

The Burger Court Opinion Writing Database

Michigan v. Payne

412 U.S. 47 (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

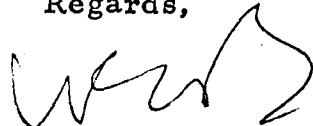
May 16, 1973

Re: No. 71-1005 - Michigan v. Payne

Dear Lewis:

Please join me.

Regards,



Mr. Justice Powell

Copies to the Conference

WD

1st DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 71-1005

From: [Redacted]

State of Michigan, Petitioner, } On Writ of Certiorari to: 5-11-73
v. } the Supreme Court of
Leroy Payne. } Michigan. Recirculated:

[May —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

We deal here with the guarantee contained in the Fifth Amendment, applicable to the States by reason of the Fourteenth, *Benton v. Maryland*, 395 U. S. 784, that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." The construction given that clause was applied retroactively in *North Carolina v. Pearce*, 395 U. S. 711; and I think that *Payne* as well as *Pearce* should have the benefit of the "new" constitutional rule. My views have been at odds with those of the Court as witnessed by the dissent of Mr. Justice Black in *Linkletter v. Walker*, 381 U. S. 618, 640, which I joined and by my separate dissent in *Desist v. United States*, 394 U. S. 244, 255. I could understand making a "new" constitutional rule applicable only prospectively. But I cannot bring myself to making the "new" rule applicable to some but not to others. If a State has violated the Federal Constitution in convicting or sentencing a prisoner, I see no way of denying him relief from that unconstitutional trial or unconstitutional sentence.

The Double Jeopardy Clause in my view was designed to discourage the abusive use of the Executive and Judicial Branches of the awesome power of government over the individual. Jeopardy attaches once the trial starts. If there is error in that trial and as a result a new trial

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1973

RE: No. 71-1005 - Michigan v. Payne

Dear Lewis:

I agree.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 14, 1973

71-1005 - Michigan v. Payne

Dear Thurgood,

I am glad to join Part III of your dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

Copies to the Conference

7
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 7, 1973

Re: No. 71-1005 - State of Michigan
v. Payne

Dear Lewis:

Please join me in your opinion in
this case.

Sincerely,



Mr. Justice Powell

Copies to The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: MAY 11 1973

No. 71-1005

Recirculated: _____

State of Michigan, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
Leroy Payne. | Michigan.

[May —, 1973]

MR. JUSTICE MARSHALL, dissenting.

The Court today holds that no limitations need be placed on resentencings that occurred before the date of decision in *North Carolina v. Pearce*, 395 U. S. 711 (1969). I believe however, that the State has an obligation to present to the court reviewing the second conviction evidence from which that court can determine whether a new sentence, more severe than that imposed at a prior trial, resulted in part from the sentencing authority's desire to punish the defendant for successfully appealing his first conviction.¹ I therefore respectfully dissent.

I

This case raises the issue of retroactivity only because of the almost unbelievable sluggishness of the appellate process in Michigan. Payne's second sentence was imposed on August 30, 1967, nearly two years before *Pearce* was decided. However, the Michigan Court of Appeals

¹ The State did present an affidavit from the sentencing judge in this case. The Michigan Supreme Court held that it did not satisfy the requirement of *North Carolina v. Pearce*, 395 U. S. 711, 726 (1969), that more severe sentences can be justified only by "objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding." See *People v. Payne*, 386 Mich. 84, —, 191 N. W. 2d 375, — (1971). Petitioner contends that this holding was erroneous. Petition for Writ of Certiorari, at 5-6. The Court does not address this contention, nor shall I.

WD

8

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

15
 2nd DRAFT

SUPREME COURT OF THE UNITED STATES: Marshall, J.

No. 71-1005

Circulated:

Recirculated: MAY 16 197

State of Michigan, Petitioner, | On Writ of Certiorari to
 v. | the Supreme Court of
 Leroy Payne. | Michigan.

[May —, 1973]

MR. JUSTICE MARSHALL, dissenting.

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WD

5
 To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Rehnquist

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

Marshall, J.

No. 71-1005

Circulated:

Recirculated:

MAY 17 1973

State of Michigan, Petitioner, } On Writ of Certiorari to
 v. } the Supreme Court of
 Leroy Payne. } Michigan.

[May —, 1973]

MR. JUSTICE MARSHALL, dissenting.

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7

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 7, 1973

Re: No. 71-1005 - Michigan v. Payne

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 4, 1973

No. 71-1005 Michigan v. Payne

MEMORANDUM TO THE CONFERENCE:

My notes indicate that, at our Conference discussion of this case, some Justices thought the case should be disposed of on the nonretroactivity issue while at least one Justice preferred (according to my notes) to reverse on the merits.

As you will see from my circulation of this date, I concluded that it was best to decide the retroactivity question which - as I recall - was the primary reason for our taking this case. On at least two prior occasions cases taken to decide whether Pearce is retroactive ultimately went off on other grounds.

While I could reverse the decision below on the merits (believing that the Pearce requirements were met), this is a more arguable issue on its facts than that of retroactivity.

If one concludes, as I did, that Pearce is nonretroactive then we do not reach the merits. My draft opinion is written accordingly.

L. F. P., Jr.

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.

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 4 1973

No. 71-1005

Recirculated: _____

State of Michigan, Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
Leroy Payne. } Michigan.

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

A writ of certiorari was granted in this case, 409 U. S. 911 (1972), to decide whether the due process holding of *North Carolina v. Pearce*, 395 U. S. 711, 723-726 (1969), is to be given retroactive effect. For the reasons that follow, we hold today that this decision is nonretroactive.¹

I

Respondent, Leroy Payne, pleaded guilty in a county circuit court in Michigan to a charge of assault with intent to commit murder in connection with an armed attack upon two sheriff's deputies. In March 1963, he was sentenced to a prison term of from 19 to 40 years. Several years later respondent's conviction and sentence were set aside when a hearing, ordered by the Michigan Court of Appeals, disclosed that his confession and subsequent guilty plea were involuntary. Following a retrial, at which he exercised his rights to trial by jury and

¹ We decide today only the retroactivity of the prophylactic restrictions established in *Pearce* to govern the rendition of a higher sentence after retrial. The question of the retroactivity of the double jeopardy holding, which "requires that punishment already exacted must be fully 'credited' in imposing a sentence upon a new conviction for the same offense," *id.*, 718-719, is not before us in this case.

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Changes 1, 8

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

2nd DRAFT

From: Powell, J.

Circulated:

No. 71-1005

Recirculated:

~~MAY 9~~ 1973

State of Michigan, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
Leroy Payne. | Michigan.

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

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I

Respondent, Leroy Payne, pleaded guilty in a county circuit court in Michigan to a charge of assault with intent to commit murder in connection with an armed attack upon two sheriff's deputies. In March 1963, he was sentenced to a prison term of from 19 to 40 years. Several years later respondent's conviction and sentence were set aside when a hearing, ordered by the Michigan Court of Appeals, disclosed that his confession and subsequent guilty plea were involuntary. Following a re-trial, at which he exercised his rights to trial by jury and to plead innocent, respondent again was found guilty on the same assault charge. On the 30th of August 1967, he was resentenced to prison from 25 to 50 years with full credit for all time served under the prior sentence. Dur-

<deletion

Change p.10

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You have dissent

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

3rd DRAFT

From: Powell, J.

Circulated:

MAY 16 1973

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 71-1005

State of Michigan, Petitioner, } On Writ of Certiorari to
v. { the Supreme Court of
Leroy Payne. Michigan.

[May —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

A writ of certiorari was granted in this case, 409 U. S. 911 (1972), to decide whether the due process holding of *North Carolina v. Pearce*, 395 U. S. 711, 723-726 (1969), is to be given retroactive effect. For the reasons that follow, we hold today that this decision is nonretroactive.

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May 17, 1973

No. 71-1005 Michigan v. Payne
No. 72-6732 Chaffin v. Stynchcombe

Dear Chief:

Although Payne has a lower number than Chaffin, I would prefer to announce Chaffin first - as this will enable me to state the rule of the Pearce case and not have to repeat it.

Sincerely,

The Chief Justice

lfp/ss

71-1005

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 31, 1973

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION
LIBRARY OF CONGRESS

May 10, 1973

Re: No. 71-1005 - Michigan v. Payne

Dear Lewis:

Please join me.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference