

# The Burger Court Opinion Writing Database

## *Tacon v. Arizona*

410 U.S. 351 (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

9

CHAMBERS OF  
THE CHIEF JUSTICE

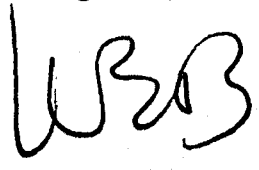
February 1, 1973

Re: No. 71-6060 - Tacon v. Arizona

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

WD

*Files  
cir.  
1-30-73*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-6060

Anthony Louis Tacon, Petitioner, v. State of Arizona.	}	On Writ of Certiorari to the Supreme Court of Arizona.
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[February —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Petitioner, while in the Armed Services, was stationed in Arizona and while there was arrested and charged with the unlawful sale of marihuana. That was on February 24, 1969. His counsel asked for a continuance of the trial until April 22, 1969, which was granted. But no trial date was set at that time and was subsequently set for March 31, 1970. In the meantime petitioner had been discharged from the Army in New York and gave his attorney his New York address. The attorney sent word by letter on March 3, 1970, that the trial would start March 31 and asked that he return a week early for preparation. Petitioner received that letter March 6 or 7, but had no funds to return. He apparently in good faith tried to raise the money but was not successful. He eventually did succeed and arrived in Arizona April 2. But the trial was over. Petitioner was convicted *in absentia* and sentenced to not less than five years nor more than 5½ years. On appeal the Supreme Court confirmed. 107 Ariz. 353, 355.

Under Rule 231 of Arizona's Rules of Criminal Procedure a trial may be conducted in the defendant's absence "if his absence is voluntary." 107 Ariz. 353. The Arizona Supreme Court held that there had been "a knowing and intelligent waiver of his right to be

*WD*

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2-7-73

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-6060

Anthony Louis Tacon, Petitioner, v. State of Arizona.	}	On Writ of Certiorari to the Supreme Court of Arizona.
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[February —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN concurs, dissenting.

Petitioner, while in the Armed Services, was stationed in Arizona and while there was arrested and charged with the unlawful sale of marihuana. That was on February 24, 1969. His counsel asked for a continuance of the trial until April 22, 1969, which was granted. But no trial date was set at that time and was subsequently set for March 31, 1970. In the meantime petitioner had been discharged from the Army in New York and gave his attorney his New York address. The attorney sent word by letter on March 3, 1970, that the trial would start March 31 and asked that he return a week early for preparation. Petitioner received that letter March 6 or 7, but had no funds to return. He apparently in good faith tried to raise the money but was not successful. He eventually did succeed and arrived in Arizona April 2. But the trial was over. Petitioner was convicted *in absentia* and sentenced to not less than five years nor more than 5½ years. On appeal the Supreme Court confirmed. 107 Ariz. 353, 355.

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WJ

W.D.  
 recd.  
 2-8-73

4th DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 71-6060

Anthony Louis Tacon, Petitioner, v. State of Arizona.	}	On Writ of Certiorari to the Supreme Court of Arizona.
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[February —, 1973]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

Petitioner, while in the Armed Services, was stationed in Arizona and while there was arrested and charged with the unlawful sale of marihuana. That was on February 24, 1969. His counsel asked for a continuance of the trial until April 22, 1969, which was granted. But no trial date was set at that time and was subsequently set for March 31, 1970. In the meantime petitioner had been discharged from the Army in New York and gave his attorney his New York address. The attorney sent word by letter on March 3, 1970, that the trial would start March 31 and asked that he return a week early for preparation. Petitioner received that letter March 6 or 7, but had no funds to return. He apparently in good faith tried to raise the money but was not successful. He eventually did succeed and arrived in Arizona April 2. But the trial was over. Petitioner was convicted *in absentia* and sentenced to not less than five years nor more than 5½ years. On appeal the Supreme Court confirmed. 107 Ariz. 353, 355.

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W.D.

B

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

February 5, 1973

RE: No. 71-6060 - Tacon v. Arizona

Dear Bill:

Please join me in your dissent in the  
above.

Sincerely,



Mr. Justice Douglas

cc: The Conference

WD

S

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

CHAMBERS OF  
JUSTICE POTTER STEWART

January 29, 1973

Re: No. 71-6060, Tacon v. Arizona

Dear Bill,

I am glad to join the Per Curiam you have  
circulated in this case.

Sincerely yours,

P.S.  
1.5

Mr. Justice Rehnquist

Copies to the Conference

30

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

February 9, 1973

Re: No. 71-6060 - Tacon v. Arizona

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

WB



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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

February 7, 1973

Re: No. 71-6060 - Tacon v. Arizona

Dear Bill:

While I voted the other way in  
conference I am now persuaded to join  
WOD's dissenting opinion.

Sincerely,



T.M.

Mr. Justice Rehnquist

cc: Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

January 30, 1973

Re: No. 71-6060 - Tacon v. Arizona

Dear Bill:

Please join me in your proposed per curiam.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

Copies to the Conference

WD

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

February 2, 1973

Re: No. 71-6060 Tacon v. Arizona

Dear Bill:

Please join me in your per curiam.

Sincerely,

*Lewis*

Mr. Justice Rehnquist

cc: The Conference

WD

Mr. Justice Douglas  
 Mr. Justice Brennan  
 Mr. Justice Stewart  
 Mr. Justice White  
 Mr. Justice Marshall  
 Mr. Justice Blackmun  
 Mr. Justice Powell

9

From: Rehnquist, J.

1st DRAFT

Circulated: 1/29/73

SUPREME COURT OF THE UNITED STATES

Recirculated: \_\_\_\_\_

No. 71-6060

Anthony Louis Tacon, Petitioner, v. State of Arizona.	}	On Writ of Certiorari to the Supreme Court of Arizona.
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121  
 488  
 P 22

[February —, 1973]

PER CURIAM.

Petitioner, while a soldier in the United States Army stationed at Fort Huachuca, Arizona, was arrested and charged by state authorities with the sale of marihuana in violation of applicable state law. Prior to his trial on this charge the petitioner was discharged from the Army and voluntarily left Arizona for New York. When the trial date was set the petitioner's court-appointed attorney so advised the petitioner and requested him to return to Arizona. Assertedly because he lacked travel funds, the petitioner did not appear in Arizona on the date set for trial. Under these circumstances the trial proceeded without the petitioner's presence, as authorized by state procedure. The jury returned a guilty verdict. After the verdict was rendered the petitioner obtained the necessary travel funds and returned to Arizona in time for his sentencing. He was sentenced to not less than five nor more than five and one-half years in prison. The Arizona Supreme Court affirmed his conviction. 107 Ariz. 353 (1971).

The petition for certiorari in this case presented questions as to constitutional limits on the States' authority to try in absentia a person who has voluntarily left the State and is unable, for financial reasons, to return to

WD

5 p. 2

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

2nd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: \_\_\_\_\_

No. 71-6060

Recirculated: 1/30/73

Anthony Louis Tacon, }  
Petitioner, } On Writ of Certiorari to the  
v. } Supreme Court of Arizona.  
State of Arizona. }

[February —, 1973]

PER CURIAM.

Petitioner, while a soldier in the United States Army stationed at Fort Huachuca, Arizona, was arrested and charged by state authorities with the sale of marihuana in violation of applicable state law. Prior to his trial on this charge the petitioner was discharged from the Army and voluntarily left Arizona for New York. When the trial date was set the petitioner's court-appointed attorney so advised the petitioner and requested him to return to Arizona. Assertedly because he lacked travel funds, the petitioner did not appear in Arizona on the date set for trial. Under these circumstances the trial proceeded without the petitioner's presence, as authorized by state procedure. The jury returned a guilty verdict. After the verdict was rendered the petitioner obtained the necessary travel funds and returned to Arizona in time for his sentencing. He was sentenced to not less than five nor more than five and one-half years in prison. The Arizona Supreme Court affirmed his conviction. 107 Ariz. 353 (1971).

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