

The Burger Court Opinion Writing Database

Palmore v. United States

411 U.S. 389 (1973)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

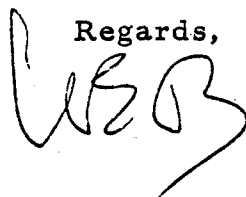
April 20, 1973

Re: No. 72-11 - Palmore v. U. S.

Dear Byron:

Please join me.

Regards,



Mr. Justice White

Copies to the Conference

11-601

9

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 4, 1973

MEMORANDUM TO THE CONFERENCE:

In due course I will circulate an
opinion in dissent from Byron's in 72-11,
Palmore v. United States.

W.D.
William O. Douglas

The Conference

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. 72-11

Circulated: 4-19

Recirculated: _____

Roosevelt F. Palmore,
Appellant,
v.
United States.

On Appeal from the District of
Columbia Court of Appeals.

[April —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Appellant, indicted for carrying a dangerous weapon in violation of 22 D. C. Code § 3204, was tried and convicted in the Superior Court of the District of Columbia, an Art. I court created by Congress¹ under the Court Reorganization Act of 1970, 84 Stat. 473. His timely objection is that he was tried, convicted, and sentenced by a court not established under Art. III.

The judges of the court that convicted him

—hold office for a term of fifteen years,² not for life as do Article III judges;

—unlike Article III judges,³ their salaries are not protected from diminishment during their continuance in office;

¹ 11 D. C. Code § 101 (2) provides, "The judicial power in the District of Columbia is vested in . . . (2) The following District of Columbia courts established pursuant to Article I of the Constitution: (A) The District of Columbia Court of Appeals (B) The Superior Court of the District of Columbia."

² 11 D. C. Code § 11-1502 (1972).

³ By Art. III, § 1, federal judges "hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

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

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-11

Circulated:

Recirculated:

4-20

Roosevelt F. Palmore,
Appellant,
v.
United States.

On Appeal from the District of
Columbia Court of Appeals.

[April —, 1973]

MR. JUSTICE DOUGLAS, dissenting.

Appellant, indicted for carrying a dangerous weapon in violation of 22 D. C. Code § 3204, was tried and convicted in the Superior Court of the District of Columbia, an Art. I court created by Congress¹ under the Court Reorganization Act of 1970, 84 Stat. 473. His timely objection is that he was tried, convicted, and sentenced by a court not established under Art. III.

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³ By Art. III, § 1, federal judges "hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation which shall not be diminished during their continuance in office."

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 5, 1973

RE: No. 72-11 Palmore v. United States

Dear Byron:

I agree.

Sincerely,

Wil

Mr. Justice White

cc: The Conference

3
CHAMBERS OF
JUSTICE POTTER STEWART

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

April 5, 1973

No. 72-11 - Palmore v. United States

Dear Byron,

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

Sincerely yours,

PS
✓

Mr. Justice White

Copies to the Conference

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

From: White, J.

1st DRAFT

Circulated: 4-4-73

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 72-11

Roosevelt F. Palmore, }
Appellant, } On Appeal from the District of
v. } Columbia Court of Appeals.
United States. }

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Aside from an initial question of our appellate jurisdiction under 28 U. S. C. § 1257 (2), this case requires us to decide whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure under Art. III of the Constitution. We hold that a defendant charged with violating a local District of Columbia criminal law has no more federal constitutional right than the citizen of any State, when charged with violation of a state law, to be tried by a judge with lifetime tenure; and that under its Art. I, § 8, cl. 17, power to legislate for the District of Columbia, Congress may provide for such trials before judges who, in accordance with the District of Columbia Code are not provided with life tenure.

I

The facts are uncomplicated. In January 1971, two officers of the District of Columbia Metropolitan Police Department observed a moving automobile with license tags suggesting that it was a rented vehicle. Although no traffic or other violation was then indicated, the officer stopped the vehicle for a spot-check of the driver's license and car-rental agreement. Palmore, the driver of

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1 & 7 (2.6)

*Please forward
JM*

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 4-9-73

No. 72-11

Roosevelt F. Palmore, Appellant, v. United States.	} On Appeal from the District of Columbia Court of Appeals.
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[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Aside from an initial question of our appellate jurisdiction under 28 U. S. C. § 1257 (2), this case requires us to decide whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution. We hold that under its Art. I, § 8, cl. 17 power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure and protection against reduction in salary. In this respect, the position of the District of Columbia defendant is similar to that of the citizen of any of the 50 States when charged with violation of a state criminal law: Neither has a federal constitutional right to be tried before judges with tenure and salary guarantees.

I

The facts are uncomplicated. In January 1971, two officers of the District of Columbia Metropolitan Police Department observed a moving automobile with license tags suggesting that it was a rented vehicle. Although

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2
STYLISTIC CHANGES THROUGHOUT.

SEE PAGES: 19, 20

Revised 4/12 for additions

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 4-17-73

No. 72-11

Roosevelt F. Palmore,)
Appellant,) On Appeal from the District of
v.) Columbia Court of Appeals.
United States.)

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Aside from an initial question of our appellate jurisdiction under 28 U. S. C. § 1257 (2), this case requires us to decide whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution. We hold that under its Art. I, § 8, cl. 17 power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure and protection against reduction in salary. In this respect, the position of the District of Columbia defendant is similar to that of the citizen of any of the 50 States when charged with violation of a state criminal law: Neither has a federal constitutional right to be tried before judges with tenure and salary guarantees.

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3
STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 20

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

4th DRAFT

From: White, J.

Supreme Court of the United States

Circulated: _____

No. 72-11

Recirculated: 4-20-73

Roosevelt F. Palmore, }
Appellant, } On Appeal from the District of
v. } Columbia Court of Appeals.
United States. }

[April —, 1973]

MR. JUSTICE WHITE delivered the opinion of the Court.

Aside from an initial question of our appellate jurisdiction under 28 U. S. C. § 1257 (2), this case requires us to decide whether a defendant charged with a felony under the District of Columbia Code may be tried by a judge who does not have protection with respect to tenure and salary under Art. III of the Constitution. We hold that under its Art. I, § 8, cl. 17, power to legislate for the District of Columbia, Congress may provide for trying local criminal cases before judges who, in accordance with the District of Columbia Code, are not accorded life tenure and protection against reduction in salary. In this respect, the position of the District of Columbia defendant is similar to that of the citizen of any of the 50 States when charged with violation of a state criminal law: Neither has a federal constitutional right to be tried before judges with tenure and salary guarantees.

I

The facts are uncomplicated. In January 1971, two officers of the District of Columbia Metropolitan Police Department observed a moving automobile with license tags suggesting that it was a rented vehicle. Although

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1973

MEMORANDUM FOR THE CONFERENCE

Re: Case Held for Palmore v. United States, No. 72-11

Petitioner in Gay v. United States, No. 72-5572, asserted in a coram nobis action in the Superior Court of the District of Columbia that the D.C. Court of Appeals did not have a complete record of the transcript before it when it affirmed his conviction for larceny after trust. The Superior Court dismissed the action without prejudice in order to enable petitioner to obtain requested counsel, and the D.C. Court of Appeals affirmed the dismissal. In an unsuccessful petition for rehearing, petitioner asserted that one of the judges on the panel that affirmed the dismissal without prejudice had participated in his case as a United States attorney when the conviction had been on direct appeal.

Petitioner contends that the Superior Court erred in dismissing his coram nobis action without a hearing and that the judge in question should not have participated in the appeal from the dismissal. Neither of these contentions merits the granting of certiorari.


B.R.W.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 12, 1973

Re: No. 72-11 - Palmore v. U. S.

Dear Byron:

Please join me.

Sincerely,


T.M.

Mr. Justice White

cc: Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 9, 1973

Re: No. 72-11 - Palmore v. U.S.

Dear Byron:

Please join me.

Sincerely,

H.A.B.

Mr. Justice White

cc: The Conference

B

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1973

Re: No. 72-11 Palmore v. United States

Dear Byron:

Please join me.

Sincerely,

Lewis

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 11, 1973

Re: No. 72-11 - Palmore v. United States

Dear Byron:

Please join me in your opinion for the Court.

Sincerely,

WHR

Mr. Justice White

Copies to the Conference