The Burger Court Opinion Writing Database

Blackledge v. Perry

417 U.S. 21 (1974)

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

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

CHAMBERS OF
THE CHIEF JUSTICE

May 14, 1974

Re: 72-1660 - Blackledge v. Perry

Dear Potter:

Please join me.

Regards,

WEB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 12, 1974

Dear Potter:

Please join me in your opinion for the Court in 72-1660 Blackledge v. Perry.

WW
William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 16, 1974

RE: No. 72-1660 Blackledge v. Perry

Dear Potter:

I agree.

Sincerely,

Bill

Mr. Justice Stewart

cc: The Conference

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

2nd DRAFT

From: Stewart, J.

Circulated: APR 12 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 72–1660

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[April —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

While serving a term of imprisonment in a North Carolina penitentiary, the respondent Perry became involved in an altercation with another inmate. A warrant issued, charging Perry with the misdemeanor of assault with a deadly weapon, N. C. Gen. Stat. § 14–33 (b)(1) (1969 ed.). Under North Carolina law, the District Court Division of the General Court of Justice has exclusive jurisdiction for the trial of misdemeanors. N. C. Gen. Stat. § 7A–272. Following a trial without a jury in the District Court of Northampton County, Perry was convicted of this misdemeanor and given a six-month sentence, to be served after completion of the prison term he was then serving.

Perry then filed a notice of appeal to the Northampton County Superior Court. Under North Carolina law, a person convicted in the District Court has a right to a trial *de novo* in the Superior Court. N. C. Gen. Stat. §§ 7A–290, 15–177.1. The right to trial *de novo* is absolute, there being no need for the appellant to allege error in the original proceeding. When an appeal is taken, the statutory scheme provides that the slate is wiped clean;

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

P. 9

3rd DRAFT

From: Stewart, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 72-1660

Recirculated: APR 16 1974

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[April —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

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P. 10

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

4th DRAFT

From: Stewart, J.

Circulated: _____

Recirculated: APR 29 1974

SUPREME COURT OF THE UNITED STATES

No. 72–1660

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry.

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

[April —, 1974]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 24, 1974

Re: No. 72-1660 - Blackledge v. Perry

Dear Potter:

Please join me.

Sincerely,

Mr. Justice Stewart

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 15, 1974

Re: No. 72-1660 -- Blackledge v. Perry

Dear Potter:

Please join me.

Sincerely,

T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 16, 1974

Re: No. 72-1660 - Blackledge v. Perry

Dear Potter:

Please join me in your recirculation of April 16.

Sincerely,

Harry

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 25, 1974

No. 72-1660 Blackledge v. Perry

Dear Chief:

I "passed" at the Conference on Friday, and promised to let you hear from me further.

As I stated at the Conference, I had thought that this case was controlled by Tollett. I do not consider the defense of double jeopardy, even if it were applicable, to be jurisdictional. If, as I have thought, an uncoerced guilty plea with advice of counsel waives constitutional rights (e. g., jury trial) as well as procedural defects, I would have thought that such a plea would waive such right as the defendant had not to be charged with a more serious offense.

While I still incline to this view, I will reconsider my position in light of the discussion at the Conference and particularly in view of what may be written. But for the time being, I am inclined to adhere to my initial view.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 16, 1974

No. 72-1660 Blackledge v. Perry

Dear Potter:

As I voted "the other way", I will await Bill Rehnquist's dissent in the above case.

Sincerely,

Lewis

Mr. Justice Stewart

lfp/ss

cc: The Conference

May 10, 1974

No. 72-1660 Blackledge v. Perry

Dear Bill:

I am happy to join Part II of your dissent in the above case. As Tollett seems controlling, it is unnecessary for me to address other issues.

I considered filing a separate dissenting opinion along the lines of the enclosed draft, but have decided not to do so. Do not hesitate to use any part of this draft, if it should appeal to you.

Sincerely,

Mr. Justice Rehnquist

lfp/ss

... have different in the challenged

Attached to LFP 5-10-74
72-1660

1fp/ss 5/10/74

No. 72-1660 BLACKLEDGE v. PERRY

MR. JUSTICE POWELL, dissenting.

I join Part II of Mr. Justice Rehnquist's dissent, but add this brief statement to emphasize my view that the Court's recent decision in Tollett v. Henderson, 411 U.S. 285 (1973) is controlling as to the effect of respondent's guilty plea.

The Court today allows a post-conviction challenge to a felony indictment, even though respondent had entered an otherwise valid guilty plea to the indictment. The basis for this belated challenge is that the indictment was handed up after respondent exercised his right under state law to a de novo trial following a misdemeanor conviction. In Tollett, we held that a voluntary guilty plea foreclosed a subsequent attack on the constitutional validity of the grand jury that had indicted the defendant.

In my view, the holdings in Tollett and in the instant case are irreconcilable. If the possible burden on the right to seek trial de novo inherent in the challenged

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1974

No. 72-1660 Blackledge v. Perry

Dear Bill:

Please join me in Part II of your dissenting opinion.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 15, 1974

Re: No. 72-1660 - Blackledge v. Perry

Dear Potter:

I anticipate circulating a dissent in this case.

Sincerely,

WHR

Mr. Justice Stewart

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–1660

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

I would find it more difficult than the Court apparently does in Part I in its opinion to conclude that the sentence imposed by the North Carolina courts violated Fourteenth Amendment due process as defined in *North Carolina* v. *Pearce,* 395 U. S. 711 (1969). I think the Court too readily equates the role of the prosecutor, who is a natural adversary of the defendant and who we observed in *Chaffin* v. *Stynchcombe,* 412 U. S. 17, 27, "often request[s] more than [he] can reasonably expect to get," with that of the sentencing judge in *Pearce.* I also think the Court passes over too lightly the reasoning of *Colten* v. *Kentucky,* 407 U. S. 104 (1972), in which we held that Kentucky's two tier appellate system for *de novo* appeals from justice court convictions did not offend *Pearce,* even though the judge at retrial might impose a more severe sentence than had been imposed by the Justice Court after the original trial.

My principal difference with the Court arises over its conclusion, in Part II of the opinion, that "the very initiation of the proceedings against [respondent] in the Superior Court operated to deny him due process of law." The Court states initially that it is not reaching respondent's double jeopardy contention, but the quoted statement surely sounds in the language of double jeopardy, however it may be dressed in due process garb.

Circulated: 4/26/74

substantial additions, as indicated

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

From: Rehnquist, J.

4/26

5/7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1660

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry.	On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

I would find it more difficult than the Court apparently does in Part I in its opinion to conclude that the very bringing of more serious charges against respondent following his request for a trial *de novo* violated due process as defined in *North Carolina* v. *Pearce*, 395 U. S. 711 (1969). Still more importantly, I believe the Court's conclusion that respondent may assert the Court's newfound *Pearce* claim in this federal habeas action, despite his plea of guilty to the charges brought after his invocation of his statutory right to a trial *de novo*, marks an unwarranted departure from the principles we have recently enunciated in *Tollett* v. *Henderson*, 411 U. S. 158 (1973), and the *Brady* 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. 790 (1970).

I

As the Court notes, in addition to his claim based on *Pearce* respondent contends that his felony indictment in the superior court violated his rights under the Double Jeopardy Clause of the Fifth Amendment, made applicable to the States through the Fourteenth Amendment, *Benton* v. *Maryland*, 395 U. S. 784 (1969). Presumably because we have earlier held that "the jeopardy

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshal
Mr. Justice Blackmu
Mr. Justice Powell

From: Rehnquist, J.

Circulated: _____

Recirculated: 5/15

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-1660

Stanley Blackledge, Warden, et al., Petitioners, *v.* Jimmy Seth Perry. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[May —, 1974]

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