

The Burger Court Opinion Writing Database

Robinson v. Neil

409 U.S. 505 (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

December 30, 1972

Re: No. 71-6272 - Robinson v. Neil

Dear Bill:

Please join me in your proposed per curiam.

Although at Conference we seemed to think this deserved only per curiam treatment, your comprehensive analysis of the elements involved suggests that the per curiam could well be a signed opinion for the Court.

Regards,

WEA

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 28, 1972

Dear Bill:

Please join me in the Per Curiam in
No. 71-6272 - Robinson v. Neil.

W. O. D.

Mr. Justice Rehnquist

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 4, 1973

3
You joined this X.

Dear Bill:

Please join me in your separate
opinion in 71-6272, Robinson v. Neil,
Warden.

will
William O. Douglas

Mr. Justice Brennan

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 10, 1973

Dear Bill:

Please join me in No. 71-6272 -

Robinson v. Neil.

W. O. D.

Mr. Justice Rehnquist

cc: Conference

114-3

Dear joined w/ B
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

January 11, 1973

Dear Bill:

I joined you in No. 71-6272 - Robinson v.
Neil.

But later when Bill Brennan circulated
I joined him.

So to keep the lines clear, I should now
be listed as joining you to the extent that Bill
Brennan did in his concurrence.

W. O. D.

Mr. Justice Rehnquist

cc: Conference

*Please file
me MR*

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

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 12/29/72

No. 71-6272

Recirculated: _____

Samuel Ed Robinson,
Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
William S. Neil, Warden. } peals for the Sixth Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN.

Although I otherwise join the opinion of the Court, I would reverse the judgment of the Court of Appeals "outright." I adhere to my view that, regardless of the similarity of the offenses, the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (concurring opinion); see *Grubb v. Oklahoma*, — U. S. —, — (1972) (dissenting opinion); *Miller v. Oregon*, 405 U. S. 1047 (1972) (dissenting opinion); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (concurring opinion). Under this "same transaction" test, all charges against petitioner should have been brought in a single prosecution.

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

No. 71-6272

Circulated: _____

Recirculated: 1/3/73

Samuel Ed Robinson,
Petitioner,
v.
William S. Neil, Warden.

On Writ of Certiorari to the
United States Court of Ap-
peals for the Sixth Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE MARSHALL concurs.

Although I otherwise join the opinion of the Court, I would reverse the judgment of the Court of Appeals "outright." I adhere to my view that, regardless of the similarity of the offenses, the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (concurring opinion); see *Grubb v. Oklahoma*, — U. S. —, — (1972) (dissenting opinion); *Miller v. Oregon*, 405 U. S. 1047 (1972) (dissenting opinion); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (concurring opinion). Under this "same-transaction" test, all charges against petitioner should have been brought in a single prosecution.

B 4
To: The Chief Justice
Mr. Justice Douglas
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

Brennan, J.

No. 71-6272

Circulated: _____

Recirculated: 1/4/73

Samuel Ed Robinson,
Petitioner,
v.
William S. Neil, Warden. } On Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit.

[January —, 1973]

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

Although I otherwise join the opinion of the Court, I would reverse the judgment of the Court of Appeals "outright." I adhere to my view that, regardless of the similarity of the offenses, the Double Jeopardy Clause of the Fifth Amendment, which is applicable to the States through the Fourteenth Amendment, *Benton v. Maryland*, 395 U. S. 784 (1969), requires the prosecution, except in most limited circumstances not present here, "to join at one trial all the charges against a defendant that grow out of a single criminal act, occurrence, episode, or transaction." *Ashe v. Swenson*, 397 U. S. 436, 453-454 (1970) (concurring opinion); see *Grubb v. Oklahoma*, — U. S. —, — (1972) (dissenting opinion); *Miller v. Oregon*, 405 U. S. 1047 (1972) (dissenting opinion); *Harris v. Washington*, 404 U. S. 55, 57 (1971) (concurring opinion). Under this "same transaction" test, all charges against petitioner should have been brought in a single prosecution.

December 26, 1972

71-6272 - Robinson v. Neil

Dear Bill,

I am glad to join your opinion for the Court in this case. I see no reason why this should be a Per Curiam, and strongly urge that it should be published under your name.

Sincerely yours,

P. S.

Mr. Justice Rehnquist

Copies to the Conference

MR

B
M

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 4, 1973

Re: No. 71-6272 - Robinson v. Neil

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 3, 1973

Re: No. 71-6272 - Robinson v. Neil

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

3 21
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 8, 1973

Re: No. 71-6272 - Robinson v. Neil

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 29, 1972

Re: No. 71-6272 Robinson v. Neil

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

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

Plated: 12/28/72

No. 71-6272

Recirculated: _____

Samuel Ed Robinson,
Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
William S. Neil, Warden. } peals for the Sixth Circuit.

[January —, 1973]

PER CURIAM.

In 1962 petitioner was tried and convicted in the Chattanooga municipal court of three counts of assault and battery in violation of a city ordinance. He was fined \$50 and costs on each count. He was later indicted by the grand jury of Hamilton County, Tennessee, which, out of the same circumstances giving rise to the municipal trial, charged him with three offenses of assault with intent to commit murder in violation of state law. The petitioner pleaded guilty to the state charges and received consecutive sentences of three to 10 years for two offenses and three to five years for the third offense. He is presently in the custody of the respondent warden of the Tennessee State Penitentiary.

In 1966 the petitioner unsuccessfully sought habeas corpus relief in state courts on the ground that the second convictions for state offenses violated his federal constitutional guarantee against twice being placed in jeopardy for the same offense. In 1967 federal courts denied a similar request for habeas corpus relief. *Robinson v. Henderson*, 268 F. Supp. 349 (ED Tenn. 1967), aff'd, 391 F. 2d 933 (CA6 1968). In 1970 the petitioner renewed his claims for habeas relief, basing his arguments on this Court's intervening decisions in *Benton v.*

pp. 1,7
joined w/ B memo

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

3rd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

No. 71-6272

Samuel Ed Robinson,
Petitioner,
v.
William S. Neil, Warden.

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

[January —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

In 1962 petitioner was tried and convicted in the Chattanooga municipal court of three counts of assault and battery in violation of a city ordinance. He was fined \$50 and costs on each count. He was later indicted by the grand jury of Hamilton County, Tennessee, which, out of the same circumstances giving rise to the municipal trial, charged him with three offenses of assault with intent to commit murder in violation of state law. The petitioner pleaded guilty to the state charges and received consecutive sentences of three to 10 years for two offenses and three to five years for the third offense. He is presently in the custody of the respondent warden of the Tennessee State Penitentiary.

In 1966 the petitioner unsuccessfully sought habeas corpus relief in state courts on the ground that the second convictions for state offenses violated his federal constitutional guarantee against twice being placed in jeopardy for the same offense. In 1967 federal courts denied a similar request for habeas corpus relief. *Robinson v. Henderson*, 268 F. Supp. 349 (ED Tenn. 1967), aff'd, 391 F. 2d 933 (CA6 1968). In 1970 the petitioner renewed his claims for habeas relief, basing his argu-