

The Burger Court Opinion Writing Database

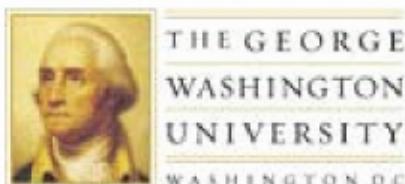
Tollett v. Henderson

411 U.S. 258 (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

CHAM
THE C. C.

April 12, 1973

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No. 72-95 - Tollett v. Henderson

Dear Bill:

Please join me.

Regards,

WRB

Mr. Justice Rehnquist

Copies to the Conference

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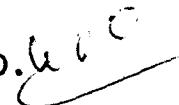
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 10, 1973

Dear Thurgood:

Please join me in your dissent
in No. 72-95 - Tollett v. Henderson.

W. O. D. 

Mr. Justice Marshall

cc: Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 10, 1973

RE: No. 72-95 Tollett v. Henderson

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,



Mr. Justice Marshall

cc: The Conference

(2)
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

April 3, 1973

72-95 - Tollett v. Henderson

Dear Bill,

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

Sincerely yours,

P.S.,
✓

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 2, 1973

Re: No. 72-95 - Tollett v. Henderson

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquest

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 3, 1973

Re: No. 72-95 - Tollett, Warden v. Henderson

Dear Bill:

I am trying my hand at a dissent
in this case.

Sincerely,


T.M.

Mr. Justice Rehnquist

cc: Conference

Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

From: Marshall, J.

Circulated: APR 10 1973

SUPREME COURT OF THE UNITED STATES

Recirculated: _____

No. 72-95

Lewis S. Tollett, Warden, Petitioner, v. Willie Lee Henderson. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1973]

MR. JUSTICE MARSHALL, dissenting.

I would affirm the judgment of the Court of Appeals. I am convinced that Henderson amply demonstrated that he is entitled to relief on any acceptable theory of voluntariness, right to effective assistance of counsel, or waiver, and that no further proceedings are necessary. The Court adopts an inflexible rule in a case where, as the Court of Appeals noted, the facts establish a need for flexibility. 459 F. 2d 237, 242 n. 5 (CA6 1962). In doing so, it disregards this Court's previous counsel that whether a defendant is to be precluded from establishing a claim that his constitutional rights have been infringed "must depend, in each case, upon the particular facts and circumstances surrounding that case," *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938).

The Court relies on the "guilty plea" trilogy, *Brady v. United States*, 397 U. S. 742 (1970), *McMann v. Richardson*, 397 U. S. 759 (1970), and *Parker v. North Carolina*, 397 U. S. 979 (1970). In each of those cases the Court held that a guilty plea, intelligently and voluntarily made, barred the assertion of later claims that at some point in the pretrial process, an admission of guilt had been unconstitutionally extracted, either through a coerced confession or through a plea of guilty induced by fear of enhanced punishment if such a plea were not made. In *McMann*, the Court summarized

W.C

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

From: Marshall, J.

Circulated:

No. 72-95

Recirculated: APR 11 1973

Lewis S. Tollett, Warden, Petitioner,
 v.
 Willie Lee Henderson.

On Writ of Certiorari to
 the United States Court
 of Appeals for the Sixth
 Circuit.

[April —, 1973]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE BRENNAN join, dissenting.

I would affirm the judgment of the Court of Appeals. I am convinced that Henderson amply demonstrated that he is entitled to relief on any acceptable theory of voluntariness, right to effective assistance of counsel, or waiver, and that no further proceedings are necessary. The Court adopts an inflexible rule in a case where, as the Court of Appeals noted, the facts establish a need for flexibility. 459 F. 2d 237, 242 n. 5 (CA6 1962). In doing so, it disregards this Court's previous counsel that whether a defendant is to be precluded from establishing a claim that his constitutional rights have been infringed "must depend, in each case, upon the particular facts and circumstances surrounding that case," *Johnson v. Zerbst*, 304 U. S. 458, 464 (1938).

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WP

Sup~~er~~ Court of the United States
Washington, D. C. 20543

CHAMBERS OF
VICE HARRY A. BLACKMUN

April 12, 1973

Re: No. 7-15 - Tollett v. Henderson

Dear Bill:

Please find me.

Sincerely,

H. A. B.

Mr. Justice ~~Reinquist~~

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 30, 1973

Re: No. 72-95 Tollett v. Henderson

Dear Bill:

Please join me.

Sincerely,

L. Lewis

Mr. Justice Rehnquist

cc: The Conference

3,5

Dear Bill,
I am trying my
hand at a dissent
in this case and
will let you know
what I think.

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

1st DRAFT From: Rehnquist, /

SUPREME COURT OF THE UNITED STATES 3/29

No. 72-95

Recirculated:

Lewis S. Tollett, Warden, Petitioner, v. Willie Lee Henderson. } On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Twenty-five years ago respondent was indicted for the crime of first degree murder by a grand jury in Davidson County, Tennessee. On the advice of counsel, he pleaded guilty and was sentenced to a term of 99 years in prison. Many years later he sought habeas corpus in both state and federal courts. In one petition in United States District Court, he contended that a confession he had given to the police had been coerced, and that he had been denied the effective assistance of counsel. The District Court considered these claims and decided them adversely to respondent, the Court of Appeals for the Sixth Circuit affirmed without opinion, and this Court denied certiorari. *Henderson v. Henderson*, 391 U. S. 927 (1968). Respondent then sought state habeas corpus, alleging for the first time that he was deprived of his constitutional right because Negroes had been excluded from the grand jury which indicted him in 1948. After a series of proceedings in the Tennessee trial and appellate courts, the Tennessee Court of Criminal Appeals ultimately concluded that respondent had waived his claim by failure to raise it before pleading to the indictment, and by pleading guilty.

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Re: 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

Reproduced, J.

Circulated:

No. 72-95

Recirculated:

4/3

Lewis S. Tollett, Warden, Petitioner, v. Willie Lee Henderson

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

[April 1, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Twenty-five years ago respondent was indicted for the crime of first degree murder by a grand jury in Davidson County, Tennessee. On the advice of counsel, he pleaded guilty and was sentenced to a term of 99 years in prison. Many years later he sought habeas corpus in both state and federal courts. In one petition in United States District Court, he contended that a confession he had given to the police had been coerced, and that he had been denied the effective assistance of counsel. The District Court considered these claims and decided them adversely to respondent, the Court of Appeals for the Sixth Circuit affirmed without opinion, and this Court denied certiorari. *Henderson v. Henderson*, 391 U. S. 927 (1968). Respondent then sought state habeas corpus, alleging for the first time that he was deprived of his constitutional right because Negroes had been excluded from the grand jury which indicted him in 1948. After a series of proceedings in the Tennessee trial and appellate courts, the Tennessee Court of Criminal Appeals ultimately concluded that respondent had waived his claim by failure to raise it before pleading to the indictment, and by pleading guilty.

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cc: Mr. Justice Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall ✓
 Mr. Justice Blackmun
 Mr. Justice Powell

3rd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 72-95

Recirculated: 4/13

Lewis S. Tollett, Warden, Petitioner,
 v.
 Willie Lee Henderson. } On Writ of Certiorari to
 } the United States Court
 } of Appeals for the Sixth
 } Circuit.

[April —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Twenty-five years ago respondent was indicted for the crime of first degree murder by a grand jury in Davidson County, Tennessee. On the advice of counsel, he pleaded guilty and was sentenced to a term of 99 years in prison. Many years later he sought habeas corpus in both state and federal courts. In one petition in United States District Court, he contended that a confession he had given to the police had been coerced, and that he had been denied the effective assistance of counsel. The District Court considered these claims and decided them adversely to respondent, the Court of Appeals for the Sixth Circuit affirmed without opinion, and this Court denied certiorari. *Henderson v. Henderson*, 391 U. S. 927 (1968). Respondent then sought state habeas corpus, alleging for the first time that he was deprived of his constitutional right because Negroes had been excluded from the grand jury which indicted him in 1948. After a series of proceedings in the Tennessee trial and appellate courts, the Tennessee Court of Criminal Appeals ultimately concluded that respondent had waived his claim by failure to raise it before pleading to the indictment, and by pleading guilty.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 2, 1973

Re: Cases Held for No. 72-95 - Tollett v. Henderson
(No. 72-304 - Howard v. Hemphill, and No. 72-470
Slayton v. Hairston)

Dear Chief:

Because I have not had an opportunity before now to prepare a memorandum on the above cases, and because of Byron's anticipated absence from Conference on Friday, I ask that their discussion be deferred one week. I shall circulate a memorandum by the beginning of next week.

Sincerely,

W.H.R.

The Chief Justice

Copies to the Conference

W.H.R.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 9, 1973

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 72-95 - Tollett v. Henderson

Howard v. Hemphill, 72-304. Respondent was indicted and tried for murder, found guilty by the jury of voluntary manslaughter, and on his appeal the Kentucky Court of Appeals reversed the conviction for error in the instructions. Respondent was retried under the murder indictment and again convicted of voluntary manslaughter. On direct appeal the Kentucky Court of Appeals affirmed. In a subsequent state collateral proceeding, respondent asserted that double jeopardy prohibited the state from trying respondent under the murder indictment. The Kentucky Court of Appeals held, inter alia, that respondent could not raise the double jeopardy claim because he had not challenged the second murder indictment prior to the retrial. After unsuccessful habeas and mandamus proceedings in federal District Court and the Court of Appeals, this Court vacated the judgment dismissing his federal petitions and remanded to the Court of Appeals "for further consideration in light of Price v. Georgia, 398 U.S. 323 (1970). - 400 U.S. 923 (1970). CA 6 then remanded to the District Court; that court felt that the order of remand required that it direct the state to retry respondent under an indictment charging only voluntary manslaughter. CA 6 affirmed this order without opinion, and the state now seeks certiorari.