

# The Burger Court Opinion Writing Database

*Ross v. Moffitt*

417 U.S. 600 (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 11, 1974

Re: 73-786 - Ross v. Moffitt

Dear Bill:

Please join me.

Regards,

MRB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM O. DOUGLAS

June 4, 1974

Dear Bill:

In 73-786, ROSS v. MOFFIT would  
you kindly add me to Bill Brennan's one  
line dissent in this case?

wvr

William O. Douglas

Mr. Justice Rehnquist

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

No. 73-786

From: Douglas, J.

6-11-

Major Fred R. Ross, et al.,  
Petitioners

v.

Claude F. Moffitt

On Writ of Certiorari  
to the Court of Appeal  
Recirculate  
for the Fourth Circuit

Mr. Justice Douglas, dissenting.

I would affirm the judgment [redacted]  
because I am in substantial agreement with the opinion  
of Chief Judge Haynsworth for a unanimous panel in the  
Court of Appeals. Moffitt v. Ross, 483 F.2d 650.

In Douglas v. California, 372 U.S. 353, we considered  
[redacted] the necessity [redacted] appointed counsel on the first appeal  
as of right, the only issue before us. We did not [redacted]  
deal with the appointment of counsel for later levels of  
discretionary review, either to the higher state courts  
or to this Court, but we noted that "there can be no  
equal justice where the kind of appeal a man enjoys 'depends  
on the amount of money he has.'" Id., at 355.

Judge Haynsworth could find "no logical basis for  
differentiation between appeals of right and permissive  
procedures in the context of the Constitution and the right  
to counsel" 483 F.2d, at 653. More familiar with the  
functioning of the North Carolina criminal justice system  
than are we, he concluded that "in the context of constitu-  
tional questions arising in criminal prosecutions, permissiv-

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-786

Circulated: 6/13/74

Recirculated:

Fred R. Ross and North  
Carolina, Petitioners, } On Writ of Certiorari to the  
v. } United States Court of Ap-  
Claude Franklin Moffit. } peals for the Fourth Circuit.

[June —, 1974]

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

I would affirm the judgment below because I am in agreement with the opinion of Chief Judge Haynsworth for a unanimous panel in the Court of Appeals. *Moffit v. Ross*. 483 F. 2d 650.

In *Douglas v. California*, 372 U. S. 353, we considered the necessity for appointed counsel on the first appeal as of right, the only issue before us. We did not deal with the appointment of counsel for later levels of discretionary review, either to the higher state courts or to this Court, but we noted that "there can be no equal justice where the kind of appeal a man enjoys 'depends on the amount of money he has.'" *Id.*, at 355.

Judge Haynsworth could find "no logical basis for differentiation between appeals of right and permissive review procedures in the context of the Constitution and the right to counsel." 483 F. 2d, at 653. More familiar with the functioning of the North Carolina criminal justice system than are we, he concluded that "in the context of constitutional questions arising in criminal prosecutions, permissive review in the state's highest court may be predictably the most meaningful review the conviction will receive." *Ibid.* The North Carolina Court of Appeals, for example, will be constrained in diverging from

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR. June 4, 1974

RE: No. 73-786 Ross v. Moffit

Dear Bill:

Will you please add at the foot of your opinion the following:

"Mr. Justice Brennan dissents and would affirm the judgment of the Court of Appeals for the reasons stated in the opinion of Chief Judge Haynsworth, 483 F. 2d 650 (1973)."

Sincerely,

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

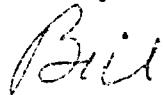
June 12, 1974

RE: No. 73-786 Ross v. Moffitt

Dear Bill:

Please join me in your dissent. If you can see your way clear to dropping the word "substantial" in the second line, I'll withdraw my dissenting statement which you have previously joined.

Sincerely,



Mr. Justice Douglas

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 4, 1974

Re: No. 73-786, Ross v. Moffit

Dear Bill,

I am glad to join your opinion for the Court  
in this case.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R WHITE

June 5, 1974

Re: No. 73-786 - Ross v. Moffit

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 11, 1974

Re: No. 73-786 -- Major Fred R. Ross v. Moffitt

Dear Bill:

Please join me in your dissent in this one.

Sincerely,

*T.M.*  
T.M.

Mr. Justice Douglas

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

June 6, 1974

Re: No. 73-786 - Ross v. Moffitt

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20530

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 5, 1974

No. 73-786 Ross v. Moffit

Dear Bill:

Please join me.

Sincerely,

Mr. Justice Rehnquist

CC: The Conference

LFP/gg

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

6-4-74  
No. 73-786

Fred R. Ross and North  
Carolina, Petitioners, } On Writ of Certiorari to the  
v.  
Claude Franklin Moffit, } United States Court of Ap-  
peals for the Fourth Circuit.

[June —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

We are asked in this case to decide whether *Douglas v. California*, 372 U. S. 353 (1963), which requires appointment of counsel for indigent state defendants on their first appeal as of right, should be extended to require counsel for discretionary state appeals and for applications for review in this Court. The Court of Appeals for the Fourth Circuit held that such appointment was required by the Due Process and Equal Protection Clauses of the Fourteenth Amendment.<sup>1</sup>

I

The case now before us has resulted from consolidation of two separate cases. North Carolina criminal prosecutions brought in the respective circuit courts for the counties of Mecklenburg and Guilford. In both cases respondent pled not guilty to charges of forgery and uttering a forged instrument, and because of his indigency was represented at trial by court-appointed counsel. He then took separate appeals to the North Carolina Court of Appeals, where he was again repre-

<sup>1</sup> *Moffitt v. Ross*, 483 F. 2d 650 (1973).

2. 3. 11. 15

Supreme Court

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 73-786

b-7-74

Fred R. Ross and North  
Carolina, Petitioners,  
v.  
Claude Franklin Moffit. } On Writ of Certiorari to the  
United States Court of Appeals for the Fourth Circuit.

[June —, 1974]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

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<sup>1</sup> *Moffitt v. Ross*, 483 F. 2d 650 (1973).

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 18, 1974

MEMORANDUM TO THE CONFERENCE

Re: Huquez v. California, No. 73-5547; Cameron v. North Carolina, No. 73-6179; Meeks v. Illinois, No. 73-6319

These cases which appear on page 1 of the June 21st Conference List have been held for Ross v. Moffitt, No. 73-786.

HUGUEZ V. CALIFORNIA, No. 73-5547:

Petitioner was convicted in California Superior Court of possession of a .22 caliber revolver. He was represented by court-appointed counsel on his appeal to the District Court of Appeal for the Second Appellate District of California which affirmed his conviction. His counsel then withdrew from the case, advising petitioner of the time limits within which to petition for rehearing in the Court of Appeal and for certiorari in the California Supreme Court. Petitioner filed a pro se petition for rehearing, alleging that denial of counsel on his petition for rehearing and on his petition for certiorari in the State Supreme Court violated his constitutional rights. No counsel was appointed, and his petitions for rehearing and then certiorari were denied.

Petitioner argues in his petition that Douglas v. California, 372 U.S. 353, should be read to require counsel for discretionary appeals as well as for appeals of right. This question was decided adversely to petitioner's position in Ross. I do not think that failure to appoint counsel for a petition for rehearing in the court to which a first appeal is taken would raise any issues requiring a different result. Petitioner also raises a search-and-seizure claim to which Ross is not relevant.