

The Burger Court Opinion Writing Database

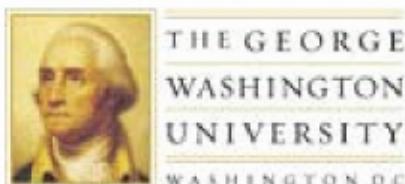
Braden v. 30th Judicial Circuit Court of Kentucky

410 U.S. 484 (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

February 23, 1973

Re: No. 71-6516 - Braden v. 30th Jud. Cir. Ct. of Ky.

Dear Bill:

1-511
Please join me in your dissent.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

cc

Supreme Court of the United States
Washington 25, D. C.CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 12, 1972

MEMO TO THE CONFERENCE:

In 71-6516 Braden v. Circuit Court I passed at our last Conference and did not vote.

I have done more work on the case and now vote to reverse.

Ahrens v. Clark should, I think, be treated as presenting a question of "venue" not of "jurisdiction" in the technical sense though the phrase "within their respective jurisdictions" appears in §2241(a).

If Ahrens v. Clark is based on considerations of venue, this Court should have considerable leeway in reinterpreting the phrase "within their respective jurisdictions" as used in § 2241(a) in light of new developments. Ahrens was based on two considerations: (1) matters of policy and (2) legislative history. The Court was concerned with "(t)he opportunities for escape afforded by travel, the cost of transportation, the administrative burden" resulting from the requirement that the prisoner be brought before the court. 335 U.S. at 191. In addition, in passing the predecessor of § 2241(a), Congress had been concerned that a District Court in Florida might exercise jurisdiction over a prisoner in Vermont.

The policy considerations now mandate in favor of allowing the petitioner to bring the habeas proceeding in the district in which the demanding custodian is located. That is the district where the relevant records and witnesses are most likely to be located. And it would be a greater imposition on the demanding authorities to require them to support their detainer in proceedings in a foreign jurisdiction. On the other side of the coin, the concerns expressed in Ahrens are no longer a major factor. In many habeas proceedings it is not necessary that the petitioner be present. If it is necessary, and policy considerations weigh in favor of holding the proceedings in the district in which the petitioner is located, the proceedings may be transferred under 28 U.S.C. § 1404(a).

As noted by the Chief Justice in Nelson v. George, 399 U.S. 224, 228 n. 5 the Fourth Circuit has held that Ahrens v. Clark was "a venue decision". He adds that "Sound judicial administration calls for" an amendment by Congress -- with which I agree. But that desire does not bind the Court to inaction in the interim.

William O. Douglas

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 13, 1972

Dear Chief Justice:

As I understand it the vote in
71-6516, Braden v. 30th Judicial Circuit
Court of Kentucky shows five for reversal.
Hence the five assumed that the assignment
should be made by me. I have accordingly
assigned it to Justice Brennan.

W.C.D
William O. Douglas

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS January 12, 1973

Dear Bill:

Please join me in your opinion
for the Court in 71-6516, Braden v. Circuit
Court.

William O. Douglas

Mr. Justice Brennan

cc: Conference
Law Clerks

January 11, 1973

RE: No. 71-6516 - Braden v. 30th Judicial Circuit Court
of Kentucky

Dear Bill:

I am enclosing my proposed opinion in the above. I would appreciate your reaction to it before I make a general circulation. The reason is that I'd like your view of my treatment of Ahrens v. Clark confining it to a rule of venue rather than overruling it outright. I did this having in mind your comments at the conference.

You will remember that there are only five of us who voted this way, the other three being Potter, Byron and Thurgood.

Sincerely,

WJB

Mr. Justice Douglas

WJS

Plaintiff 2nd

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

From: Brennan, J.

Circulated: 1/12/73

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-6516

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky. } On Writ of Certiorari to
the United States Court
of Appeals for the Sixth
Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner is presently serving a sentence in an Alabama prison. He applied to the District Court for the Western District of Kentucky for a writ of federal habeas corpus, alleging denial of his constitutional right to a speedy trial, *Smith v. Hooey*, 393 U. S. 374 (1969), and praying that an order issue directing Kentucky to afford him an immediate trial on a then three-year-old Kentucky indictment. We are to consider whether, as petitioner was not physically present within the territorial limits of the District Court for the Western District of Kentucky, the provision of 28 U. S. C. § 2241 (a) that “[w]rits of habeas corpus may be granted by the . . . district courts . . . within their respective jurisdictions” (emphasis supplied), precluded the District Court from entertaining petitioner’s application. The District Court held that the section did not bar its determination of the application. The court held further that petitioner had been denied a speedy trial and ordered respondent Kentucky officials either to secure his presence in Kentucky for trial within 60 days or to dismiss the indictment. The Court of Appeals for the Sixth Circuit re-

10
Please find enclosed
Yours

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

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

~~ATPS~~ Circulated:

No. 71-6516

Recirculated: 1/22/23

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky. } On Writ of Certiorari to
the United States Court
of Appeals for the Sixth
Circuit.

[January —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

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4-9, 11-15

JAN 11

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

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

No. 71-6516

Recirculated: 2/13/73

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky. } On Writ of Certiorari to
the United States Court
of Appeals for the Sixth
Circuit.

[February —, 1973]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

Petitioner is presently serving a sentence in an Alabama prison. He applied to the District Court for the Western District of Kentucky for a writ of federal habeas corpus, alleging denial of his constitutional right to a speedy trial, *Smith v. Hooey*, 393 U. S. 374 (1969), and praying that an order issue directing Kentucky to afford him an immediate trial on a then three-year-old Kentucky indictment. We are to consider whether, as petitioner was not physically present within the territorial limits of the District Court for the Western District of Kentucky, the provision of 28 U. S. C. § 2241 (a) that “[w]rits of habeas corpus may be granted by the . . . district courts . . . within their respective jurisdictions” (emphasis supplied), precluded the District Court from entertaining petitioner’s application. The District Court held that the section did not bar its determination of the application. The court held further that petitioner had been denied a speedy trial and ordered respondent Kentucky officials either to secure his presence in Kentucky for trial within 60 days or to dismiss the indictment. The Court of Appeals for the Sixth Circuit re-

No. 72-563

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 13, 1973

MEMORANDUM TO THE CONFERENCE

Re: Case held for Braden v. 30th Judicial District, 71-6516

In United States ex rel. Worton v. Oklahoma, 72-5632, a state prisoner in Texas seeks to attack on federal habeas corpus an Oklahoma conviction. The United States District Court for the Eastern District of Oklahoma held that the court lacked jurisdiction because the petitioner was not confined in the State of Oklahoma. The 10th Circuit denied a certificate of probable cause to appeal. On its face, the case would seem to be squarely controlled by our decision in Braden, but the situation is complicated by a factual dispute. Respondent, the State of Oklahoma, denies that a detainer has been lodged against the petitioner. In Braden we left open the question of relief where no detainer has been filed. Moreover, respondent contends that the sentence on the Oklahoma conviction under attack has already been fully served. If that assertion is correct, petitioner must demonstrate that he is still in "custody" under the Oklahoma sentence, even though the sentence was served before he filed his petition for habeas corpus. Since the courts below have apparently relied on Ahrens v. Clark and have therefore had no occasion to consider either respondent's factual contentions or the legal issues those contentions bring to light, I recommend that we vacate the judgment of the Court of Appeals and remand for reconsideration in view of Braden.

Sincerely,

W.J.B. Jr.

WJR

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 22, 1973

72-6516

MEMORANDUM TO THE CONFERENCE:

Re: Case held for Braden v. 30th Judicial District
Supplement to Memorandum of March 13

My initial memorandum on United States ex rel. Worton v. Oklahoma, No. 72-5632, was based on the original petition for certiorari. The amended petition has now come to my attention, and it clarifies a factual issue to which I referred in my earlier memorandum. The amended petition makes clear that petitioner has fully served his Oklahoma sentence and that no detainer has been lodged against him. Petitioner does assert, however, that he received a life sentence in Texas under that State's habitual offender act, and that one of the prior convictions is the Oklahoma conviction he now attacks on federal habeas corpus in Oklahoma. Braden indicates that Ahrens v. Clark does not, as the courts below apparently held, preclude an action in Oklahoma. But as I pointed out in my memorandum of March 13, the question remains whether petitioner is in the "custody" of Oklahoma officials, and that question should be considered on remand.

Sincerely,

W.J.B., jr.

WJP

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 16, 1973

No. 71-6516 - Braden v. Circuit Court

Dear Bill,

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

Sincerely yours,

P.S.

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

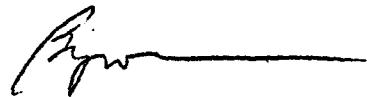
January 18, 1973

Re: No. 71-6516 - Braden v. 30th Judicial
Circuit Court of Kentucky

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to Conference

23
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1973

Re: No. 71-6516 - Braden v. 30th Judicial
Circuit Court of Kentucky

Dear Bill:

I am still with you.

Sincerely,



Mr. Justice Brennan

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1973

Re: No. 71-6516 - Braden v. 30th Judicial Circuit
Court of Kentucky

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

January 23, 1973

Re: No. 71-6516 - Braden v. 30th Judicial
Circuit Court

Dear Chief:

In line with our conversation of this noon, I enclose a copy of what I was thinking about for a concurrence in the result in this case.

Sincerely,

HAB

The Chief Justice

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

1st DRAFT

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 2/5/73

No. 71-6516

Recirculated: _____

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky.

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

[February —, 1973]

MR. JUSTICE BLACKMUN, concurring.

I concur in the result. The conclusion the Court reaches is not unexpected when one notes the extraordinary expansion of the concept of habeas corpus effected in recent years. See *Ex parte Hull*, 312 U. S. 546 (1941); *Ex parte Endo*, 323 U. S. 283 (1944); *Jones v. Cunningham*, 371 U. S. 236 (1963); *Peyton v. Rowe*, 391 U. S. 54 (1968); *Carafas v. Lavallee*, 391 U. S. 234 (1968); *Nelson v. George*, 399 U. S. 224 (1970). Cf. *Schlanger v. Seamans*, 401 U. S. 487 (1971). A trend of this kind, once begun, easily assumes startling proportions. The present case is but one more step, with the Alabama warden now made the agent of the Commonwealth of Kentucky.

I do not go so far as to say that on the facts of this case the result is necessarily wrong. I merely point out that we have come a long way from the traditional notions of the Great Writ. The common law scholars of the past hardly would recognize what the Court has developed, see 4 Blackstone, *Commentaries* *131-134 (1765), and they would, I suspect, conclude that it is not for the better.

The result in this case is not without its irony. The petitioner's speedy trial claim follows upon his escape from Kentucky custody after that State, at its expense,

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 12, 1972

No. 71-6516 Braden v. Circuit Court

MEMORANDUM TO THE CONFERENCE:

Since the Conference on Friday, I have given further consideration to this case and now vote to affirm or to DIG.

Although I have no real feel for the applicable law, I find it difficult to construe the statute to confer habeas corpus jurisdiction when the petitioner is not in physical custody within the forum state. The unanimous opinion by CA 6 (Judges Edwards, McCree & McAllister) seems correctly decided under the statute and in light of the history and purpose of habeas corpus.

The problem presented by the facts on this case certainly calls for remedial action. I think it should come from the Congress rather than the courts.


L. F. P., Jr.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 14, 1973

Re: No. 71-6516 Braden v. 30th Judicial Circuit

Dear Bill:

This refers to your opinion for the Court, circulated on January 12.

As I was in dissent, I will await further circulations.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

February 16, 1973

No: No. 71-3816 Brandon v. 30th Judicial Circuit
Court of Kentucky

Dear Bill:

Please take me in your dissenting opinion.

Always,

L. J. P.

Mr. Justice Reinhardt

cc: The Conference

5

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 15, 1973

Re: No. 71-6516 - Braden v. 30th Judicial Circuit Court

Dear Bill:

I am where Lewis suggests in his note to you that he is; I voted to affirm at Conference, and will await further developments.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

WD

4, 5, 6, 7
You joined w
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 Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 2/8

No. 71-6516

Recirculated:

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky.

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

[February —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

Today the Court overrules *Ahrens v. Clark*, 335 U. S. 188 (1948), which construed the legislative intent of Congress in enacting the lineal predecessor of 28 U. S. C. § 2241. Although considerations of "convenience" may support the result reached in this case, those considerations are, in this context, appropriate for Congress, not this Court, to make. Congress has not legislatively overruled *Ahrens*, and subsequent "developments" are simply irrelevant to the judicial task of ascertaining the legislative intent of Congress in providing, in 1867, that federal district courts may issue writs of habeas corpus "within their respective jurisdictions" for prisoners in the custody of state authorities. The Court, however, not only accomplishes a feat of judicial prestidigitation, but without discussion or analysis, explicitly extends the scope of *Peyton v. Rowe*, 391 U. S. 54 (1968), and implicitly rejects *Ex parte Royall*, 117 U. S. 241 (1886).

I

In order to appreciate the full impact of the Court's decision, a brief reiteration of the procedural stance of the case at the time the petition for habeas corpus was filed is necessary. Petitioner was incarcerated in Alabama pursuant to a state court judgment, the validity

3
9

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

SUPREME COURT OF THE UNITED STATES

No. 71-6516

Circulated:

Recirculated: 2/17

Charles D. Braden,
Petitioner,
v.
30th Judicial Circuit Court
of Kentucky.

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

[February —, 1973]

MR. JUSTICE REHNQUIST, dissenting.

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I

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