

The Burger Court Opinion Writing Database

Gagnon v. Scarpelli

411 U.S. 778 (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 3, 1973

Re: No. 71-1225, Gagnon v. Scarpelli

Dear Lewis:

I am not yet at rest on your opinion.

I cannot yet see how you can have a workable "sometimes" rule on counsel. The result of discretionary rules on counsel is to give rise to equal protection claims. It is a troublesome area.

In the next week I will conclude whether to join, to join the result or write separately.

Regards,

W. B.

Mr. Justice Powell

M
Supreme Court of the United States
Washington, D. C. 20542CHAMBERS OF
THE CHIEF JUSTICE

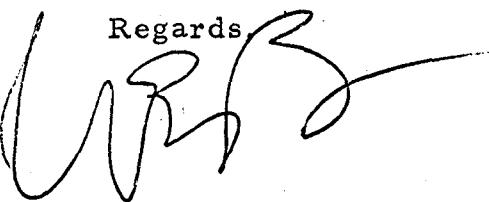
May 8, 1973

Re: No. 71-1225 - Gagnon v. Scarpelli

Dear Lewis:

I have worked out my reservations on the discretionary nature of the appointment of counsel so that I can now join you.

I hope my concerns are groundless for this is a most sensitive and important area.

Regards


Mr. Justice Powell

Copies to the Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-1225

Circulated:

3/30

John R. Gagnon, Warden, | On Writ of Certiorari to the
Petitioner, | United States ^{Circulated:} Court of
v. | Appeals for the Seventh
Gerald H. Scarpelli. | Circuit.

[April —, 1973]

MR. JUSTICE DOUGLAS.

While I agree with the opinion of the Court I believe that due process requires the appointment of counsel in this case in light of the claim that respondent's confession of the burglary was made under coercion. See *Morrissey v. Brewer*, 408 U. S. 471, 498 (dissenting in part).

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglass, S.

No. 71-1225

Circulated:

John R. Gagnon, Warden, Petitioner, v. Gerald H. Scarpelli. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1973]

MR. JUSTICE DOUGLAS, dissenting in part.

I believe that due process requires the appointment of counsel in this case because of the claim that respondent's confession of the burglary was made under coercion. See *Morrissey v. Brewer*, 408 U. S. 471, 498.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 29, 1973

RE: No. 71-1225 Gagnon v. Scarpelli

Dear Lewis:

I agree.

Sincerely,

Bill

Mr. Justice Powell

cc; The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

March 29, 1973

71-1225 - Gagnon v. Scarpelli

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 30, 1973

Re: No. 71-1225 - Gagnon v. Scarpelli

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1973

Re: No. 71-1225 - Gagnon, Warden v. Scarpelli

Dear Lewis:

Please join me.

Sincerely,



T.M.

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 29, 1973

Re: No. 71-1225 - Gagnon v. Scarpelli

Dear Lewis:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

*Please join us
JW*

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: MAR 28 1973

No. 71-1225

Recirculated:

John R. Gagnon, Warden, Petitioner, *v.* Gerald H. Scarpelli. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[April —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case presents the related questions whether a previously sentenced probationer is entitled to a hearing when his probation is revoked and, if so, whether he is entitled to be represented by appointed counsel at such a hearing.

I

Respondent, Gerald Scarpelli, pleaded guilty in July, 1965, to a charge of armed robbery in Wisconsin. The trial judge sentenced him to 15 years' imprisonment, but suspended the sentence and placed him on probation for seven years in the custody of the Wisconsin Department of Public Welfare ("the Department").¹ At that time, he signed an agreement specifying the terms of his probation and a "Travel Permit and Agreement to Return" allowing him to reside in Illinois, with supervision there

¹ The Court's order placing respondent on probation provided, among other things, that "[i]n the event of his failure to meet the conditions of his probation he will stand committed under the sentence all ready [sic] imposed." App., p. 10. The agreement specifying the conditions of the probation, duly executed by respondent, obligated him to "make a sincere attempt to avoid all acts which are forbidden by law . . ." App., p. 12.

March 29, 1973

Re: No. 71-1225 Gagnon v. Scarpelli

Dear Bill:

My reason for concluding that respondent is entitled to a hearing is that Morrissey applied in terms only to a parole revocation, not to a probation revocation. The first question the present opinion needed to address, then, was whether a probationer is entitled to a hearing upon revocation. While I felt that the question was an easy one in light of Morrissey, I thought it necessary to decide it explicitly.

Respondent gets the benefit of our ruling that a probationer is entitled to such a hearing only because his case happens to be our vehicle for deciding the question.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

May 17, 1973

Cases held for No. 71-1225, GAGNON v. SCARPELLI

MEMORANDUM TO THE CONFERENCE

Four cases involving the right to appointed counsel at parole revocation proceedings were held for Gagnon v. Scarpelli. While that case was itself a probation revocation case, we there set standards for the appointment of counsel at both probation and parole revocation proceedings.

1. Martinez v. Alldredge (No. 72-5709).

Petitioner was convicted in 1963 of a federal narcotics offense and was sentenced to ten years imprisonment. In 1969, he was granted parole, but shortly thereafter was arrested for and pleaded guilty to a state charge of possession of cocaine. After serving his state term, he was afforded a federal revocation interview on December 1, 1970. He executed a written waiver of counsel and admitted a parole violation -- that is, that he had been convicted of a state crime. He argues that he admitted the parole violation only after having been denied the right to appointed counsel. He makes no claim in mitigation of the violation.

Gagnon v. Scarpelli held that one who makes no colorable claim that he did not commit the violation or that there were substantial reasons in mitigation of the violation is not entitled to appointed counsel. Accordingly, I will vote to deny.

LFP

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 29, 1973

Re: No. 71-1225 - Gagnon v. Scarpelli

Dear Lewis:

Since we said in Morrisey v. Brewer that our holding there was not retroactive, I had some difficulty at first blush with your conclusion that since Scarpelli did not get a hearing, he is entitled to habeas. You have undoubtedly thought the thing through much more than I have, but I wonder if some word of explanation in the opinion might not be in order.

Sincerely,

W.M.

Mr. Justice Powell

Sally - see draft reply
attached.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 30, 1973

Re: No. 71-1225 - Gagnon v. Scarpelli

Dear Lewis:

Please join me.

Sincerely,

WR

Mr. Justice Powell

Copies to the Conference