pr

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

GEORGE MARTIN BRADLEY v. UNITED STATES

Circulated: _____
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ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 71-5431. Decided January —, 1972

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"In 1731, a Parliament of George II did permanently what a Parliament of Cromwell had done only temporarily, and made English the language of our law. An Act of that year recited the mischiefs arising from the use in the courts of a language unintelligi-

5th DRAFT

SUPREME COURT OF THE UNITED STATES

GEORGE MARTIN BRADLEY v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

No. 71-5431. Decided January —, 1972

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST concur.

The question presented in this case is whether we abandon precedent which is squarely in point, which is less than one year old and which has no constitutional dimensions. As in *Durham v. United States*, 401 U. S. 481 (1971), the instant petitioner, a federal defendant whose conviction was affirmed by the Court of Appeals, died after filing his petition for writ of certiorari for further direct review. Under such circumstances, *Durham* holds that because of mootness all aspects of a prosecution are to be abated and the District Court should vacate all counts of the indictment. The Solicitor General suggests that that procedure be followed here. It is now suggested, however, that the Court should merely dismiss the petition.

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Mr. Justice Blackmun
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Powell
Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. January 13, 1972

RE: No. 71-5431 - Bradley v. United States

Dear Bill:

Will you please add at the foot of your
opinion in the above:

"Mr. Justice Brennan would vacate the
conviction and direct that the prosecution
be dismissed. Durham v. United
States, 401 U.S. 481 (1971).

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 17, 1972

Re: 71-5431 - Bradley v. United States

Dear Bill,

I agree with your circulation in this case.

Sincerely yours,

P.S.
✓

Mr. Justice Douglas

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January 15, 1972

Re: No. 71-5431 - Bradley v. U. S.

Dear Bill:

At the foot of your opinion
in this case please add me to
Brother Brennan's notation.

Sincerely,

B.R.W.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 18, 1972

Re: No. 71-5431 - Bradley v. United States

Dear Bill:

Will you please add at the foot of your opinion:

"Mr. Justice Blackmun dissents for the reasons stated in his dissenting opinion in Durham v. United States, 401 U.S. 481, 483-485 (1971)."

Sincerely,

H.A.B.

Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 18, 1972

Re: 71-5431 - Bradley v. United States

Dear Bill:

I am happy to join in your opinion.

Sincerely,



Mr. Justice Douglas

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