

# The Burger Court Opinion Writing Database

*Tacon v. Arizona*

410 U.S. 351 (1973)

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

June 9, 1972

Re: No. 71-6060 - Tacon v. Arizona

Dear Byron:

Please join me in your dissent. I doubt it is  
worth our voting to grant.

Regards,

WHD

Mr. Justice White

Copies to the Conference

*1*  
*Chart Th 107 Court*

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**

Anthony Tacon, J.  
ANTHONY LOUIS TACON v. STATE OF ARIZONA

ON PETITION FOR WRIT OF CERTIORARI TO ~~the state court~~: 6/7/72  
COURT OF ARIZONA

No. 71-6060. Decided June —, 1972

PER CURIAM.

The question is whether petitioner was denied due process of law by the trial court's failure to grant a continuance to enable petitioner to be present at his felony trial and to testify on his own behalf. We hold that in the circumstances of this case the denial of the continuance deprived petitioner of his right to a fair trial secured by the Fourteenth Amendment. Accordingly, we reverse the judgment of the Supreme Court of Arizona.

Petitioner was arrested by Arizona authorities on February 24, 1969, and was charged with the unlawful sale of marihuana. Under Arizona law, sale of marihuana—first offense—is punishable by imprisonment in the state penitentiary for five years to life with no possibility of parole until three years have been served. Ariz. Rev. Stat. Ann. § 36-1002.07 (A) (Supp. 1971).

Trial was originally set for April 22, 1969, but was continued on motion of petitioner's counsel. On December 13, 1969, petitioner was discharged from the United States Army in Arizona and, after first advising his attorney of where he could be reached, returned to his home in New York City.

On March 2, 1970, trial was set for March 31. The next day, petitioner's attorney wrote petitioner of the trial date and requested that he return to Arizona at least one week before trial.<sup>1</sup> Petitioner did not contact

<sup>1</sup> Petitioner's attorney mailed a second letter on March 18, 1970, which was not received by petitioner until April 1 because of a mail strike. The attorney also sent a telegram on March 24 which re-

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

May 31, 1972

RE: No. 71-6060 - Tacon v. Arizona

Dear Bill:

I agree.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 5, 1972

71-6060 - Tacon v. Arizona

Dear Bill,

I agree with your Per Curiam in this case.

Sincerely yours,

*P.S.*

Mr. Justice Douglas

Copies to the Conference

3  
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

From: White, J.

## SUPREME COURT OF THE UNITED STATES

Circulated: 6-5-72

ANTHONY LOUIS TACON v. STATE OF ARIZONA

Recirculated: \_\_\_\_\_

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME  
COURT OF ARIZONA

No. 71-6060. Decided June —, 1972

MR. JUSTICE WHITE, dissenting.

The Court overlooks a significant fact. The motion for continuance filed on April First would have delayed the trial only until the morning of the second of April, but petitioner did not arrive in Arizona until the night of the second, and he did not contact his lawyer until the morning of the third. Thus even had the continuance been granted the trial would have been concluded before petitioner arrived on the scene. Denial of the motion, if error, could therefore have been no more than harmless error.

Is the Court implying that a second motion for a continuance would have had to have been granted if made on the morning of the second of April? If such an implication—the only one which could sustain the Court's opinion—is drawn, then what principles direct a State as to the proper disposition of requests for continuances made on the third of April, the fourth of April, and for that matter on the first of July? What if anything must a defendant's lawyer show as to the defendant's reason for nonappearance? What must be demonstrated as to the expectation of later appearance? I cannot discern the answers to these questions from the *per curiam* and I doubt that state officials charged with following this opinion will have any greater success. I cannot even discern on what basis the majority decides this case. I would set this case for argument and more mature consideration.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

June 5, 1972

Re: No. 71-6060 - Tacon v. Arizona

Dear Bill:

Please join me in your per curiam.

Sincerely,

  
T.M.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 6, 1972

Re: No. 71-6060 - Tacon v. Arizona

Dear Byron:

I, too, would set the case for argument.

Therefore, please join me in your dissent.

Sincerely,

*H. A. B.*

Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 1, 1972

Re: 71-6060 Tacon v. Arizona

Dear Bill:

Please join me in your Per Curiam.

Sincerely,



Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 6, 1972

Re: 71-6060 - Tacon v. Arizona

Dear Byron:

Please join me in your proposed dissent.

Sincerely,



Mr. Justice White

Copies to the Conference