

The Burger Court Opinion Writing Database

Taylor v. Hayes
418 U.S. 488 (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

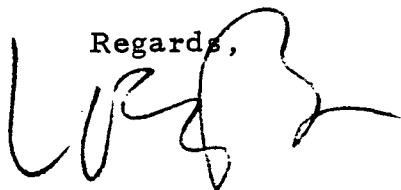
June 17, 1974

Re: 73-473 - Taylor v. Hayes

Dear Byron:

Please join me in your opinion.

Regards,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 20, 1974

Re: 73-473 - Taylor v. Hayes

MEMORANDUM TO THE CONFERENCE:

This will confirm my "join" in the
above with the recent modification.

Regards,

WSB

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 16, 1974

Dear Byron:

In 73-473, Taylor v. Hayes please
note that I join in Parts II and III of your
opinion.

WOD
WILLIAM O. DOUGLAS

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. May 16, 1974

RE: No. 73-473 Taylor v. Hayes

Dear Byron:

I agree.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 15, 1974

73-473 - Taylor v. Hayes

Dear Byron,

I am glad to join the opinion you have
written for the Court in this case.

Sincerely yours,

C. S. W.

Mr. Justice White

Copies to the Conference

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

2nd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 5-15-74

No. 73-473

Recirculated: _____

Daniel T. Taylor, III,
Petitioner,
v.
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.

On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case concerns the validity of a criminal contempt judgment entered against petitioner by reason of certain events occurring in the course of a criminal trial in the courts of the Commonwealth of Kentucky. Petitioner was retained counsel for Narvel Tinsley, a Negro, who along with his brother Michael was charged with the murders of two police officers. According to the Kentucky Supreme Court, the "murders created some considerable sensation in Louisville . . . and the newspaper coverage was overly abundant." *Taylor v. Hayes*, 494 S. W. 2d 737, 739 (1973). Trial before respondent trial judge began on October 18, 1971, and was completed on October 29.

On nine different occasions during this turbulent trial, respondent, out of the hearing of the jury and most often in chambers, informed petitioner that he was in contempt of court. The first charge was immediately reduced to a warning and no sentence was imposed at the

JP 9.10.14

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

3rd DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

No. 73-473

Recirculated: 5-20-74

Daniel T. Taylor, III,
Petitioner,
v.
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division. } On Writ of Certiorari to
the Court of Appeals of Kentucky.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case concerns the validity of a criminal contempt judgment entered against petitioner by reason of certain events occurring in the course of a criminal trial in the courts of the Commonwealth of Kentucky. Petitioner was retained counsel for Narvel Tinsley, a Negro, who along with his brother Michael was charged with the murders of two police officers. According to the Kentucky Court of Appeals, the "murders created some considerable sensation in Louisville . . . and the newspaper coverage was overly abundant." *Taylor v. Hayes*, 494 S. W. 2d 737, 739 (1973). Trial before respondent trial judge began on October 18, 1971, and was completed on October 29.

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11-12, 14-15

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

From: White, J.

4th DRAFT

Circulated:

Recirculated: 6-12-74

SUPREME COURT OF THE UNITED STATES

No. 73-473

Daniel T. Taylor, III,
Petitioner,
v.
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division. } On Writ of Certiorari to the Court of Appeals of Kentucky.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case concerns the validity of a criminal contempt judgment entered against petitioner by reason of certain events occurring in the course of a criminal trial in the courts of the Commonwealth of Kentucky. Petitioner was retained counsel for Narvel Tinsley, a Negro, who along with his brother Michael was charged with the murders of two police officers. According to the Kentucky Court of Appeals, the "murders created some considerable sensation in Louisville . . . and the newspaper coverage was overly abundant." *Taylor v. Hayes*, 494 S. W. 2d 737, 739 (1973). Trial before respondent trial judge began on October 18, 1971, and was completed on October 29.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 17, 1974

MEMORANDUM TO THE CONFERENCE

Re: No. 73-473 -- Taylor v. Hayes

At the conclusion of the paragraph ending at the top of page 10, I am adding the following new footnote:

"Groppi dealt with contempt of a state legislative body and the contempt action was not taken until several days later without notice or opportunity for Groppi to be heard."

Sincerely,



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

p - 10

From: White, J.

5th DRAFT

Circulated: _____

Recirculated: 6-10-74

SUPREME COURT OF THE UNITED STATES

No. 73-473

Daniel T. Taylor, III,
Petitioner,

v.

John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.

On Writ of Certiorari to
the Court of Appeals of
Kentucky.

[May —, 1974]

MR. JUSTICE WHITE delivered the opinion of the Court.

The question in this case concerns the validity of a criminal contempt judgment entered against petitioner by reason of certain events occurring in the course of a criminal trial in the courts of the Commonwealth of Kentucky. Petitioner was retained counsel for Narvel Tinsley, a Negro, who along with his brother Michael was charged with the murders of two police officers. According to the Kentucky Court of Appeals, the "murders created some considerable sensation in Louisville . . . and the newspaper coverage was overly abundant." *Taylor v. Hayes*, 494 S. W. 2d 737, 739 (1973). Trial before respondent trial judge began on October 18, 1971, and was completed on October 29.

On nine different occasions during this turbulent trial, respondent, out of the hearing of the jury and most often in chambers, informed petitioner that he was in contempt of court. The first charge was immediately reduced to a warning and no sentence was imposed at the

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 19, 1974

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Taylor v. Hayes, No. 73-473:

Grossman v. Striepeke, No. 73-787
Buckley v. California, No. 73-1052

1. Grossman v. Striepeke, No. 73-787. Petr was summarily convicted of direct contempt by a California trial judge at the end of a trial in which he served as defense counsel; he was sentenced to five days' imprisonment and fined \$500. In a habeas proceeding, the contempt order was affirmed in part by the California CA, and the California SC denied review. Federal habeas relief was denied by the USDC N.D. California without opinion, and the CA 9 (Koelsch, Browning, Carter) affirmed. Petr was released on his own recognizance by the federal district court after serving two days of his sentence. When a stay pending cert was denied by this Court, petr served the balance of his sentence and paid the fine. Petr alleges that serious collateral consequences, including disbarment, will flow from this conviction.

The trial judge cited petr for three acts of contempt, all of which transpired during a brief colloquy between the prosecutor, the judge and petr in the midst of the trial. After the trial court questioned the relevance of one of petr's questions put to a witness, petr replied that he was entitled to ask the question because the prosecution had opened the line of inquiry, "unless there's a different rule for him than for me." A lively exchange between petr and the judge ensued, during which petr construed the trial court's comments to mean that he, petr, was being called a liar. At this point, the trial judge cited petr for misconduct. The trial court's citation charged petr with interrupting the trial and listed the three contempts as (a) continued argument after the court had ruled; accusing the court in "a loud, disorderly, contemptuous, insolent and rude manner and tone of voice and in the presence of

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 16, 1974

Re: No. 73-473 -- Taylor v. Hayes

Dear Byron:

I, too, will join in Parts II and III of your opinion.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

1st DRAFT

From: Marshall, J.

Circulated: JUN 11 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-473

Daniel T. Taylor, III,
Petitioner,
v.
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.

On Writ of Certiorari to the Court of Appeals of Kentucky.

[June —, 1974]

MR. JUSTICE MARSHALL, dissenting in part.

I join Parts II and III of the opinion of the Court, but I cannot join the holding in Part I that petitioner was not entitled to a jury trial. Petitioner was summarily convicted of contempt and sentenced to almost four and one-half years in prison. In my view, this sentence marked the contempt charges against petitioner as "serious" rather than "petty" and called into play petitioner's Sixth Amendment right to a jury trial.

The Court, however, relies on the fact that the trial judge subsequently realized his error and reduced the sentence to six months. The Court characterizes this as a determination by the state that "the contempt is not so serious as to warrant more than a six-months sentence." *Ante*, at 7. In my view, the trial judge's reduction of petitioner's sentence was a transparent effort to circumvent this Court's Sixth Amendment decisions and to save his summary conviction of petitioner without the necessity of airing the charges before an impartial jury. It is hardly coincidence that petitioner's sentence was reduced to the maximum that our decisions would permit.

Today's decision represents an extraordinarily rigid

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

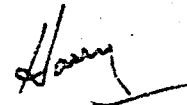
May 20, 1974

Re: No. 73-473 - Taylor v. Hayes

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

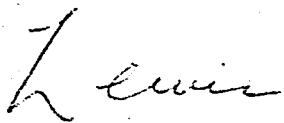
May 17, 1974

No. 73-473 Taylor v. Hayes

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference

1st DRAFT

Mr.
Mr.
Mr. Justice
Mr. Justice
Mr. Justice

SUPREME COURT OF THE UNITED STATES

Nos. 73-473 AND 73-5615

From: Rehnquist, J.

Circulated: 6-10-79

Recirculated:

Daniel T. Taylor, III,
Petitioner,
73-473 *v.*
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.

On Writ of Certiorari to the Court of Appeals of Kentucky.

Dominick Codispoti and Herbert Langnes, Petitioners,
73-5615 *v.*
State of Pennsylvania.

On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.

[June —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

These two cases are graphic illustrations of the manner in which constitutional limitations on the power of a trial judge to summarily punish for contempt have been fashioned virtually out of whole cloth by this Court in the course of only 20-odd years. In *Sacher v. United States*, 343 U. S. 1 (1952), the Court, speaking through Mr. Justice Jackson, said:

"Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. But the very practical reasons which have led every system of law to vest a contempt power in one who presides over judicial proceedings also are the reasons which account for it being made summary. . . . The rights and immunities of accused persons would be exposed to serious

10-13

2nd DRAFT

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

SUPREME COURT OF THE UNITED STATES

Nos. 73-473 AND 73-5615

Argued: 6-17-74

Received: 6-17-74

Daniel T. Taylor, III,
Petitioner,

73-473 *v.*
John P. Hayes, Judge, Jefferson Circuit Court, Criminal Branch, Second Division.

On Writ of Certiorari to the Court of Appeals of Kentucky.

Dominick Codispoti and Herbert Langnes, Petitioners,
73-5615 *v.*
State of Pennsylvania.

On Writ of Certiorari to the Supreme Court of Pennsylvania for the Western District.

[June —, 1974]

MR. JUSTICE REHNQUIST, dissenting.

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“Summary punishment always, and rightly, is regarded with disfavor and, if imposed in passion or pettiness, brings discredit to a court as certainly as the conduct it penalizes. But the very practical reasons which have led every system of law to vest a contempt power in one who presides over judicial proceedings also are the reasons which account for it being made summary. . . . The rights and immunities of accused persons would be exposed to serious