

The Burger Court Opinion Writing Database

Chambers v. Mississippi
410 U.S. 284 (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

November 20, 1972

PERSONAL

Re: No. 71-5908 - Chambers v. Mississippi

Dear Lewis:

I am assigning the above to you and I agree with you that it must be written very narrowly.

We have a real problem on a state case and there is much in what Bill Rehnquist said about intruding in state procedures and "constitutionalizing everything." Nonetheless, this can be reversed on no grounds except the Federal Constitution and were I doing it, I would rest it on the unique factors of this case and even call them unique, i. e.:

- (a) There was eye-witness testimony that McDonald was seen shooting the victim.
- (b) There was evidence that McDonald purchased two pistols of the caliber that killed the victim.
- (c) No evidence that Chambers owned a 22.
- (d) Professed testimony that McDonald had told three persons he had done the killing.

You know all this as well as I do and I recite it only to underscore that my approach would be to hold (but I would avoid a "totality of circumstances" concept) that in these peculiar and unique circumstances McDonald was inherently a hostile witness and that due process required he should have been subject to all the attacks available on such a witness.

2.

If this is narrowly done, there is a good chance to pick up
Rehnquist and I would try to do that.

Regards,

W. B. S.

Mr. Justice Powell

I have these thoughts
on top of my mind
& I hope you don't
mind my passing
them on to you.

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

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1973

Re: No. 71-5908 - Chambers v. Mississippi

Dear Lewis:

Please join me.

Regards,

WSB

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 28, 1972

Dear Lewis:

In 71-5908, Chambers v. Mississippi
please join me.

aw
William O. Douglas

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 5, 1973

Dear Lewis:

In 71-5908, Chambers v. Mississippi

I am still with you.

William O. Douglas

Mr. Justice Powell

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. December 29, 1972

RE: No. 71-5908 - Chambers v.
Mississippi

Dear Lewis:

Please join me in your fine opinion
in the above.

Sincerely,

Wm. J. Brennan, Jr.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 28, 1972

No. 71-5908 - Chambers v. Mississippi

Dear Lewis,

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

Sincerely yours,

P. C.

Mr. Justice Powell

Copies to the Conference

Only copy

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 30, 1973

*Noted
W. R.
W. Rehnquist*

Dear Bill:

As per our conversation, I
am enclosing a draft of a possible
concurrence in Chambers.

Sincerely,

Byron

Mr. Justice Rehnquist

No. 71-5908 - Chambers v. Mississippi

Mr. Justice White, concurring.

We would not ordinarily expect an appellate court in the state or federal system to remain silent on a constitutional issue requiring decision in the case before it. Normally, a court's silence on an important question would simply indicate that it was unnecessary to decide the issue because it was not properly before the court or for some other reason. As my Brother Rehnquist points out, the Court stated in Street v. New York, 394 U.S. 576, 582 (1969), that "when the highest state court has failed to pass upon a federal question it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show to the contrary."

Under this rule it becomes the petitioner's burden to demonstrate that under the applicable state law his claim was properly before the state court and was therefore necessarily rejected, although silently, by affirmance of the judgment. If he fails to do so, we need not entertain and decide the federal question that he presses.

It is not our invariable practice, however, that we will not ourselves canvass state law to determine whether the federal question, presented to but not discussed by the state supreme court, was properly raised in accordance with state procedures. The Court surveyed state law in Street itself, with little if any help from the appellant; and I think it is appropriate here where the State does not



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.

Circulated: 2-14-73

No. 71-5908

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

Leon Chambers, Petitioner, | On Writ of Certiorari to
 v. | the Supreme Court of
 State of Mississippi. | Mississippi.

[February —, 1973]

MR. JUSTICE WHITE, concurring.

We would not ordinarily expect an appellate court in the state or federal system to remain silent on a constitutional issue requiring decision in the case before it. Normally, a court's silence on an important question would simply indicate that it was unnecessary to decide the issue because it was not properly before the court or for some other reason. As my Brother REHNQUIST points out, the Court stated in *Street v. New York*, 394 U. S. 576, 582 (1969), that "when the highest state court has failed to pass upon a federal question it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show to the contrary."

Under this rule it becomes the petitioner's burden to demonstrate that under the applicable state law his claim was properly before the state court and was therefore necessarily rejected, although silently, by affirmance of the judgment. If he fails to do so, we need not entertain and decide the federal question that he presses.

It is not our invariable practice, however, that we will not ourselves canvass state law to determine whether the federal question, presented to but not discussed by the state supreme court, was properly raised in accordance with state procedures. The Court surveyed

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1973

Re: Chambers v. Mississippi - No. 71-5908

Dear Lewis:

Please join me.

Sincerely,


T.M.

Mr. Justice Powell

cc: Conference

B

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 22, 1973

Re: No. 71-5908 - Chambers v. Mississippi

Dear Lewis:

This case is not an easy one so far as the posture of this Court is concerned. You have prepared an appropriately narrow opinion which meets the issues, and I am glad to join.

Sincerely,

H. A. B.

Mr. Justice Powell

Copies to the Conference

2/27/72

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: 12/27/72

SUPREME COURT OF THE UNITED STATES

No. 71-5908

Recirculated: _____

Leon Chambers, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Mississippi. | Mississippi.

[January —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner, Leon Chambers, was tried by a jury in a Mississippi trial court and convicted of murdering a policeman. The jury assessed punishment at life imprisonment and the Mississippi Supreme Court affirmed, one justice dissenting. *Chambers v. Mississippi*, 252 So. 2d 217 (1971). Pending disposition of his application for certiorari to this Court, petitioner was granted bail by order of the Circuit Justice dated February 1, 1972. Two weeks later, on the State's request for reconsideration, that order was reaffirmed. 405 U. S. 1205 (1972). Subsequently the petition for certiorari was granted, 405 U. S. 987 (1972), to consider whether petitioner's trial was conducted in accord with principles of due process under the Fourteenth Amendment. We conclude that it was not.

I

The events that led to petitioner's prosecution for murder occurred in the small town of Woodville in southern Mississippi. On Saturday evening, June 14, 1969, two Woodville policemen, James Forman and Aaron "Sonny" Liberty, entered a local bar and pool hall to execute a warrant for the arrest of a youth named C. C. Jackson. Jackson resisted and a hostile crowd

Changes pp 6, 7, 15

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

Circulated: _____

No. 71-5908

Recirculated: 1/4/73

Leon Chambers, Petitioner, On Writ of Certiorari to
v. _____ the Supreme Court of
State of Mississippi. Mississippi.

[January —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner, Leon Chambers, was tried by a jury in a Mississippi trial court and convicted of murdering a policeman. The jury assessed punishment at life imprisonment and the Mississippi Supreme Court affirmed, one justice dissenting. *Chambers v. Mississippi*, 252 So. 2d 217 (1971). Pending disposition of his application for certiorari to this Court, petitioner was granted bail by order of the Circuit Justice dated February 1, 1972. Two weeks later, on the State's request for reconsideration, that order was reaffirmed. 405 U. S. 1205 (1972). Subsequently the petition for certiorari was granted, 405 U. S. 987 (1972), to consider whether petitioner's trial was conducted in accord with principles of due process under the Fourteenth Amendment. We conclude that it was not.

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3
changes 6, 11, 15, 16, 18

113-A
113-A

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice O'Conor

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-5908

From: J.
Circulated:

Received by: 2/19/73

Leon Chambers, Petitioner, } On Writ of Certiorari to
v. } the Supreme Court of
State of Mississippi. } Mississippi.

[February —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

Petitioner, Leon Chambers, was tried by a jury in a Mississippi trial court and convicted of murdering a policeman. The jury assessed punishment at life imprisonment and the Mississippi Supreme Court affirmed, one justice dissenting. *Chambers v. Mississippi*, 252 So. 2d 217 (1971). Pending disposition of his application for certiorari to this Court, petitioner was granted bail by order of the Circuit Justice dated February 1, 1972. Two weeks later, on the State's request for reconsideration, that order was reaffirmed. 405 U. S. 1205 (1972). Subsequently the petition for certiorari was granted, 405 U. S. 987 (1972), to consider whether petitioner's trial was conducted in accord with principles of due process under the Fourteenth Amendment. We conclude that it was not.

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The events that led to petitioner's prosecution for murder occurred in the small town of Woodville in southern Mississippi. On Saturday evening, June 14, 1969, two Woodville policemen, James Forman and Aaron "Sonny" Liberty, entered a local bar and pool hall to execute a warrant for the arrest of a youth named C. C. Jackson. Jackson resisted and a hostile crowd

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

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 1/2/73

No. 71-5908

Recirculated: _____

Leon Chambers, Petitioner, | On Writ of Certiorari to
v. | the Supreme Court of
State of Mississippi. | Mississippi.

[January —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

Were I to reach the merits in this case, I would have considerable difficulty in subscribing to the Court's further constitutionalization of the intricacies of the common law of evidence. I do not reach the merits, since I conclude that petitioner failed to properly raise in the Mississippi courts the constitutional issue which he seeks to have this Court decide.

28 U. S. C. § 1257 provides in pertinent part as follows:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

"(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

We deal here with a limitation imposed by Congress upon this Court's authority to review judgments of state courts. It is a jurisdictional limitation, *Cardinale v. Louisiana*, 394 U. S. 437, 438 (1969), which has always been interpreted with careful regard for the delicate