The Burger Court Opinion Writing Database

Fontaine v. United States

411 U.S. 213 (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

March 5, 1973

Re: No. 71-6757 - Fontaine v. U. S.

MEMORANDUM TO THE CONFERENCE:

I have concluded to vote to reverse in the above case and I believe there is a possible per curiam formulation which might command a unanimous Court for a remand.

Temporarily I will hold up assignment but will circulate my formulation if it seems that the "affirm" votes will join it.

Regards,

WEB

Bill
Can you join
Plan? WBB

SUPREME COURT OF THE UNITED STATES

DAVID X. FONTAINE v. UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757 Decided October _____, 1972

PER CURIAM.

On November 13, 1969, the petitioner was arraigned in a federal district court upon a charge of robbery of a federally insured bank.[1] He executed a written waiver of his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, proceeding under Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knowingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See McCarthy v. United States, 394 U.S. 459, 464-467; cf. Boykin v. Alabama, 395 U.S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years

[1] He had been arrested by state officers and had been in the custody of state police and state jurisdiction until the time of the federal charge.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 7, 1973

Re: No. 71-6757 - Fontaine v. United States

MEMORANDUM TO THE CONFERENCE:

I enclose a per curiam disposition of the above case. I have not changed my views on the merits but this case does not warrant engaging the attention of five to remand and four to spell out why this is unnecessary. The enclosed disposition makes no precedent and reduces the case to one on the facts revealed in the per curiam.

I would hope we can all agree on this and save our time for more important problems.

Regards,

WRB

Please join me
JM

To: Mr. Justice Dougl
Mr. Justice Brenn
Mr. Justice Stewa
Mr. Justice White
Mr. Justice Marsh
Mr. Justice Black
Mr. Justice Powel
Mr. Justice Rehnq

From: The

Circulated: MAR 7 197

Recirculated:

No. 71-6757 DAVID X. FONTAINE v. UNITED STATES

PER CURIAM.

On November 13, 1969, the petitioner was arraigned in a federal district court upon a charge of robbery of a federally insured bank.[1] He executed a written waiver of his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, proceeding under Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knpwingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See McCarthy v. United States, 394 U.S. 459, 464-467; cf. Boykin v. Alabama, 395 U.S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years

---

[1] He had been arrested by state officers and had been in the custody of state police and state jurisdiction until the time of the federal charge.

5

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

CHAMBERS OF
THE CHIEF JUSTICE

March 8, 1973

Re: No. 71-6757 - Fontaine v. United States

MEMORANDUM TO THE CONFERENCE:

The final paragraph should have provided that we vacate the judgment of the Court of Appeals and remand etc.

If all "goes well" I will correct this before printing.

Regards,

WEB

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

Circulated: _____

Recirculated: MAR 14 1973

1st DRAFT

SUPREME COURT OF THE UNITED STATES

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided March —, 1973

PER CURIAM.

On November 13, 1969, the petitioner was arraigned in a federal district court upon a charge of robbery of a federally insured bank.[1] He executed a written waiver of his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, proceeding under Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knowingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See *McCarthy* v. *United States*, 394 U. S. 459, 464–467; cf. *Boykin* v. *Alabama*, 395 U. S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years in prison.

On July 20, 1971, the petitioner filed a motion under 28 U. S. C. § 2255 to vacate his sentence on the grounds that his plea of guilty had been induced by a combination of fear, coercive police tactics, and illness, including mental illness. The District Judge who had accepted the petitioner's plea and sentenced him to prison considered the motion but denied it without an evidentiary hearing; the District Judge reasoned that since the requirements of Rule 11 had been met, this collateral attack was *per se* unavailable, stating: "When the trial court

[1] He had been arrested by state officers and had been in the custody of state police and state jurisdiction until the time of the federal charge.

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 11, 1972

Dear Potter:

Please join me in your Memorandum in No. 71-6757 - Fontaine v. U. S.

W. O. D.

Mr. Justice Stewart

cc: Conference

p. 14, 10/13 Ln 7

71-6757

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 13, 1972

#2

Dear Potter,

Please join me in your dissenting opinion in No. 71-6757, Fontaine v. U.S.

W. O. D.

Justice Stewart

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

October 16, 1972

Dear Potter:

I join your Per Curiam in No. 71-6757 - Fontaine v. U. S.

Yours faithfully,

W. O. D.

Mr. Justice Stewart

cc: Conference

WD

The Chief Justice

October 30, 1972

Dear Potter:

In No. 71-6757 - Fontaine v. U. S., I am still with you in your fourth draft.

W. O. D.

Mr. Justice Stewart

cc: Conference

B

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 8, 1973

Dear Chief:

I join your per curiam in 71-6757, Fontaine v. U.S. with the following reservation: since I originally joined Potter's opinion I would be inclined to get his reaction to your present per curiam. I have not talked with him but off hand see no reason why it is inconsistent with what he had earlier said.

William O. Douglas

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 11, 1972

RE: No. 71-6757 Fontaine v. United States

Dear Potter:

Please join me.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

WJB

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 8, 1973

RE: No. 71-6757 Fontaine v. United States

Dear Chief:

I agree with the Per Curiam you have prepared in the above.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

From: Stewart, J.

Circulated: OCT 10 1972

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided October —, 1972

Memorandum of MR. JUSTICE STEWART.

On November 13, 1969, the petitioner was arraigned in a federal district court upon an information charging him with bank robbery. He waived his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, in accord with Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knowingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See *McCarthy* v. *United States,* 394 U. S. 459, 464–467; cf. *Boykin* v. *Alabama,* 395 U. S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years in prison.

On July 20, 1971, the petitioner filed a motion under 28 U. S. C. § 2255 to vacate his sentence on the grounds that his plea of guilty had been induced by a combination of fear, coercive police tactics, and mental illness. The same district judge who had accepted the petitioner's plea and sentenced him to prison denied the motion without an evidentiary hearing, reasoning that since the requirements of Rule 11 had been met, this collateral attack was *per se* unavailable: "When the trial court has so questioned the accused about pleading guilty, the petitioner cannot now be heard to collaterally attack the record and deny what was said in open court." (Pet. App. 17–A—17–B). The Sixth Circuit affirmed on the same grounds. Petitioner seeks certiorari to review that

(WP)

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

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: OCT 16 1972

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided October —, 1972

PER CURIAM.

On November 13, 1969, the petitioner was arraigned in a federal district court upon an information charging him with bank robbery. He waived his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, in accord with Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knowingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See *McCarthy* v. *United States,* 394 U. S. 459, 464–467; cf. *Boykin* v. *Alabama,* 395 U. S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years in prison.

On July 20, 1971, the petitioner filed a motion under 28 U. S. C. § 2255 to vacate his sentence on the grounds that his plea of guilty had been induced by a combination of fear, coercive police tactics, and mental illness. The same district judge who had accepted the petitioner's plea and sentenced him to prison denied the motion without an evidentiary hearing, reasoning that since the requirements of Rule 11 had been met, this collateral attack was *per se* unavailable: "When the trial court has so questioned the accused about pleading guilty, the petitioner cannot now be heard to collaterally attack the record and deny what was said in open court." The Court of Appeals for the Sixth Circuit affirmed on the

WD

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

4th DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: OCT 30 1972

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided October —, 1972

PER CURIAM.

On November 13, 1969, the petitioner was arraigned in a federal district court upon an information charging him with bank robbery. He waived his right to counsel and to a grand jury indictment, and pleaded guilty. Before accepting the plea, the trial judge, in accord with Rule 11 of the Federal Rules of Criminal Procedure, addressed the petitioner personally. The petitioner acknowledged in substance that his plea was given voluntarily and knowingly, that he understood the nature of the charge and the consequences of the plea, and that he was in fact guilty. See *McCarthy* v. *United States,* 394 U. S. 459, 464–467; cf. *Boykin* v. *Alabama,* 395 U. S. 238, 242. The judge then accepted the guilty plea and subsequently sentenced the petitioner to 20 years in prison.

On July 20, 1971, the petitioner filed a motion under 28 U. S. C. § 2255 to vacate his sentence on the grounds that his plea of guilty had been induced by a combination of fear, coercive police tactics, and mental illness. The same district judge who had accepted the petitioner's plea and sentenced him to prison denied the motion without an evidentiary hearing, reasoning that since the requirements of Rule 11 had been met, this collateral attack was *per se* unavailable: "When the trial court has so questioned the accused about pleading guilty, the petitioner cannot now be heard to collaterally attack the record and deny what was said in open court." The Court of Appeals for the Sixth Circuit affirmed on the

6

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 8, 1973

Re: No. 71-6757 - Fontaine v. United States

Dear Chief,

If nothing is written in dissent, I am quite willing to join the Per Curiam you circulated yesterday.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 31, 1972

Re: No. 71-6757 - Fontaine v. United States

Dear Bill:

Please note at the foot of your dissenting opinion in this case the following:

> Mr. Justice White also dissents from the Court's summary action and would grant the petition for certiorari and set the case for oral argument.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

WD

8

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

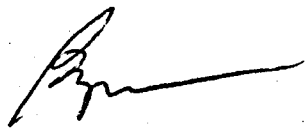
March 8, 1973

Re: No. 71-6757 - Fontaine v. United States

Dear Chief:

Please note at the foot of your suggested *per curiam* that Mr. Justice White dissents.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 18, 1972

Re: No. 71-6757 - Fontaine v. United States

Dear Potter:

Please join me in your per curiam.

Sincerely,

T.M.

Mr. Justice Stewart

cc: Conference

WD

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 13, 1973

Re: No. 71-6757 - Fontaine v. U. S.

Dear Chief:

Please join me.

Sincerely,

T.M.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 30, 1972

Re: No. 71-6757 - Fontaine v. United States

Dear Bill:

Please join me in your dissent circulated on October 27.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

cc: The Conference

WD

M

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 8, 1973

Re: No. 71-6757 - Fontaine v. United States

Dear Chief:

Just as Potter says, if nothing is written in dissent I can, and do, join the proposed per curiam you circulated March 7.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 17, 1972

Re: No. 71-6757 Fontaine v. U. S.

Dear Potter:

Please join me.

Sincerely,

Lewis

Mr. Justice Stewart

cc: The Conference

WD

B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 8, 1973

Re: No. 71-6757 Fontaine v. United States

Dear Chief:

Please join me in your Per Curiam.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 16, 1972

Re: No. 71-6757 - Fontaine v. United States

Dear Potter:

It seems to me that your draft opinion reversing the Court of Appeals in this case goes beyond the holding of Machibroda, so I will hope in the next couple of days to circulate a dissent from your draft.

Sincerely,

WHR

Mr. Justice Stewart

Copies to Conference

WHR

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.

Circulated: 10/27/72

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided October —, 1972

MR. JUSTICE REHNQUIST, dissenting.

The majority's summary reversal of this case inferentially decides important questions of federal criminal law without the benefit of briefs on the merits or oral argument. It extends the holding of *Machibroda* v. *United States,* 368 U. S. 487, and concludes, without explanation, that important changes in Rule 11, Fed. Rule Crim. Proc., enacted since the Court's decision in *Machibroda,* have had no effect whatever on the availability of an evidentiary hearing under 28 U. S. C. § 2255.

As the Court's opinion notes, petitioner was arraigned in the United States District Court on November 13, 1969, on a charge of armed bank robbery. A Rule 11 hearing was held at that time at which petitioner admitted that he robbed the teller of the Liberty State Bank in Hamtramck, Michigan, with a gun, of about $1,400. The following colloquy occurred between the District Court and petitioner:

> "THE COURT: With respect to your plea of guilty has anyone made any promise to you of any kind with respect to this matter in order for you to offer your plea of guilty here?
>
> "DEFENDANT FONTAINE: No, sir.
>
> "THE COURT: No one has threatened you?
>
> "DEFENDANT FONTAINE: No, sir.
>
> . . . . .
>
> "THE COURT: Are you knowingly and freely and voluntarily offering your plea of guilty here?
>
> "DEFENDANT FONTAINE: Yes, sir.

1, 3, 4

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

From: Rehnquist, J.

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 10/31/72

DAVID X. FONTAINE *v.* UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 71-6757. Decided October —, 1972

MR. JUSTICE REHNQUIST, with whom MR. JUSTICE BLACKMUN joins, dissenting.

The majority's summary reversal of this case inferentially decides important questions of federal criminal law without the benefit of briefs on the merits or oral argument. It extends the holding of *Machibroda* v. *United States,* 368 U. S. 487, and concludes, without explanation, that important changes in Rule 11, Fed. Rule Crim. Proc., enacted since the Court's decision in *Machibroda,* have had no effect whatever on the availability of an evidentiary hearing under 28 U. S. C. § 2255.

As the Court's opinion notes, petitioner was arraigned in the United States District Court on November 13, 1969, on a charge of armed bank robbery. A Rule 11 hearing was held at that time at which petitioner admitted that he robbed the teller of the Liberty State Bank in Hamtramck, Michigan, with a gun, of about $1,400. The following colloquy occurred between the District Court and petitioner:

> "THE COURT: With respect to your plea of guilty has anyone made any promise to you of any kind with respect to this matter in order for you to offer your plea of guilty here?
>
> "DEFENDANT FONTAINE: No, sir.
>
> "THE COURT: No one has threatened you?
>
> "DEFENDANT FONTAINE: No, sir.
>
> . . . . .
>
> "THE COURT: Are you knowingly and freely and voluntarily offering your plea of guilty here?
>
> "DEFENDANT FONTAINE: Yes, sir.

WD

B

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1973

Re: No. 71-6757 - Fontaine v. U. S.

Dear Chief:

Please join me.

Sincerely,

WHR

The Chief Justice

Copies to the Conference