

The Burger Court Opinion Writing Database

Jenkins v. Georgia

418 U.S. 153 (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

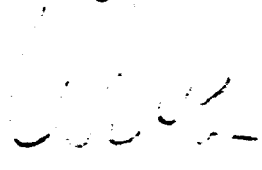
June 18, 1974

Re: 73-557 - Jenkins v. Georgia

Dear Bill:

Please join me.

Regards,



Mr. Justice Rehnquist

Copies to the Conference

ADDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
THE CHIEF JUSTICE

April 16, 1974

Re: 73-557 - Jenkins v. Georgia

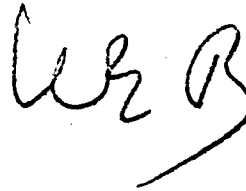
MEMORANDUM TO THE CONFERENCE:

There seems to be a general interest in viewing the film involved in the above case.

The Clerk is trying to make arrangements to exhibit it Thursday at an hour to be fixed.

Please advise if there is any particular time when you cannot be available Thursday, assuming you wish to see it.

Regards,



P. S. -- We find that the equipment is available at ten a.m. and the only room large enough to accommodate the equipment is either the East or West Conference rooms -- one of which will be set up for the film.

NOT RECORDED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

To: The Chief Justice
Mr. Justice Black
Mr. Justice Brennan
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Souter
Mr. Justice Ginsburg
Mr. Justice Breyer
Mr. Justice Alito
Mr. Justice Kagan
Mr. Justice Sotomayor
Mr. Justice Roberts
Mr. Justice Thomas
Mr. Justice Kennedy
Mr. Justice Scalia
Mr. Justice Brandenburg
Mr. Justice Burger
Mr. Justice Fortas
Mr. Justice Goldwater
Mr. Justice Harlan II
Mr. Justice Marshall II
Mr. Justice Rehnquist
Mr. Justice Stevens
Mr. Justice Tamm
Mr. Justice Taft
Mr. Justice Traynor
Mr. Justice Warren
Mr. Justice Whitaker
Mr. Justice Winterrowd
Mr. Justice Burger II
Mr. Justice Powell
Mr. Justice Reagan
Mr. Justice Anderson
Mr. Justice Silberman
Mr. Justice Thornburgh
Mr. Justice Casper
Mr. Justice Callahan
Mr. Justice Felt
Mr. Justice Gale
Mr. Justice Rosen
Mr. Justice Sullivan
Mr. Justice Tavel
Mr. Justice Trotter
Mr. Justice Tele. Room
Mr. Justice Holmes
Mr. Justice Gandy

Billy Jenkins

v.

No. 73-557

State of Georgia

Mr. Justice Brennan, concurring in result.

Circulated: _____

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Recirculated: _____

Adopting a restatement of the Roth-Memoirs definition of "obscenity," the Court in Miller v. California, 413 U.S. 15 (1973), held that obscene material could be regulated, provided that "(a) . . . 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest . . . ; (b) . . . the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) . . . the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." Miller v. California supra, 413 U.S., at 24. It was my view then -- and it remains so -- that the Court's reformulation hardly represented a solution to what Mr. Justice Harlan called "the intractable obscenity problem," Interstate Circuit, Inc. v. Dallas, 390 U.S. 676, 704 (1968) (concurring and dissenting). Today's decision confirms my observation in Paris Adult Theater I v. Slaton, 413 U.S. 49 (1973), that the Court's new formulation does not extricate us from the mire of case-by-case determinations of obscenity. I there observed that:

"Ultimately, the reformulation must fail because it still leaves in this Court the responsibility of determining in each case whether the materials are protected by the First Amendment. The Court concedes that even under its restated formulation, the First Amendment interests at stake require 'appellate courts to conduct an independent review of constitutional claims when necessary,' Miller v. California [413 U.S. 15, 25], citing Mr. Justice Harlan's opinion in Roth, where he stated, 'I do not understand how the Court can resolve the constitutional problems now before it without making its own

*/

See Roth v. United States, 354 U.S. 476 (1957), and Memoirs v. Massachusetts, 383 U.S. 413 (1966).

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-557

Billy Jenkins, Appellant,	} On Appeal from the Supreme Court of Georgia.
v.	
State of Georgia.	

[June —, 1974]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE STEWART and MR. JUSTICE MARSHALL join, concurring in result.

Adopting a restatement of the *Roth-Memoirs** definition of "obscenity," the Court in *Miller v. California*, 413 U. S. 15 (1973), held that obscene material could be regulated, provided that "(a) . . . 'the average person, applying contemporary community standards' would find that the work, taken as a whole, appeals to the prurient interest . . . ; (b) . . . the work depicts or describes in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) . . . the work, taken as a whole, lacks serious literary, artistic, political, or scientific value." *Miller v. California, supra*, 413 U. S., at 24. It was my view then—and it remains so—that the Court's reformulation hardly represented a solution to what Mr. Justice Harlan called "the intractable obscenity problem," *Interstate Circuit, Inc. v. Dallas*, 390 U. S. 676, 704 (1968) (concurring and dissenting). Today's decision confirms my observation in *Paris Adult Theater I v. Slaton*, 413 U. S. 49 (1973), that the Court's new formulation does not extricate us from the mire of

*See *Roth v. United States*, 354 U. S. 476 (1957), and *Memoirs v. Massachusetts*, 383 U. S. 413 (1966).

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 18, 1974

No. 73-557, Jenkins v. Georgia

Dear Bill,

Please add my name to your
concurring opinion in this case.

Sincerely yours,

P.S.
/

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 13, 1974

Re: No. 73-557 - Jenkins v. Georgia

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 18, 1974

Re: No. 73-557 -- Billy Jenkins v. State of Georgia

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: The Conference

November 30, 1973

Dear Chief:

May I, at this late moment, ask that No. 73-557, Jenkins v. Georgia, be relisted to December 7 and not be recorded as a grant on Monday's order list.

Sincerely,

HAB

The Chief Justice

To: John Jeffries - Please

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

Discuss with
me on
Saturday AM

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 30, 1973

MEMORANDUM TO THE CONFERENCE

Re: No. 73-557 - Jenkins v. Georgia

I am asking that this case be relisted to
December 7.

H. A. B.
—

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 18, 1974

Dear Bill:

Re: No. 73-557 - Jenkins v. Georgia

Please join me.

Sincerely,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

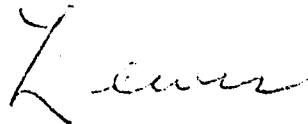
June 10, 1974

No. 73-557 Jenkins v. Georgia

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

lfp/ss

cc: The Conference

To: The Chief Justice
 Mr. Justice Douglas
 Mr. Justice Brennan
 Mr. Justice Stevens
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Powell

1st DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 6/10

No. 73-557

Recirculated:

Billy Jenkins, Appellant, } On Appeal from the Supreme
 v. } Court of Georgia.
 State of Georgia.

[June —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant was convicted in Georgia of the crime of distributing obscene material. His conviction, in March 1972, was for showing the film "Carnal Knowledge" in a movie theater in Albany, Georgia. The jury that found appellant guilty was instructed on obscenity pursuant to the Georgia statute, which defines obscene material in language similar to that of the definition of obscenity set forth in our plurality opinion in *Memoirs v. Massachusetts*, 383 U. S. 413, 418 (1966):

"Material is obscene if considered as a whole applying community standards, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and utterly without redeeming social value and if, in addition, it goes substantially beyond customary limits of candor in describing or representing such matters." Ga. Code Ann. § 26-2101 (b) (1972).¹

¹ Section 26-2101 is entitled "Distributing obscene materials." Subsection (a) of § 26-2101 provides in relevant part: "A person commits the offense of distributing obscene materials when he . . . exhibits or otherwise disseminates to any person any obscene material of any description, knowing the obscene nature thereof . . ." Subsection (a) goes on to provide that the requisite knowledge may

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-557

From: Rehnquist, J.

Circulated: 4/4

Recirculated: 4/4

Billy Jenkins, Appellant, | On Appeal from the Supreme
v. | Court of Georgia.
State of Georgia.

[June —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Appellant was convicted in Georgia of the crime of distributing obscene material. His conviction, in March 1972, was for showing the film "Carnal Knowledge" in a movie theater in Albany, Georgia. The jury that found appellant guilty was instructed on obscenity pursuant to the Georgia statute, which defines obscene material in language similar to that of the definition of obscenity set forth in this Court's plurality opinion in *Memoirs v. Massachusetts*, 383 U. S. 413, 418 (1966):

"Material is obscene if considered as a whole applying community standards, its predominant appeal is to prurient interest, that is, a shameful or morbid interest in nudity, sex or excretion, and utterly without redeeming social value and if, in addition, it goes substantially beyond customary limits of candor in describing or representing such matters." Ga. Code Ann. § 26-2101 (b) (1972).¹

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