

The Burger Court Opinion Writing Database

Breed v. Jones

421 U.S. 519 (1975)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



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

From: The Chief Justice

Circulated: MAY 13 1975

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1995

Allen F. Breed, Etc.,
Petitioner,
v.
Gary Steven Jones. } On Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit.

[May —, 1975]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari to decide whether the prosecution of respondent as an adult, after juvenile court proceedings which resulted in a finding that respondent had violated a criminal statute and a subsequent finding that he was unfit for treatment as a juvenile, violated the Fifth and Fourteenth Amendments to the United States Constitution.

On February 9, 1971, a petition was filed in the Superior Court of California, County of Los Angeles Juvenile Court, alleging that respondent, then 17 years of age, was a person described by Cal. Welf. & Inst's Code § 602,¹ in that, on or about February 8, while armed with

¹ As of the date of filing of the petition in this case, Cal. Welf. & Inst's Code § 602 (West 1966) provided:

"Any person under the age of 21 years who violates any law of this State or of the United States or any ordinance of any city or county of this State defining crime or who, after having been found by the juvenile court to be a person described by Section 601, fails to obey any lawful order of the juvenile court, is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court."

An amendment in 1971, not relevant here, lowered the jurisdic-

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

CHAMBERS OF
THE CHIEF JUSTICE

May 19, 1975

Re: 73-1995 - Breed v. Jones

MEMORANDUM TO THE CONFERENCE:

On final examination, I have made one change
on page 9 to convert a somewhat opaque (even cryptic)
generalization, into a concrete statement of historical fact.

Regards,

WRB

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To: Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

From: The Chief Justice

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pp. 9, 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 73-1995

Allen F. Breed, Etc.,
Petitioner,
v.
Gary Steven Jones. } On Writ of Certiorari to the
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An amendment in 1971, not relevant here, lowered the jurisdic-

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

LC

CHAMBERS OF
THE CHIEF JUSTICE

May 27, 1975

Re: Cases held for No. 73-1995 - Breed v. Jones

MEMORANDUM TO THE CONFERENCE:

Three cases, one on cert from CA 5, one from CA 4, and one from the Court of Appeals of Maryland, were held for Breed. My recommended dispositions are as follows:

No. 73-1768 - Duff (Florida) v. Fain (I will vote: DENY.)

At the age of sixteen, respondent was arrested for breaking into the home of a woman and raping her. Eleven days later, a hearing was held on a petition alleging that respondent was a delinquent child by reason of rape and aggravated assault with a dangerous weapon. Over the objection of a Florida assistant state attorney who urged the juvenile court judge to waive jurisdiction under Fla. Stat. Ann. § 39.02(6), the judge found respondent delinquent and ordered that he be committed to the Division of Youth Services for an indeterminate period not to extend beyond his twenty-first birthday. Subsequently, the juvenile judge refused to stay the order of commitment and an indictment was returned charging respondent with forcible rape on the basis of the same acts at issue in the delinquency adjudication. After the state courts rejected respondent's argument that prosecution under that indictment would violate the Double Jeopardy Clause, he obtained a writ of habeas corpus from DC, MD Fla. CA 5 affirmed and denied rehearing en ban.

Petitioner contends that the District Court lacked jurisdiction under 28 U.S.C. § 2241, maintaining that the "special circumstances" necessary for pre-trial habeas under Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, are not present here. Petitioner also contends, as did the State in Breed, that the adjudicatory proceeding in juvenile court is not a bar to prosecution of respondent as an adult under either the Double Jeopardy Clause or principles of fundamental fairness (CA 5 relied on both).

Since respondent was actually committed to custody after an adjudicatory hearing which resulted in a finding that he had committed a violation of a criminal law, see Fla. Stat. Ann. § 39.01(11), the conclusion that prosecution as an adult would violate the Double Jeopardy Clause is even clearer in this case than it was in Breed. The fact that the juvenile

Wm. Payle 0171

✓

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

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

150-2
May 21, 1975

Re: No. 73-1995 - Breed v. Jones

Dear Chief:

Please join me.

WILLIAM O. DOUGLAS

The Chief Justice

cc: The Conference

✓

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 15, 1975

RE: No. 73-1995 Breed v. Jones

Dear Chief:

I agree.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 13, 1975

No. 73-1995 - Breed v. Jones

Dear Chief,

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

Sincerely yours,

P.S.
/

The Chief Justice

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 16, 1975

Re: No. 73-1995 - Breed v. Jones

Dear Chief:

I agree.

Sincerely,

Byron

The Chief Justice

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 15, 1975

Re: No. 73-1995 -- Allen F. Breed v. Gary Steven Jones

Dear Chief:

Please join me.

Sincerely,

T.M.
T.M.

The Chief Justice

cc: The Conference

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

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CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 19, 1975

Re: No. 73-1995 - Breed v. Jones

Dear Chief:

Please join me. I suspect that this result will have some grave effect on the juvenile court system. The original high hopes are gradually vanishing, but there is little that can be done.

Sincerely,



The Chief Justice

cc: The Conference

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 15, 1975

No. 73-1995 Breed v. Jones

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 16, 1975

Re: No. 73-1995 - Breed v. Jones

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

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U.S. SUPREME COURT

P.S. Dear Chief: I would feel more comfortable if you ~~would~~ would agree to make a change of one word on page 9.. The second sentence in the first full paragraph on that page now reads:

"The Court's answer to that perception has been to make applicable in juvenile proceedings, with few exceptions, constitutional guarantees associated with traditional criminal prosecution."
(Emphasis supplied.)

Would you be willing to change "few" to "some"? I would like to see the question of inclusion and exclusion decided on a case by case basis, and not tip the scales in favor of inclusion by any general language such as this might be interpreted to be.

WHR

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