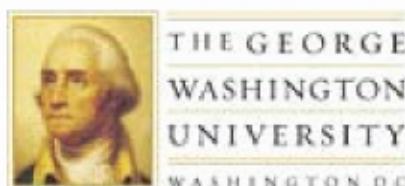


The Burger Court Opinion Writing Database

Fuller v. Oregon

417 U.S. 40 (1974)

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

May 14, 1974

Re: 73-5280 - Fuller v. Oregon

Dear Potter:

Please join me.

Regards,

WB B

Mr. Justice Stewart

Copies to the Conference

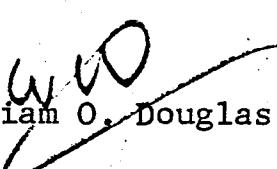
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

May 7, 1974

Dear Potter:

Please join me in your opinion in No. 73-5280, Fuller v. Oregon. I may decide to file a separate opinion. But whether or not I do so I am still with you.


William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

No. 73-5280

Circulate: 5-15

Prince Eric Fuller,
Petitioner, } On Writ of Certiorari to the Court of
v. } Appeals of Oregon.
State of Oregon.

Recirculated:

[April —, 1974]

MR. JUSTICE DOUGLAS, concurring.

The petitioner in this case, charged with a felony, received court-appointed counsel, which is available in Oregon to a defendant who executes a statement that he is unable to obtain counsel, when it appears to the court that the defendant is without means. Ore. Rev. Stat. §§ 133.625 (1)(c), (d). Petitioner was convicted, and sentenced to five years' probation. One of the conditions of probation was that petitioner reimburse the county for the cost of his appointed attorney's fees and for the expenses of a defense investigator.¹ These costs were assessed pursuant to the Oregon recoupment statutes, *id.*, §§ 161.665-161.685, which authorize the sentencing court to require a convicted defendant to pay certain costs² and to condition probation on such payment.

¹ In this case, the petitioner's father apparently paid the costs, and petitioner will repay his father.

² The costs which can be assessed are limited by statute to those "specially incurred" by the State in prosecuting a defendant. Ore. Rev. Stat. § 161.665 (2). The Oregon Court of Appeals found that most costs on the prosecution side of the case could not be charged to a defendant, including police investigations, district attorneys' salaries, and sheriff's salaries. *State v. Fuller*, — Ore. App. —, —, 504 p. 2d 1393, 1396. Also, jury fees and the costs of summoning jurors cannot be charged to the defendant. *Ibid.*; see Ore. Rev. Stat. § 161.655 (2). The costs which can be charged appear limited

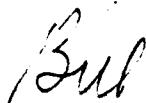
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. April 1, 1974

Dear Thurgood:

I note on today's assignment list that only you and I are in dissent in Fuller v. Oregon, No. 73-5280, in which Potter has been assigned a Per Curiam. Would you care to take on the dissent?

Sincerely,



Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. May 8, 1974

RE: No. 73-5280 Fuller v. Oregon

Dear Thurgood:

Please join me in your dissenting
opinion in the above.

Sincerely,



Mr. Justice Marshall

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, .

SUPREME COURT OF THE UNITED STATES

Circulated: MAY 6 1974

No. 73-5280

Recirculated: _____

Prince Eric Fuller,
 Petitioner, } On Writ of Certiorari to the Court of
 v. } Appeals of Oregon.
 State of Oregon.

[May —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to determine whether Oregon may constitutionally require a person convicted of a criminal offense to repay to the State the costs of providing him with effective representation of counsel, when he is indigent at the time of the criminal proceedings but subsequently acquires the means to bear the costs of his legal defense.

The petitioner Fuller pleaded guilty, on July 20, 1972, to an information charging him with sodomy in the third degree.¹ At the hearing on the plea and in other court proceedings he was represented by a local member of the bar appointed by the court upon the petitioner's representation that he was indigent and unable to hire a lawyer. Fuller's counsel in turn hired an investigator to aid in gathering facts for his defense, and the investigator's fees were also assumed by the State. Fuller was subsequently sentenced to five years of probation, conditioned upon his satisfactorily complying with the requirements of a work-release program at the county jail that

¹ Other charges contained in the information against Fuller were dismissed when his guilty plea was accepted.

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

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Stewart, J.

Circulated:

No. 73-5280

MAY 13 1974

Recirculated:

Prince Eric Fuller,
 Petitioner, } On Writ of Certiorari to the Court of
 v. } Appeals of Oregon.
 State of Oregon.

[May —, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to determine whether Oregon may constitutionally require a person convicted of a criminal offense to repay to the State the costs of providing him with effective representation of counsel, when he is indigent at the time of the criminal proceedings but subsequently acquires the means to bear the costs of his legal defense.

The petitioner Fuller pleaded guilty, on July 20, 1972, to an information charging him with sodomy in the third degree.¹ At the hearing on the plea and in other court proceedings he was represented by a local member of the bar appointed by the court upon the petitioner's representation that he was indigent and unable to hire a lawyer. Fuller's counsel in turn hired an investigator to aid in gathering facts for his defense, and the investigator's fees were also assumed by the State. Fuller was subsequently sentenced to five years of probation, conditioned upon his satisfactorily complying with the requirements of a work-release program at the county jail that

¹ Other charges contained in the information against Fuller were dismissed when his guilty plea was accepted.

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

From: Stewart, J.

Circulated:

Recirculated: MAY 17 1974

SUPREME COURT OF THE UNITED STATES

No. 73-5280

Prince Eric Fuller,
 Petitioner, } On Writ of Certiorari to the Court of
 v. } Appeals of Oregon.
 State of Oregon.

[May 20, 1974]

MR. JUSTICE STEWART delivered the opinion of the Court.

In this case we are called upon to determine whether Oregon may constitutionally require a person convicted of a criminal offense to repay to the State the costs of providing him with effective representation of counsel, when he is indigent at the time of the criminal proceedings but subsequently acquires the means to bear the costs of his legal defense.

The petitioner Fuller pleaded guilty, on July 20, 1972, to an information charging him with sodomy in the third degree.¹ At the hearing on the plea and in other court proceedings he was represented by a local member of the bar appointed by the court upon the petitioner's representation that he was indigent and unable to hire a lawyer. Fuller's counsel in turn hired an investigator to aid in gathering facts for his defense, and the investigator's fees were also assumed by the State. Fuller was subsequently sentenced to five years of probation, conditioned upon his satisfactorily complying with the requirements of a work-release program at the county jail that

¹ Other charges contained in the information against Fuller were dismissed when his guilty plea was accepted.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 8, 1974

Re: No. 73-5280 - Fuller v. Oregon

Dear Potter:

I agree with your opinion in this case.

Sincerely,



Mr. Justice Stewart

Copies to Conference

April 2, 1974

Dear Bill:

I will be delighted, I hope, to do the dissent
in Fuller v. Oregon, No. 73-5280.

Sincerely,

T. M.

Mr. Justice Brennan

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: MAY 8 1974

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 73-5280

Prince Eric Fuller,
Petitioner, } On Writ of Certiorari to the Court of
v. } Appeals of Oregon.
State of Oregon.

[May —, 1974]

MR. JUSTICE MARSHALL, dissenting.

In my view, the Oregon recoupment statute at issue in this case discriminates against indigent defendants in violation of the Equal Protection Clause and the principles established by this Court in *James v. Strange*, 407 U. S. 128 (1972). In that case we held unconstitutional under the Equal Protection Clause a Kansas recoupment statute because it failed to provide equal treatment between indigent defendants and other civil judgment debtors. We relied on the fact that indigent defendants were not entitled to the protective exemptions Kansas had erected for other civil judgment debtors.

The Oregon recoupment statute at issue here similarly provides unequal treatment between indigent defendants and other civil judgment debtors. The majority obscures the issue in this case by focusing solely on the question whether the Oregon statute affords an indigent defendant the same protective exemptions provided other civil debtors. True, as construed by the Oregon Court of Appeals, the statute does not discriminate in this regard. But the treatment it affords indigent defendants remains unequal in another, even more fundamental respect. The important fact which the majority ignores is that under Oregon law, the repayment of the indigent defendant's debt to the State can be made a condition of his probation, as it was in this case. Petitioner's

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: MAY 9 1974

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-5280

Prince Eric Fuller,
 Petitioner, } On Writ of Certiorari to the Court of
 v. } Appeals of Oregon.
 State of Oregon.

[May —, 1974]

MR. JUSTICE MARSHALL, with whom MR. JUSTICE BRENNAN joins, dissenting.

In my view, the Oregon recoupment statute at issue in this case discriminates against indigent defendants in violation of the Equal Protection Clause and the principles established by this Court in *James v. Strange*, 407 U. S. 128 (1972). In that case we held unconstitutional under the Equal Protection Clause a Kansas recoupment statute because it failed to provide equal treatment between indigent defendants and other civil judgment debtors. We relied on the fact that indigent defendants were not entitled to the protective exemptions Kansas had erected for other civil judgment debtors.

The Oregon recoupment statute at issue here similarly provides unequal treatment between indigent defendants and other civil judgment debtors. The majority obfuscates the issue in this case by focusing solely on the question whether the Oregon statute affords an indigent defendant the same protective exemptions provided other civil debtors. True, as construed by the Oregon Court of Appeals, the statute does not discriminate in this regard. But the treatment it affords indigent defendants remains unequal in another, even more fundamental respect. The important fact which the majority ignores is that under Oregon law, the repayment of the indigent defendant's debt to the State can be made a condition

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1974

Re: No. 73-5280 - Fuller v. Oregon

Dear Potter:

I am glad to join your opinion for this case.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 10, 1974

No. 73-5280 Fuller v. Oregon

Dear Potter:

Please join me.

Sincerely,

L. Powell

Mr. Justice Stewart

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 7, 1974

Re: No. 73-5280 - Fuller v. Oregon

Dear Potter:

Please join me.

sincerely,



Mr. Justice Stewart

Copies to the Conference