

The Burger Court Opinion Writing Database

Lefkowitz v. Newsome

420 U.S. 283 (1975)

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

December 30, 1974

Re: 73-1627 - Lefkowitz v. Newsome

Dear Bill:

Assignment of the above case was deferred until I made further study. I have done so but am not sufficiently sure of an affirmance to cast my vote. It is a close case, and I think I will defer my vote until I see what is written on both sides.

I am afraid we have unduly curtailed the states in the administration of this whole area; after all, one half of the expense is on the state.

Will you therefore assign.

Regards,

W.B.

Mr. Justice Douglas

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 24, 1975

Re: 73-1627 - Lefkowitz v. Newsome

Dear Byron:

Please show me as joining in your dissenting
opinion circulated January 16.

Regards,

WS (3)

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

January 24, 1975

Re: 73-1627 - Lefkowitz v. Newsome

Dear Lewis:

Please show me as joining in your dissenting
opinion circulated January 17.

Regards,



Mr. Justice Powell

Copies to the Conference

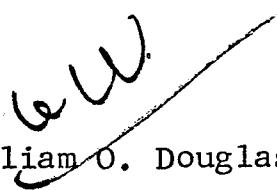
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 30, 1974

Dear Potter:

In light of the memorandum of December 30th from the Chief Justice re 73-1627, Lefkowitz v. Newsome, I am pursuant to our telephone conversation assigning the case to you.


William O. Douglas

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 10, 1975

Dear Potter:

Please join me in your
opinion for the Court in LEFKOWITZ
v. NEWSOME, No. 73-1627.

WOP/Gaudia

WILLIAM O. DOUGLAS

Mr. Justice Stewart
cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 10, 1975

RE: No. 73-1627 Lefkowitz v. Newsome

Dear Potter:

I agree.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

December 30, 1974

No. 73-1627, Lefkowitz v. Newsome

Dear Bill,

The Chief Justice has now circulated copies of his note to you, requesting that you assign the opinion in this case. In accord with our telephone conversation of this morning, I shall proceed on the understanding that you will assign it to me.

Sincerely yours,

Mr. Justice Douglas

Wm. O. Douglas
Dec 30 1974

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

on: Stewart, J.

SUPREME COURT OF THE UNITED STATES. Dated: JAN 9 1975

No. 73-1627

Recirculated: _____

Louis J. Lefkowitz, Attorney General of New York, Petitioner,
v.
Leon Newsome. } On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent Leon Newsome was arrested pursuant to N. Y. Penal Law § 240.35 (6) for loitering in the lobby of a New York City Housing Authority apartment building. A search of Newsome conducted at the time of his arrest produced a small quantity of heroin and related narcotics paraphernalia. Consequently, in addition to the offense of loitering, he was also charged with possession of a dangerous drug, fourth degree, N. Y. Penal Law § 220.05 (now codified as modified as N. Y. Penal Law § 220.03), and criminally possessing a hypodermic instrument. N. Y. Penal Law § 220.45.

The New York City Criminal Court conducted a non-jury trial on the loitering charge and a hearing on Newsome's motion to suppress the evidence seized at the time of his arrest. Newsome argued that the arresting officer did not have probable cause for the loitering arrest, that there was insufficient evidence to support a loitering conviction, and that the loitering statute was unconstitutional and therefore could not serve as the basis for either a loitering conviction or a lawful search incident to arrest.

Pp 6, 8

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

Mr. Stewart, J.

SUPREME COURT OF THE UNITED STATES

Recirculated:

No. 73-1627

Recirculated: JAN 13 1975

Louis J. Lefkowitz, Attorney
General of New York,
Petitioner,
v.
Leon Newsome. } On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[January --, 1975]

MR. JUSTICE STEWART delivered the opinion of the Court.

The respondent Leon Newsome was arrested pursuant to N. Y. Penal Law § 240.35 (6) for loitering in the lobby of a New York City Housing Authority apartment building. A search of Newsome conducted at the time of his arrest produced a small quantity of heroin and related narcotics paraphernalia. Consequently, in addition to the offense of loitering, he was also charged with possession of a dangerous drug, fourth degree, N. Y. Penal Law § 220.05 (now codified as modified as N. Y. Penal Law § 220.03), and criminally possessing a hypodermic instrument. N. Y. Penal Law § 220.45.

The New York City Criminal Court conducted a non-jury trial on the loitering charge and a hearing on Newsome's motion to suppress the evidence seized at the time of his arrest. Newsome argued that the arresting officer did not have probable cause for the loitering arrest, that there was insufficient evidence to support a loitering conviction, and that the loitering statute was unconstitutional and therefore could not serve as the basis for either a loitering conviction or a lawful search incident to arrest.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 9, 1975

MEMORANDUM TO THE CONFERENCE

Re: No. 73-1627 - Lefkowitz v. Newsome

I shall shortly circulate a dissent in
this case.

Sincerely,



Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
✓Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: White, J.

—
No. 73-1627
—

Circulated: 1-11-75

Recirculated: —

Louis J. Lefkowitz, Attorney
General of New York,
Petitioner,
v.
Leon Newsome.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[January —, 1975]

MR. JUSTICE WHITE, dissenting.

Because I believe that *federal* law provides respondent Newsome no right to set aside his plea of guilty—a solemn, counseled admission in open court that he is in fact guilty—even assuming that he had previously been the victim of a search which did not measure up to federal standards, I respectfully dissent.

I

The federal habeas corpus statute, pursuant to which Newsome sought to have the courts below set aside his plea of guilty, provides relief only if the petitioner can establish that “he is in custody in violation of the constitution or laws or treaties of the United States.” 18 U. S. C. § 2254 (a). It is common ground, I take it, that the Federal Constitution does not itself entitle a defendant who has pleaded guilty to have that plea set aside upon a showing that he has previously been the victim of an unconstitutional search, even if he can also show that he pleaded guilty only because the prosecution planned to use the fruits of the search against him at trial.¹ *Blackledge v. Perry*, 417 U. S. 21; *Tollett v.*

¹ Indeed, not only does the United States Constitution grant no such entitlement, but the federal courts have for the most part

pp 2, 5-8

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.

Circulated:

Recirculated: 1-15-75

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1627

Louis J. Lefkowitz, Attorney
General of New York,
Petitioner,
v.
Leon Newsome.] On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[January —, 1975]

MR. JUSTICE WHITE, dissenting.

Because I believe that *federal* law provides respondent Newsome no right to set aside his plea of guilty—a solemn, counseled admission in open court that he is in fact guilty—even assuming that he had previously been the victim of a search which did not measure up to federal standards, I respectfully dissent.

I

The federal habeas corpus statute, pursuant to which Newsome sought to have the courts below set aside his plea of guilty, provides relief only if the petitioner can establish that “he is in custody in violation of the constitution or laws or treaties of the United States.” 18 U. S. C. § 2254 (a). It is common ground, I take it, that the Federal Constitution does not itself entitle a defendant who has pleaded guilty to have that plea set aside upon a showing that he has previously been the victim of an unconstitutional search, even if he can also show that he pleaded guilty only because the prosecution planned to use the fruits of the search against him at trial.¹ *Blackledge v. Perry*, 417 U. S. 21; *Tollett v.*

¹ Indeed, not only does the United States Constitution grant no such entitlement, but the federal courts have for the most part

PP 1, 9

4th DRAFT

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

SUPREME COURT OF THE UNITED STATES

No. 73-1627

From: White, J.

Circulated: _____

Recirculated: 1-16-75

Louis J. Lefkowitz, Attorney
General of New York,
Petitioner,
v.
Leon Newsome.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

[January —, 1975]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHNQUIST joins, dissenting.

Because I believe that *federal* law provides respondent Newsome no right to set aside his plea of guilty—a solemn, counseled admission in open court that he is in fact guilty—even assuming that he had previously been the victim of a search which did not measure up to federal standards, I respectfully dissent.

I

The federal habeas corpus statute, pursuant to which Newsome sought to have the courts below set aside his plea of guilty, provides relief only if the petitioner can establish that “he is in custody in violation of the constitution or laws or treaties of the United States.” 18 U. S. C. § 2254 (a). It is common ground, I take it, that the Federal Constitution does not itself entitle a defendant who has pleaded guilty to have that plea set aside upon a showing that he has previously been the victim of an unconstitutional search, even if he can also show that he pleaded guilty only because the prosecution planned to use the fruits of the search against him at trial.¹ *Blackledge v. Perry*, 417 U. S. 21; *Tollett v.*

¹ Indeed, not only does the United States Constitution grant no such entitlement, but the federal courts have for the most part

Wm. O. Douglas

Oct 74

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 14, 1975

Re: No. 73-1627 -- Louis J. Lefkowitz v. Leon Newsome

Dear Potter:

Please join me in your opinion

Sincerely,



T. M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 20, 1975

Re: No. 73-1627 - Lefkowitz v. Newsome

Dear Potter:

Please join me.

Sincerely,



Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 14, 1975

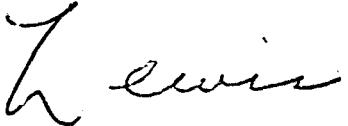
No. 73-1627 Lefkowitz v. Newsome

Dear Potter:

As stated at the Conference, I will dissent on the basis of my Bustamonte opinion.

If I express a view on the merits, I am in accord with Byron's view that the counseled admission of guilt is conclusive under federal law. I will circulate something in the near future.

Sincerely,



Mr. Justice Stewart

lfp/ss

cc: The Conference

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Powell, J.

No. 73-1627

Circulated: JAN 17 1975

Louis J. Lefkowitz, Attorney General of New York, Petitioner,
v.
Leon Newsome.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[January —, 1975]

MR. JUSTICE POWELL, dissenting.

I would reverse the judgment of the Court of Appeals for the reasons set forth in my concurring opinion in *Schneckloth v. Bustamonte*, 412 U. S. 218, 250 (1973). This case is even more inappropriate for federal collateral review of a state prisoner's Fourth Amendment claim. The prisoner here, with advice of counsel, pleaded guilty in open court. He does not question the voluntariness of his plea nor does he assert innocence. Rather, he argues that his conviction is reviewable in federal habeas corpus because of a relatively unique New York statute which allows appeal from an adverse suppression ruling notwithstanding the guilty plea.

Yet, the Court today holds that respondent is entitled to seek *federal* habeas corpus relief. This ruling distorts beyond recognition the writ of habeas corpus. The historic and honored purpose of habeas corpus, and indeed its only justification, is to provide the added assurance to a free society that no innocent person will suffer an unconstitutional deprivation of liberty. The great writ was not designed as a means for freeing persons who have voluntarily confessed guilt under procedures comporting with due process of law.

Apart from my views as to the inappropriateness of federal habeas corpus review of Fourth Amendment

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1627

From: Powell, J.

Circulated:

Louis J. Lefkowitz, Attorney
General of New York,
Petitioner,

v.

Leon Newsome.

On Writ of Certiorari to the
United States Court of
Appeals for the Second
Circuit.

Recirculated: JAN 24 1975

[January —, 1975]

MR. JUSTICE POWELL, with whom THE CHIEF JUSTICE
and MR. JUSTICE REHNQUIST join, dissenting.

I would reverse the judgment of the Court of Appeals for the reasons set forth in my concurring opinion in *Schneckloth v. Bustamonte*, 412 U. S. 218, 250 (1973). This case is even more inappropriate for federal collateral review of a state prisoner's Fourth Amendment claim. The prisoner here, with advice of counsel, pleaded guilty in open court. He does not question the voluntariness of his plea nor does he assert innocence. Rather, he argues that his conviction is reviewable in federal habeas corpus because of a relatively unique New York statute which allows appeal from an adverse suppression ruling notwithstanding the guilty plea.

Yet the Court today holds that respondent is entitled to seek federal habeas corpus relief. This ruling distorts beyond recognition the writ of habeas corpus. The historic and honored purpose of habeas corpus, and indeed its only justification, is to provide the added assurance to a free society that no innocent person will suffer an unconstitutional deprivation of liberty. The great writ was not designed as a means for freeing persons who have voluntarily confessed guilt under procedures comporting with due process of law.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 14, 1975

Re: No. 73-1627 - Lefkowitz v. Newsome

Dear Byron:

Please join me in your dissent in this case.

Sincerely,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 20, 1975

No. 73-1627 - Lefkowitz v. Newsome

Dear Lewis:

Please join me in your dissent.

Sincerely,

Wm

Mr. Justice Powell

cc: The Conference

REPRODUCED FROM THE COLLECTION OF THE MANUSCRIPT DIVISION
IN THE LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

✓

January 21, 1975

Re: No. 73-1627 - Lefkowitz v. Newsome

Dear Lewis:

Please join me in the dissenting opinion you have prepared in this case.

Sincerely,

W

Mr. Justice Powell

Copies to the Conference