

# The Burger Court Opinion Writing Database

*Swenson v. Stidham*

409 U.S. 224 (1972)

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

By  
CHAMBERS OF  
THE CHIEF JUSTICE

November 17, 1972

Re: 71-224 - Swenson v. Stidham

Dear Byron:

Please join me.

Regards,

WBW

Mr. Justice White

Copies to the Conference

Supreme Court of the United States  
Washington 25, D. C.

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

November 16, 1972

Dear Byron:

In 71-224, Swenson v. Stidham please  
join me.

William O. Douglas

Mr. Justice White

cc: Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. November 15, 1972

RE: No. 71-224 Swenson v. Stidham

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 16, 1972

71-224 - Swenson v. Stidham

Dear Byron,

Although I continue to have some doubts about this case, I shall acquiesce in your opinion for the Court unless somebody else by separate writing convinces me to the contrary.

Sincerely yours,

P.S.  
P.

Mr. Justice White

Copies to the Conference

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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: 11-14-72

No. 71-224

Recirculated:

Harold R. Swenson, Warden, Petitioner,  
v.  
James William Stidham.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Eighth  
Circuit.

[November —, 1972]

MR. JUSTICE WHITE delivered the opinion of the Court.

This case has a long and tortured history and is not yet concluded. At this juncture the question is whether, absent further state court proceedings to determine the voluntariness of his conviction, petitioner's 1955 conviction for murder is vulnerable to attack under the Fourteenth Amendment as construed and applied in *Jackson v. Denno*, 378 U. S. 368 (1964).

In July 1955, petitioner Stidham was convicted of first-degree murder of a fellow inmate during a riot. He was sentenced to life imprisonment. He was represented by experienced counsel who challenged his confession when it was offered at trial. A full evidentiary hearing outside the presence of the jury was held. Stidham's testimony as to the relevant circumstances surrounding his confession was in sharp conflict with that of the officers. His claim was that he had been subjected to gross physical abuse; the officers denied the claim. At the conclusion of the hearing, the trial judge admitted the confession with the following ruling:

"THE COURT: 16 and 16-1, it is the Court's opinion that the matters concerning the statement should be offered in the presence of the Jury, subject of course to any attacks as to its credibility by the Defendant. The Defendant has of course the

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5+6  
q. 9

*Please sign my*

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

circulated:

No. 71-224

Recirculated: 11-16-72

Harold R. Swenson, Warden, Petitioner,  
v.  
James William Stidham.

On Writ of Certiorari to  
the United States Court  
of Appeals for the Eighth  
Circuit.

[November —, 1972]

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This case has a long and tortured history and is not yet concluded. At this juncture the question is whether, absent further state court proceedings to determine the voluntariness of his confession, petitioner's 1955 conviction for murder is vulnerable to attack under the Fourteenth Amendment as construed and applied in *Jackson v. Denno*, 378 U. S. 368 (1964).

In July 1955, petitioner Stidham was convicted of first-degree murder of a fellow inmate during a riot. He was sentenced to life imprisonment. He was represented by experienced counsel who challenged his confession when it was offered at trial. A full evidentiary hearing outside the presence of the jury was held. Stidham's testimony as to the relevant circumstances surrounding his confession was in sharp conflict with that of the officers. His claim was that he had been subjected to gross physical abuse; the officers denied the claim. At the conclusion of the hearing, the trial judge admitted the confession with the following ruling:

"THE COURT: 16 and 16-1, it is the Court's opinion that the matters concerning the statement should be offered in the presence of the Jury, subject of course to any attacks as to its credibility by the Defendant. The Defendant has of course the

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

January 13, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 71-224 - Swenson v. Stidham

This refers to the petition for rehearing appearing on page five of the conference list for January 19.

On the last page of my opinion for the Court in this case, it is stated that "Neither the District Court nor the Court of Appeals reached this issue"--the issue of the voluntariness of Stidham's confession. This was not entirely accurate, for, as the parties point out, the District Court wrote two opinions in this case and did deal with the voluntariness issue in its earlier opinion. I would amend the sentence to read as follows:

The Court of Appeals did not reach this issue.

This will remove the possibility that the Court of Appeals would have remanded the case to the District Court. In light of the record, I doubt that it would have done so in any event, but the parties are entitled to have my error corrected.



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 16, 1972

Re: No. 71-224 - Swenson v. Stidham

Dear Byron:

I have not yet come to rest on this.  
I hope you will give me a few more days to make  
up my mind.

Sincerely,

  
T.M.

Mr. Justice White

cc: Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

November 22, 1972

Re: No. 71-224 - Swenson v. Stidham

Dear Byron:

Please join me.

I apologize for the delay in making up my mind. After going over the record I am still convinced that Ohio did not at any time give the respondent a Jackson v. Denno hearing. While this gives me problems as to the particular individual involved in the case I have convinced myself that I should go along, hoping that the matter will be threshed out on future federal habeas corpus.

Sincerely,  
  
T.M.

Mr. Justice White

cc: Conference

Qa

Rea

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 16, 1972

Re: No. 71-224 - Swenson v. Stidham

Dear Byron:

Please join me.

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.

November 15, 1972

Re: No. 71-224 Swenson v. Stidham

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

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CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

All have joined chief  
cept + you Supreme Court of the United States  
Washington, D. C. 20543

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LIBRARY OF CONGRESS

November 16, 1972

Re: No. 71-224 - Swenson v. Stidham

Dear Byron:

Please join me.

Sincerely,

WW

Mr. Justice White

Copies to Conference