

The Burger Court Opinion Writing Database

Strunk v. United States

412 U.S. 434 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



C.J.
I am in general
agreement with
your memorandum
in this case

To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Marshall
Mr. Justice White
Mr. Justice Black
Mr. Justice Stewart
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

Circulated: MAY 22 1973

Recirculated: _____

No. 72-5521 - Strunk v. United States

MEMORANDUM TO THE CONFERENCE:

At Conference we were all agreed on reversal but a substantial number thought that even absent a cross petition by the Government we could perhaps remand on what to many of us seemed a clearly erroneous holding by the Court of Appeals in the speedy trial issue. My review of the record in light of prior holdings, including Barker v. Wingo, satisfied me that there is, on this record at least, only one remedy for denial of a speed trial. Ordinarily I would, when unable to carry out the Conference vote, ask to have the case reassigned but there appears to be enough votes to support the result I think correct. I therefore propose disposition which follows:

Petitioner was found guilty in the United States District Court of transporting a stolen automobile from Wisconsin to Illinois in violation of 18 U.S.C. 2312 and sentenced to a term of 5 years. The 5-year sentence was to run concurrently with a sentence of 1 to 3 years that petitioner was then serving in the Nebraska State Penitentiary pursuant to a conviction in the courts of that state.

S. R. B. 22

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3, 5-6

To: Mr. Justice POWERS
Mr. Justice BRENNAN
Mr. Justice BLACKETT
Mr. Justice CLARK
Mr. Justice HARLAN
Mr. Justice MARSHALL
Mr. Justice MINTON
Mr. Justice ROBERTS
Mr. Justice STEWART

PRINTED
1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: The Clerk of the Court

Circulated:

No. 72-5521

Recirculated: JUN 4 1973

Clarence Eugene Strunk, Petitioner, v. United States. On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

(June —, 1973)

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioner was found guilty in the United States District Court of transporting a stolen automobile from Wisconsin to Illinois in violation of 18 U. S. C. § 2312 and was sentenced to a term of five years. The five-year sentence was to run concurrently with a sentence of one to three years that petitioner was then serving in the Nebraska State Penitentiary pursuant to a conviction in the courts of that State.

The District Court denied a motion to dismiss the federal charge in which petitioner argued that he had been denied his right to a speedy trial. When the case went to trial, petitioner called no witnesses and did not take the stand; the jury returned a verdict of guilty. The Court of Appeals reversed the District Court and held that, on the record, petitioner had in fact been denied a speedy trial. However, the court went on to hold that the "extreme" remedy of dismissal of the charges was not warranted; the case was remanded to the District Court to reduce the sentence to the extent of the 259 days in order to compensate for the unnecessary delay which had occurred between return of the indictment and petitioners' arraignment.

STYLISTIC CHANGES THROUGHOUT.

STYLING BY
SFF PAGES: 1

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

Recirculated: July 6 1973

No. 72-5521

Clarence Eugene Strunk, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.

[June —, 1973]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

Petitioner was found guilty in United States District Court of transporting a stolen automobile from Wisconsin to Illinois in violation of 18 U. S. C. § 2312 and was sentenced to a term of five years. The five-year sentence was to run concurrently with a sentence of one to three years that petitioner was then serving in the Nebraska State Penitentiary pursuant to a conviction in the courts of that State.

Prior to trial the District Court denied a motion to dismiss the federal charge in which petitioner argued that he had been denied his right to a speedy trial. At trial, petitioner called no witnesses and did not take the stand; the jury returned a verdict of guilty. The Court of Appeals reversed the District Court, holding that petitioner had in fact been denied a speedy trial. However, the court went on to hold that the "extreme" remedy of dismissal of the charges was not warranted; the case was remanded to the District Court to reduce the sentence to the extent of the 259 days in order to compensate for the unnecessary delay which had occurred between return of the indictment and petitioners' arraignment.

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

CHAMBERS OF
THE CHIEF JUSTICE

June 8, 1973

Dear Bill:

I will be at the Law School, University of Alabama on Monday morning and will not return to Washington until after lunch.

Will you undertake to "announce" my opinion in No. 72-5521 - Strunk v. United States?

You may do this in any way you wish. My format is very simple:

FOR REASONS STATED IN AN OPINION FILED

WITH THE CLERK TODAY THE JUDGMENT UNDER

REVIEW IS REVERSED AND REMANDED.

Thank you for taking over while I have a morning "bull session" with law students on the general problems of District Courts and Courts of Appeals -- things they hear very little about in Law School.

Regards,

W.S.B

Mr. Justice Douglas

WD
in box 1588
59 (orig) file

January 4, 1973

Dear Byron:

Please join me in your dissent in
72-5521, Strunk v. United States, and welcome
home.

William O. Douglas

cc: Justice Stewart

cc: Conference
Law Clerks

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 28, 1973

Dear Bill:

I agree with your memo of April
26th on 72-5521, Strunk v. United States.

W^W William O. Douglas

Mr. Justice Rehnquist

cc: The Conference

5
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 22, 1973

Dear Chief:

In No. 72-5521 - Strunk v.
U. S., I am in accord with the
result reached in your Memorandum
of May 22, and with the reasoning
used to reach that result.

W. O.D.

W.W.D.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

June 4, 1973

Dear Chief:

Please join me in your recirculated
opinion of June 4th in 72-5521, Strunk v. U.S.

W.O.D.
William O. Douglas

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. December 19, 1972

RE: No. 72-5521 - Strunk v. United States

Dear Byron:

Please join me in your dissent in the
above.

Sincerely,

W. J. Brennan Jr.

Mr. Justice White

cc: The Conference

WD

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 22, 1973

RE: No. 72-5521 - Strunk v. United States

Dear Chief:

I fully agree with your proposed disposition
in the above case.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 4, 1973

RE: No. 72-5521 Strunk v. United States

Dear Chief:

I agree.

Sincerely,

Bril

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

April 30, 1973

Dear Bill,

I agree with your memo of
April 26th on 72-5521, Strunk v. United
States.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 22, 1973

72-5521 - Strunk v. United States

Dear Chief,

I agree with your memorandum in
this case.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 4, 1973

Re: No. 72-5521, Strunk v. United States

Dear Chief,

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

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

Circulated: 12-18-72

CLARENCE EUGENE STRUNK v. UNITED
STATES

Recirculated: _____

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

No. 72-5521. Decided January —, 1973

MR. JUSTICE WHITE, dissenting.

On appeal from his conviction for transporting a motor vehicle in interstate commerce knowing it to have been stolen, 18 U. S. C. § 2312, petitioner claimed that he had been deprived of his Sixth Amendment right to a speedy trial. He had previously raised the issue in a pre-trial motion to dismiss the indictment pursuant to Rule 48, Fed. Rule Crim. Proc. 48 (b). The Court of Appeals for the Seventh Circuit evaluated the speedy trial claim on the basis of the standards articulated by this Court in *Barker v. Wingo*, 407 U. S. 514 (1972). Finding an unreasonable delay between the issuance of the indictment and the date of trial, an absence of sufficient justification for the delay, and prejudice to petitioner from the delay, the Court of Appeals held that petitioner "was denied a speedy trial to his prejudice." The Court of Appeals, however, refused to dismiss the indictment against petitioner, but rather remanded the case to the District Court "with direction to enter an order instructing the Attorney General to credit the defendant with the period of time elapsing between the return of the indictment and the date of the arraignment." The Court of Appeals reasoned that, since petitioner's counsel had admitted that the delay had not prejudiced the presentation of his defense and since the only prejudice to petitioner was the delay in commencement of his federal sentence, the proper remedy for the constitutional violation was to treat the sentence as illegal to the extent of the delay. See Fed. Rule Crim. Proc. 35.

Join
12/20

B
file

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 22, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

I agree with your suggested disposition
in this case.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 5, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

I agree with your June 4 circulation.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 21, 1972

Re: No. 72-5521 - Strunk v. U. S.

Dear Byron:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice White

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 22, 1973

Re: No. 72-5521 - Strunk v. U. S.

Dear Chief:

I am in general agreement with
your memorandum in this case.

Sincerely,



T.M.

The Chief Justice

cc: Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 6, 1973

Re: No. 72-5521 - Strunk 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

May 23, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

I shall go along with your suggested memorandum
circulated May 22.

Sincerely,

H. A. B.

The Chief Justice

Copies to the Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 5, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

I join your recirculation of June 4.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

5
LPC OF
S. F. POWELL, JR.

December 20, 1972

Re: No. 72-5521 Strunk v. United States

Dear Byron:

Please join me in your dissent.

Sincerely,

S. F. Powell, Jr.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 22, 1973

No. 72-5521 Strunk v. United States

Dear Chief:

I agree with your memorandum in this case.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 4, 1973

No. 72-5521 Strunk v. U. S.

Dear Chief:

I reaffirm, for the record, my "join" on the basis of your printed draft opinion.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

7
Supreme Court of the United States
Washington, D. C. 20543CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

115-8

April 26, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

I have slightly altered my views on this case since the Conference discussion. As I recall, all of us agreed that the remedy applied by the Court of Appeals after it found the violation of the petitioner's right to speedy trial was an improper one; the majority of us agreed that the government could support the judgment of the Court of Appeals here on the ground that the Court of Appeals had erroneously determined that there was in fact a violation of the petitioner's speedy trial right, although that majority was divided into whether or not it would accept the government's invitation to review the Court of Appeals' determination on that issue. We then got into a discussion of whether if the government's contention were in fact sustained on this issue, the government was entitled to anything more than an affirmance of the Court of Appeals' judgment, in view of the fact that the government did not petition for certiorari.

Further thinking along this line now convinces me that the government is not entitled to even raise in this Court the merits of the speedy trial contention, in view of the fact that it failed to cross-petition for certiorari. I reached this conclusion because acceptance of the government's contention on this point would not lead to an affirmance of the judgment below, but instead to an affirmance of the

- 2 -

District Court's judgment. Therefore the argument that the government makes is not really one in support of the judgment below, and could properly have been made only in the event of a cross-petition for certiorari.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 24, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

Please join me in your proposed disposition of this case.

Sincerely,

WM

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 6, 1973

Re: No. 72-5521 - Strunk v. United States

Dear Chief:

Please join me in your recirculation of June 4th.

Sincerely,
WR

The Chief Justice

Copies to the Conference