The Burger Court Opinion Writing Database

McGinnis v. Royster

410 U.S. 263 (1973)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University
Forrest Maltzman, George Washington University

B

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

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1973

Re: No. 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me.

Regards,

WEB

Mr. Justice Powell

Copies to the Conference

3

Please join me

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

1st DRAFT

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 1-16-73

Recirculated:

No. 71-718

Paul D. McGinnis, Commissioner of Correction, State of New York, et al., Appellants, *v.* James Royster et al.	On Appeal from the United States District Court for the Southern District of New York.

[January —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Under § 230 (3) of the New York Correction Law a prisoner loses "good time" as punishment for offenses against the discipline of the prison. The statutory appearance of inmates before a parole board is computed by allowance of five days for "good conduct" each month under the law governing appellees.[1] No "good time" credit is allowed, however, for the period of their presentence incarceration in a county jail. Thus two prisoners—one out on bail or personal recognizance pending

[1] The statutory scheme of § 230 was replaced by §§ 803 and 805 of the Correction Law and §§ 70.30 and 70.40 of the new Penal Law, which sections apply to all convictions for offenses committed *on or after that date* (but not to convictions—as of appellees for offenses committed *prior* to the effective date). The challenged statute, § 230 (3) of the Correction Law, now applies only to those prisoners who were convicted for offenses committed before September 1, 1967, whose minimum terms have not yet expired, who have not yet met with the Parole Board, and who have not yet elected the "conditional release" program offered by the new law and made available to old law prisoners by § 230-a of the Correction Law. Of these prisoners, a smaller class yet—comprised of those inmates who served time in county jail prior to sentence to state prison—actually feel the effect of § 230 (3)'s proscription against good time credit for jail time. Nevertheless, the mandate of § 230 (3) affects a substantial number of individuals.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-718

Paul D. McGinnis, Commissioner of Correction, State of New York, et al., Appellants, *v.* James Royster et al. | On Appeal from the United States District Court for the Southern District of New York.

[January —, 1973]

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

Under § 230 (3) of the New York Correction Law a prisoner loses "good time" as punishment for offenses against the discipline of the prison. The statutory appearance of inmates before a parole board is computed by allowance of five days for "good conduct" each month under the law governing appellees.[1] No "good time" credit is allowed, however, for the period of their presentence incarceration in a county jail. Thus two prisoners—one out on bail or personal recognizance pending

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3rd Changes 5, 6, 7

To: The Chief Justice
Mr. Justice Brennan
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

No. 71-718

From: Douglas, J.

Circulated: _____

Recirculated: JAN 23 1973

Paul D. McGinnis, Commissioner of Correction, State of New York, et al., Appellants, *v.* James Royster et al.

On Appeal from the United States District Court for the Southern District of New York.

[January —, 1973]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 16, 1973

RE: No. 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me in your very fine opinion in the above.

Sincerely,

Bill

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 16, 1973

71-718 - McGinnis v. Royster

Dear Lewis,

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

Sincerely yours,

P.S.

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 16, 1973

Re: No. 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me.

Sincerely,

Byron

Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 17, 1973

Re: No. 71-718 - McGinnis v. Royster

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.

Mr. Justice Douglas

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 15, 1973

Re: 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me.

Sincerely,

H.A.B.

Mr. Justice Powell

Copies to the Conference

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-718

Paul D. McGinnis, Commissioner of Correction, State of New York, et al., Appellants, *v.* James Royster et al. | On Appeal from the United States District Court for the Southern District of New York.

[January —, 1973]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question before us concerns the constitutionality of § 230 (3) of the New York Correction Law which denied appellee state prisoners "good time" credit for their presentence incarceration in county jails.[1] Appellees

[1] Section 230 (3):

"In the case of a definite sentence prisoner, said reduction shall be computed upon the term of the sentence as imposed by the court, less jail time allowance, and in the case of an indeterminate sentence prisoner, said reduction shall be computed upon the minimum term of such sentence, less jail time allowance. No prisoner, however, shall be released under the provisions hereof from a state prison until he shall have served at least one year. In the case of a prisoner confined in a penitentiary, said reduction shall be computed upon the term of the sentence as imposed by the court, including jail time allowance. Subject to the rules of the commissioner of correction, the maximum reduction of ten days in each month, may, in the discretion of the board hereinafter provided for, be in whole or in part withheld, forfeited or cancelled, in accordance with the rules of

♡/ pp. 3, 14.

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

From: Powell, J.

Circulated:

Recirculated: FEB 16 197

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71-718

Paul D. McGinnis, Commissioner of Correction, State of New York, et al., Appellants, *v.* James Royster et al. | On Appeal from the United States District Court for the Southern District of New York.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 15, 1973

Re: No. 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me.

Sincerely,

WHR

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 15, 1973

Re: No. 71-718 - McGinnis v. Royster

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference

Dear Lewis:

This is the most minor of minor suggestions; in your footnote 2 beginning on page 2, you discuss the exhaustion question and indicate that the state did not press this issue before us. It seems to me that this is a good enough reason for reaching the merits, as you do. I think that the language in the last sentence of the footnote "and our decision that appellee's claim must in any event be rejected" tends to suggest an alternative ground for reaching the merits which might undercut the reasoning of the majority vote in Oswald at last Friday's Conference. Would you have any objection to deleting this language, so that the last sentence in the footnote would simply read: "In light of this it becomes unnecessary to comment further on any possible exhaustion question"?