

The Burger Court Opinion Writing Database

LaVallee v. Delle Rose

410 U.S. 690 (1973)

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



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

CHAMBERS OF
THE CHIEF JUSTICE

March 1, 1973

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Regards,

WJR

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

March 6, 1973

Dear Thurgood:

Please join me in your dissent in
72-905, LaVallee v. Rose.


William O. Douglas

Mr. Justice Marshall

cc: The Conference

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Wm

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 6, 1973

Mr. Justice Marshall

RE: No. 72-905 LaVallee v. Rose

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,

Bul

Mr. Justice Marshall

cc: The Conference

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Mr

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

CHAMBERS OF
JUSTICE POTTER STEWART

Mr

March 5, 1973

72-905 - LaVallee v. Rose

Dear Thurgood,

Please add my name to your dissenting opinion in this case.

Sincerely yours,

P.S.

Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 6, 1973

na
72-905, LaVallee v. Rose

Dear Thurgood,

While I agree with the substance of your opinion, I am reluctant to join it because of its final sentence. If four of us subscribe to that sentence, it would follow that certiorari would be granted and the case set for argument. Since I have no doubt that, after argument, the result in this case would be no different, I think an argument would be a waste of time.

Sincerely yours,
PS,

Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 5, 1973

B. R. White

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

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Wm
noted
WJK
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To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

Circulated: **MAR 1 -**

Recirculated: _____

**J. EDWIN LAVALLEE, SUPERINTENDENT OF
CLINTON CORRECTIONAL FACILITY v.
PASQUALE DELLE ROSE**

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

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, dissenting.

I cannot accept the Court's holding that both the District Court and the Court of Appeals improperly concluded that the voluntariness of respondent's confessions was not adequately resolved by the state trial court, thereby relieving respondent of the obligation to establish "by convincing evidence that the factual determination of the State court was erroneous," 28 U. S. C. § 2254 (d)(1). The Court does not deny that the state trial court judge, after summarizing the record evidence and respondent's testimony on the question of voluntariness, utterly failed to explain the basis for his conclusion that "considering the totality of the circumstances . . . the respective confessions to the police and district attorney were, in all respects, voluntary and legally admissible in evidence at the trial. . . ." Despite this absence of any reasoned explanation for the state court's action, the Court now assures us that "it can scarcely be doubted from its written opinion that respondent's factual contentions were resolved against him." *Ante*, at —. I could not disagree more, and therefore I must respectfully dissent.

Foremost, the Court's certainty as to the basis for the state court's action rests upon the fact that it is clear the state court "applied" the correct legal standard in evaluating the voluntariness of respondent's confes-

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2, 3, 4, 5, 6

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

J. EDWIN LAVALLEE, SUPERINTENDENT OF
CLINTON CORRECTIONAL FACILITY v.
PASQUALE DELLE ROSE

From: Marshall, J.

Circulated: _____

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

Re-circulated: MAR 6 -

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, dissenting.

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

J. EDWIN LAVALLEE, SUPERINTENDENT OF

CLINTON CORRECTIONAL FACILITY v.

PASQUALE DELLE ROSE

Recirculated: MAR 8 -

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

No. 72-905. Decided March —, 1973

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS, MR. JUSTICE BRENNAN, and MR. JUSTICE STEWART concur, dissenting.

I cannot accept the Court's holding that both the District Court and the Court of Appeals improperly concluded that the voluntariness of respondent's confessions was not adequately resolved by the state trial court, thereby relieving respondent of the obligation to establish "by convincing evidence that the factual determination of the State court was erroneous," 28 U. S. C. § 2254 (d)(1). The Court does not deny that the state trial court judge, after summarizing the record evidence and respondent's testimony on the question of voluntariness, utterly failed to explain the basis for his conclusion that "considering the totality of the circumstances . . . the respective confessions to the police and district attorney were, in all respects, voluntary and legally admissible in evidence at the trial. . . ." Despite this absence of any reasoned explanation for the state court's action, the Court now assures us that "it can scarcely be doubted from its written opinion that respondent's factual contentions were resolved against him." *Ante*, at —. I could not disagree more, and therefore I must respectfully dissent.

Foremost, the Court's certainty as to the basis for the state court's action rests upon the fact that it is clear the state court "applied" the correct legal standard in evaluating the voluntariness of respondent's confes-

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 6, 1973

Re: No. 72-905 - LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,

H. A. B.

Mr. Justice Rehnquist

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 7, 1973

File

Re: No. 72-905 LaVallee v. Rose

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

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[illegible]

1st DRAFT

SUPREME COURT OF THE UNITED STATES

TIES
 Re-validated: 2/27/1961
 OF
 Re-validated:

J. EDWIN LAVALLEE, SUPERINTENDENT OF
CLINTON CORRECTIONAL FACILITY v. PASQUALE DELLE ROSE

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

No. 72-905. Decided March —, 1973

PER CURIAM:

The State of New York petitions for certiorari to review the adverse determination of the Court of Appeals in this federal habeas corpus proceeding directing the release* of respondent Pasquale Delle Rose. Rose was serving a life sentence for the premeditated murder of his wife in 1963. At his trial, occurring before *Jackson v. Denno*, respondent was convicted by a jury which chose to credit his two confessions over his protestation of accidental involvement, and which presumably found them to be voluntary. On appeal, the New York appellate court directed the trial court to hold a special ~~meeting~~ ^{hearing} to determine the voluntariness of his confessions in accordance with *People v. Huntley*, 15 N. Y. 2d 72 (1965), the State's procedural response to this Court's decision in *Jackson v. Denno*, 378 U. S. 368 (1964).

On remand to the trial court, the State rested on the trial record, and the respondent, in addition to relying on the record, testified in his own behalf. After extensively summarizing the trial evidence and respondent's explanations of certain of his confession statements, the court concluded:

“On all evidence, both at the trial and at the hearing, and after considering the totality of the circumstances, including the omission to warn de-

*Respondent was ordered released unless retried within 60 days without the use of his confessions.

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

J. EDWIN LAVALLEE, SUPERINTENDENT OF
 CLINTON CORRECTIONAL FACILITY v. PASQUALE DELLE ROSE

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

No. 72-905. Decided March —, 1973

PER CURIAM.

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"On all evidence, both at the trial and at the hearing, and after considering the totality of the circumstances, including the omission to warn de-

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