The Burger Court Opinion Writing Database

Marshall v. United States

414 U.S. 417 (1974)

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

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

1st DRAFT

From: The Chief Justice

SUPREME COURT OF THE UNITED STATES

Circulated: NOV 21 1973

Recirculated: _____

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[December —, 1973]

PER CURIAM.

We granted certiorari to consider petitioner's claim that the provisions of Title II of the Narcotic Addict Rehabilitation Act of 1966, 18 U. S. C. §§ 4251–4255, deny due process and equal protection by excluding from rehabilitative commitment, in lieu of penal incarceration, addicts with two or more prior felony convictions. The circuits are in apparent conflict on this question. See *Watson* v. *United States,* — U. S. App. D. C. —, 439 F. 2d 442 (1970); *United States* v. *Hamilton,* — U. S. App. D. C. —, 462 F. 2d 1190 (1972); *United States* v. *Bishop,* 469 F. 2d 1337 (CA1 1972); and *Macias* v. *United States,* 464 F. 2d 1291 (CA5 1972).

(1)

Petitioner, Robert Edward Marshall, pleaded guilty to an indictment charging him with entering a bank with intent to commit a felony, in violation of 18 U. S. C. § 2113 (a). At sentencing, petitioner requested that he be considered for treatment as a narcotic addict pursuant to Title II of the Narcotic Rehabilitation Act of 1966 (NARA). The sentencing judge, after noting petitioner's three prior felony convictions for burglary, forgery, and possession of a firearm, concluded that the

pp 1, 3, 4, 5, 6, 8, 9, 10, 12

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

2nd DRAFT

From: The Chief Justice

Circulated:

Recirculated: DEC 10 1973

SUPREME COURT OF THE UNITED STATES

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[December —, 1973]

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

We granted certiorari to consider petitioner's claim that the provisions of Title II of the Narcotic Addict Rehabilitation Act of 1966, 18 U. S. C. §§ 4251–4255, deny due process and equal protection by excluding from rehabilitative commitment, in lieu of penal incarceration, addicts with two or more prior felony convictions. The circuits are in apparent conflict on this question. See *Watson* v. *United States,* — U. S. App. D. C. —, 439 F. 2d 442 (1970); *United States* v. *Hamilton,* — U. S. App. D. C. —, 462 F. 2d 1190 (1972); *United States* v. *Bishop,* 469 F. 2d 1337 (CA1 1972); and *Macias* v. *United States,* 464 F. 2d 1291 (CA5 1972), cert. pending No. 72-5539; *Marshall* v. *United States,* 470 F. 2d 34 (CA9 1972).

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pp 1, 2, 3, 4, 5, 6, 8, 10, 11

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

From: The Chief Justice

Circulated:

Recirculated: JAN 4 1974

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 9, 1974]

9/8

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

We granted certiorari to consider petitioner's claim that the provisions of Title II of the Narcotic Addict Rehabilitation Act of 1966, 18 U. S. C. §§ 4251–4255, deny due process and equal protection by excluding from discretionary rehabilitative commitment, in lieu of penal incarceration, addicts with two or more prior felony convictions. The circuits are in apparent conflict on this question. See *Watson* v. *United States*, — U. S. App. D. C. —, 439 F. 2d 442 (1970); *United States* v. *Hamilton*, — U. S. App. D. C. —, 462 F. 2d 1190 (1972); *United States* v. *Bishop*, 469 F. 2d 1337 (CA1 1972); and *Macias* v. *United States*, 464 F. 2d 1291 (CA5 1972), cert. pending No. 72-5539; *Marshall* v. *United States*, 470 F. 2d 34 (CA9 1972).

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

CHAMBERS OF
THE CHIEF JUSTICE

January 4, 1973

Re: 72-5881 - Marshall v. U. S.

MEMORANDUM TO THE CONFERENCE:

The citation presenting problems in the announcement of the above case has been removed and I will be announcing the opinion on Tuesday, January 8.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

January 16, 1974

MEMORANDUM TO THE CONFERENCE:

Three cases were held pending the decision in No. 72-5881, Marshall v. United States, which was announced on January 9, 1974. These cases appear on List 3, Sheet 2, for the January 18, 1974 Conference. I recommend disposition of these cases as follows:

No. 72-5539, Macias v. United States:

The Court of Appeals affirmed the District Court's rejection of petitioner's §2255 motion to vacate his sentence on the ground that he was eligible for sentencing under Title II of NARA. Petitioner had two prior felonies (burglary and forgery), and the Court of Appeals held that even if those prior offenses were the result of petitioner's drug habit, the two-prior-felony exclusion was constitutional and operated to preclude sentencing petitioner under NARA. We noted in Marshall that "Congress has not yet chosen to" provide for the discretionary inclusion in NARA programs of those whose prior convictions were "addiction-related or motivated." Slip op. at p. 10. Since the judgment of the Court of Appeals was in conformity with our judgment in Marshall, I recommend that certiorari be denied.

No. 72-6744, Turner v. United States:

Civil commitment under Title I of NARA, and sentencing under Title II of NARA, are both unavailable to an individual charged with or convicted of "a crime of violence." 28 U.S.C. §2901(g)(1); 18 U.S.C. §4251(f)(1). Such crimes are defined identically in 28 U.S.C. §2901(c) and 18 U.S.C. §4251(b). Petitioner was charged

with unarmed street robbery under the D. C. Code, which meets the statutory definition of "a crime of violence." His pre-trial motion for civil commitment under Title I was denied by the United States District Court (DDC) (Richey), which upheld the exclusion against petitioner's equal protection challenge under the Fifth Amendment Due Process Clause. The Court of Appeals (CADC) (Bazelon, Wright and MacKinnon) affirmed. Petitioner renews his constitutional challenge to the exclusion under the Due Process Clause, adding the contention that it constitutes cruel and unusual punishment.

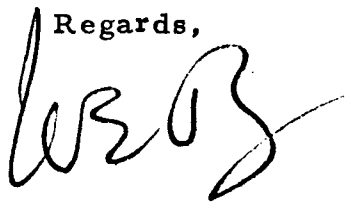
The case is not governed by our decision in Marshall, which dealt with the different two-prior-felony exclusion. It seems to me, however, that in view of the early release possible for persons who are the beneficiaries of Title I or Title II treatment, Congress could rationally have distinguished those who were charged with or convicted of a violent crime from those charged with or convicted of a non-violent crime. The distinction could be drawn on the basis of Congress' concern for the public safety and the belief that those involved in violent crimes would be more likely to return to that mode of behavior if they resumed criminal conduct upon release than would those involved in non-violent crime. Additionally, a propensity for violence would support the conclusion that a person charged with or convicted of such a crime would be more likely to "pose impediments to the successful treatment of others in the program." Marshall slip op., at p. 8. Finally, Congress could have been desirous of excluding the more violence prone criminals from NARA treatment in order not to lessen the deterrence of violent crimes. For the foregoing reasons it would appear that the Court of Appeals' judgment of affirmance was correct. Petitioner has cited no cases in conflict; nor do there appear to be any. On this state of the law, perhaps the best disposition would be to deny certiorari, unless a per curiam affirmance would seem appropriate following Marshall.

No. 72-6952, Simmons v. United States:

Petitioner was convicted of armed bank robbery, "a crime of violence" making petitioner ineligible for sentencing under Title II

of NARA. As in Turner, above, petitioner contends the violent-crime exclusion denies him equal protection of the law. The Court of Appeals affirmed petitioner's conviction, holding that his challenge to the NARA exclusion was indistinguishable from the Court of Appeals' opinion in Marshall. Petitioner also claimed that his confession should have been suppressed, but the Court of Appeals held that facts brought out at the pre-trial suppression hearing established by a preponderance of evidence that the confession was voluntary. I recommend the same disposition as in Turner, above.

Regards,



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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 21, 1972

Dear Thurgood:

I like your dissent in [illegible],
Marshall v. U.S. Would you mind rather
[illegible]

[illegible]

[illegible]

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 3, 1974

RE: No. 72-5881 - Marshall v. United States

Dear Thurgood:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 26, 1973

No. 72-5881 - Marshall v. U. S.

Dear Chief,

I am glad to join your opinion for the Court in this case, and I see no reason why it should not be a signed opinion.

Sincerely yours,

P. S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

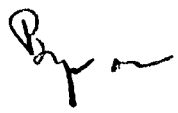
November 21, 1973

Re: No. 72-5881 - Marshall v. United States

Dear Chief:

I agree with your suggested per curiam in this case. Shouldn't it be a signed opinion?

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 26, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 72-5881 -- Marshall v. United States

In due time I will circulate a dissent in this case.

Sincerely,

T.M.

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

From: Marshall, J.

Circulated: DEC 28 1973

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1974]

MR. JUSTICE MARSHALL, dissenting.

Title II of the Narcotics Addict Rehabilitation Act of 1966 authorizes treatment in lieu of prison sentence for those addicts convicted of an offense against the United States whom the sentencing court has determined are "likely to be rehabilitated through treatment." 18 U. S. C. § 4252 (a). Petitioner was denied treatment for his disease of narcotics addiction, even though no determination was ever made that he is not likely to be rehabilitated through treatment, because the Act excludes from consideration for the NARA program any person with two or more prior felony convictions. 18 U. S. C. § 4251 (f)(4). Two Courts of Appeals have concluded that the two felony exclusion, though intended by Congress to serve admittedly legitimate ends, is not a sufficiently rational means towards those ends to withstand scrutiny under the Equal Protection Clause.[1]

[1] See *Watson* v. *United States*, — U. S. App. D. C. —, 439 F. 2d (1970); *United States* v. *Hamilton*, — U. S. App. D. C. —, 462 F. 2d 1190 (1972); *United States* v. *Bishop*, 469 F. 2d 1337 (CA1 1972). In addition to the statute's flaws noted in this opinion, these decisions also point out other anomalies implicit in the two felony exclusion. Under the Act, an addict who has engaged in trafficking to support his own habit would be eligible for non-criminal disposition under Tit. II, whereas a nontrafficking addict found, for the third time, in possession of narcotics for his own use would not. This result, "is curiously at odds with the Congressional preoccupation, underlying the Narcotic Addict Rehabilitation Act,

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

From: Marshall, J.

Circulated:

Recirculated: JAN 3 19

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 72–5881

Robert Edward Marshall, Petitioner, *v.* United States.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January —, 1974]

pp 1, 5

MR. JUSTICE MARSHALL, with whom MR. JUSTICE DOUGLAS concurs, dissenting.

Title II of the Narcotics Addict Rehabilitation Act of 1966 authorizes treatment in lieu of prison sentence for those addicts convicted of an offense against the United States who the sentencing court has determined are "likely to be rehabilitated through treatment." 18 U. S. C. § 4252 (a). Petitioner was denied treatment for his disease of narcotics addiction, even though no determination was ever made that he is not likely to be rehabilitated through treatment, because the Act excludes from consideration for the NARA program any person with two or more prior felony convictions. 18 U. S. C. § 4251 (f)(4). Two Courts of Appeals have concluded that the two felony exclusion, though intended by Congress to serve admittedly legitimate ends, is not a sufficiently rational means towards those ends to withstand scrutiny under the Equal Protection Clause.[1]

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Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquis

From: Marshall, J.

Circulated: JAN 7 197

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 9, 1974]

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

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To: The Chief Justice
Mr. Justice Douglas
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Recirculated: JAN 8 19

SUPREME COURT OF THE UNITED STATES

No. 72-5881

Robert Edward Marshall, Petitioner, *v.* United States. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[January 9, 1974]

p. 9

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

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 23, 1973

Re: No. 72-5881 - Marshall v. United States

Dear Chief:

Please join me.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 26, 1973

No. 72-5881 Marshall v. United States

Dear Chief:

Please join me in your Per Curiam for the Court.

In view of the length and thoroughness of the opinion, I hope it will be a signed opinion rather than a P. C.

Sincerely,

Lewis

The Chief Justice

cc: The Conference

lfp/ss

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 23, 1973

Re: No. 72-5881 - Marshall v. United States

Dear Chief:

Please join me. I agree with Byron's suggestion that the opinion ought to be signed.

Sincerely,

The Chief Justice

Copies to the Conference