The Burger Court Opinion Writing Database

Brown v. Oklahoma

408 U.S. 914 (1972)

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

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

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 6-15-72

Recirculated: _____

WILBERT MONTELL BROWN *v.* STATE OF OKLAHOMA

ON APPEAL FROM THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

No. 71-6535. Decided June —, 1972

PER CURIAM.

The judgment is vacated and the case is remanded to the Court of Criminal Appeals of the State of Oklahoma for reconsideration in the light of *Cohen* v. *California*, 402 U. S. 15 (1971), and *Gooding* v. *Wilson*, 405 U. S. — (1972).

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 14, 1972

71-6535 - Brown v. Oklahoma

Dear Bill,

I agree with your suggested disposition of this case.

Sincerely yours,

PS

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1972

Re: No. 71-6535 - Brown v. Oklahoma

Dear Bill:

I agree with your suggested disposition in this case.

Sincerely,

Mr. Justice Brennan

Copies to Conference

June 19, 1972

Re: No. 71-6535 - Brown v. Oklahoma

Dear Chief and Bill:

If you propose to extend your dissents in No. 70-5323, Lewis v. New Orleans, and No. 71-1044, Rosenfeld v. New Jersey, to this case, I would join each of you. If Lewis expands his dissent in Rosenfeld to include this case, I would also join him.

Sincerely,

H. A. B.

The Chief Justice
Mr. Justice Rehnquist

cc: Mr. Justice Powell

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

From: Powell, J.

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Recirculated: _____

SUPREME COURT OF THE UNITED STATES

WILBERT MONTELL BROWN *v.* STATE OF OKLAHOMA

ON APPEAL FROM THE COURT OF CRIMINAL APPEALS OF THE STATE OF OKLAHOMA

No. 71-6535. Decided June —, 1972

MR. JUSTICE POWELL, concurring in the result.

The statute involved in this case is considerably broader than the statute involved in *Rosenfeld* v. *New Jersey, ante,* p. ——, and it has not been given a narrowing construction by the Oklahoma courts. Moreover, the papers filed in this case indicate that the language for which appellant was prosecuted was used in a political meeting to which appellant had been invited to present the Black Panther viewpoint. In these circumstances language of the character charged might well have been anticipated by the audience.

These factors lead me to conclude that this case is significantly different from *Rosenfeld* v. *New Jersey, ante,* p. ——. I therefore concur in the Court's disposition of this case.