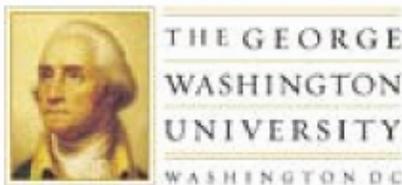


The Burger Court Opinion Writing Database

North v. Russell

427 U.S. 328 (1976)

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



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

No. 74-1409 North v. Russell

MR. CHIEF JUSTICE BURGER delivered the opinion of the

Court.

JUN 1 1976

Circulated: _____

Recirculated: _____

The question presented in this case is whether an accused, subject to possible imprisonment, is denied due process when tried before a non-lawyer police court judge with a later trial de novo available under a state's two-tier court system; and whether a state denies equal protection by providing law-trained judges for some police courts and lay judges for others, depending upon the state constitution's classification of cities according to population.

(1)

Appellant Lonnie North was arrested in Lynch, Kentucky, on July 10, 1974, and charged with driving while intoxicated in violation of Ky. Rev. Stat. § 189.520(2). If a first offense a penalty of a fine from \$100 to \$500 is provided; if a subsequent offense, the same fine and imprisonment for not more than six months. ^{1/} Ky. Rev. Stat. § 189.990 (10)(a).

1/

The offense now carries the same monetary fine schedule, but a second offense now requires imprisonment for not less than three days and not more than six months; any subsequent offense requires imprisonment for not less than thirty days and not more than twelve months. Ky. Rev. Stat. § 189.990(9)(a).

The only way to ever get a fact trial is to be first found "guilty" or to plead "guilty" after that procedure is complete.

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist

✓

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1409

Lonnie North, Appellant,
v.
C. B. Russell et al. } On Appeal from the Court of
Appeals of Kentucky.

[June —, 1976]

U.S. Supreme Court
M. P. S.

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

The question presented in this case is whether an accused, subject to possible imprisonment, is denied due process when tried before a nonlawyer police court judge with a later trial *de novo* available under a State's two-tier court system; and whether a State denies equal protection by providing law-trained judges for some police courts and lay judges for others, depending upon the state constitution's classification of cities according to population.

(1)

Appellant Lonnie North was arrested in Lynch, Ky., on July 10, 1974, and charged with driving while intoxicated in violation of Ky. Rev. Stat. § 189.520 (2). If a first offense a penalty of a fine from \$100 to \$500 is provided; if a subsequent offense, the same fine and imprisonment for not more than six months.¹ Ky Rev. Stat. § 189.990 (10)(a).

¹ The offense now carrier the same monetary fine schedule, but a second offense now requires imprisonment for not less than three days and not more than six months; any subsequent offense requires imprisonment for not less than 30 days and not more than 12 months. Ky. Rev. Stat. § 189.990 (9)(a).

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

Carl

CHAMBERS OF
THE CHIEF JUSTICE

June 9, 1976

PERSONAL

Re: 74-1409 - North v. Russell

Dear Lewis:

Your points can readily be accommodated
and I enclose a proposed additional paragraph.

Let me know if this meets your problems.

Regards,

WRB

Mr. Justice Powell

*Dear Chief
your ^{proposed} additional
paragraph accommodates
my suggestion, and
I join you
opinion*

To: Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Rehnquist ✓
 Mr. Justice Brandenburg
 Mr. Justice Black
 Mr. Justice Douglas

Recirculated: JUN 11 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1409

Lonnie North, Appellant,
 v.
 C. B. Russell et al. } On Appeal from the Court of
 Appeals of Kentucky.

[June —, 1976]

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

The question presented in this case is whether an accused, subject to possible imprisonment, is denied due process when (tried) before a nonlawyer police court judge with a later trial *de novo* available under a State's two-tier court system; and whether a State denies equal protection by providing law-trained judges for some police courts and lay judges for others, depending upon the state constitution's classification of cities according to population.

(1)

Appellant Lonnie North was arrested in Lynch, Ky., on July 10, 1974, and charged with driving while intoxicated in violation of Ky. Rev. Stat. § 189.520 (2). If a first offense a penalty of a fine from \$100 to \$500 is provided; if a subsequent offense, the same fine and imprisonment for not more than six months.¹ Ky Rev. Stat. § 189.990 (10) (a).

¹ The offense now carrier the same monetary fine schedule, but a second offense now requires imprisonment for not less than three days and not more than six months; any subsequent offense requires imprisonment for not less than 30 days and not more than 12 months. Ky. Rev. Stat. § 189.990 (9) (a).

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

CHAMBERS OF
THE CHIEF JUSTICE

June 23, 1976

Re: 74-1409 - North v. Russell

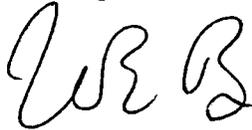
MEMORANDUM TO THE CONFERENCE:

To save part of the paper flood, I will not recirculate the June 10 draft to which I am adding the following to note 4, page 5.

The brief of amicus curiae New York State Association of Magistrates informs us that, of the states that have nonlawyer judges, Delaware, Florida, Idaho, Iowa, Mississippi, Montana, New Mexico, New York, North Carolina, North Dakota, Pennsylvania, Texas, Utah, Washington, West Virginia, and Wyoming have mandatory training programs and Alaska, Georgia, Kansas, Louisiana, Missouri, Nevada, New Hampshire, Oregon, South Carolina, Tennessee, Vermont and Wisconsin have voluntary training programs.

A few other purely stylistic changes are being made for the announcement run.

Regards,



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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 21, 1976

RE: No. 74-1409 North v. Russell

Dear Chief:

Will you please note at the foot of your
opinion: "Mr. Justice Brennan concurs in re-
sult."

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 2, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1409, North v. Russell

In due course, I shall circulate a
dissenting opinion in this case.

P.S.
P. S.

To: The Chief Justice
 Mr. Justice Brandeis
 Mr. Justice Cardozo
 Mr. Justice Sutherland
 Mr. Justice Van Devanter
 Mr. Justice McReynolds
 Mr. Justice G. D. Roberts
 Mr. Justice Harlan
 Mr. Justice Stewart

From: Mr. Justice Stewart

Opinion filed:

Rehearing denied:

NO. 74-1409, NORTH v. RUSSELL

MR. JUSTICE STEWART, dissenting.

Lonnie North was haled into a Kentucky criminal court and there tried, convicted, and sentenced to a term of imprisonment by Judge C. B. Russell. Judge Russell is a coal miner without any legal training or education whatever. ^{1/} I believe that a trial before such a judge that results in the imprisonment of the defendant is constitutionally intolerable. It deprives the accused of his right to the effective assistance of counsel guaranteed by the Sixth and Fourteenth Amendments, and deprives him as well of Due Process of Law. ^{2/}

J
17
18

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

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1409

Lonnie North, Appellant, }
v. } On Appeal from the Court of
C. B. Russell et al. } Appeals of Kentucky.

[June —, 1976]

MR. JUSTICE STEWART, dissenting.

Lonnie North was haled into a Kentucky criminal court and there tried, convicted, and sentenced to a term of imprisonment by Judge C. B. Russell. Judge Russell is a coal miner without any legal training or education whatever.¹ I believe that a trial before such a judge that results in the imprisonment of the defendant is constitutionally intolerable. It deprives the accused of his right to the effective assistance of counsel guaranteed

¹ The judge at North's state habeas corpus hearing concluded: "I think the fact has been established that [Judge Russell is] not a lawyer, he doesn't know any law, he hasn't studied any law." Judge Russell testified that he had only a high school education.

A study of California's lay judges made in 1972 showed that 37% had no education beyond high school while 13% had even less formal education. *Gordon v. Justice Court*, — Cal. 3d —, 525 P. 2d 72, 76 n. 6. A 1966 survey revealed that only 5% of Virginia's justices of the peace were college graduates, Note, 52 Va. L. Rev. 151, 177, while in 1958 one-half of West Virginia's justices had not completed high school, Note, 69 W. Va. L. Rev. 314, 323. In 1969, the Assistant State Attorney General of Mississippi told the State's Judiciary Commission that "33% of the justices of the peace are limited in educational background to the extent that they are not capable of learning the necessary elements of law." Hearings on Justice of the Peace Courts and Judges before the Mississippi Judiciary Comm'n (testimony of R. Hugo Newcomb, Sr.) quoted in Comment, 44 Miss. L. J. 996, 1000 n. 31.

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 22, 1976

Re: No. 74-1409, North v. Russell

Dear Thurgood,

Pursuant to your suggestion I have added the enclosed footnote on page 7 of my dissenting opinion.

Sincerely yours,

P.S.
/

Mr. Justice Marshall

17

To: The Chief Justice
Mr. Justice Warren
Mr. Justice Brandeis
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice White
Mr. Justice Souter

Filed: June 1, 1976
Circuit: _____
Page: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1409

Lonnie North, Appellant, }
v. } On Appeal from the Court of
C. B. Russell et al. } Appeals of Kentucky.

[June —, 1976]

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

Lonnie North was haled into a Kentucky criminal court and there tried, convicted, and sentenced to a term of imprisonment by Judge C. B. Russell. Judge Russell is a coal miner without any legal training or education whatever.¹ I believe that a trial before such a judge that results in the imprisonment of the defendant is constitutionally intolerable. It deprives the accused of his right to the effective assistance of counsel guaranteed

He had

¹The judge at North's state habeas corpus hearing concluded: "I think the fact has been established that [Judge Russell is] not a lawyer, he doesn't know any law, he hasn't studied any law." Judge Russell testified that he had only a high school education. Judge Russell never received any training concerning his duties as a lay judge. This is not a case, therefore, involving a lay judge who has received the kind of special training that several States apparently provide. See *ante*, at 5 n. 4.

A study of California's lay judges made in 1972 showed that 37% had no education beyond high school while 13% had even less formal education. *Gordon v. Justice Court*, — Cal. 3d —, 525 P. 2d 72, 76 n. 6. A 1966 survey revealed that only 5% of Virginia's justices of the peace were college graduates, Note, 52 Va. L. Rev. 151, 177, while in 1958 one-half of West Virginia's justices had not completed high school, Note, 69 W. Va. L. Rev. 314, 323. In 1969, the Assistant State Attorney General of Mississippi told the State's Judiciary Commission that "33% of the justices of the peace are limited in educational background to the extent that they are not

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: No. 74-1409 - North v. Russell

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 74-1409 -- Lonnie North v. C.B. Russell

Dear Potter:

Here is what I was suggesting to be added to your opinion in North v. Russell:

The majority opinion assumes . . . "The appellee judge testified that informing defendants of a right to counsel was 'the usual procedure.' App., at 32. We also assume that police court judges in Kentucky recognize their obligation to inform all convicted defendants, including those who waived counsel or for whom imprisonment was not imposed, of their unconditional right to a trial de novo and of the necessity that an 'appeal' be filed within 30 days in order to implement that right. Ky. Rule Crim. Proc. 12.04.

The record shows that in this case, immediately after the sentence was imposed, the following happened:

"40 Then what happened to you?

A He wrote out a slip and gave it to Mr. Potter and told him to bring me to Harlan.

41 Did they -- did he bring you to Harlan?

A Yes sir.

42 Where did he lodge you?

A In the county jail.

- 2 -

43 How long did you stay at the county jail?

A From Thursday night at 9:00 to Friday afternoon at 3:00.

44 And you only got out of jail when the court signed the writ in this case?

A Yes sir."

You will note on page 10 of the record that the original writ in this case was signed on the 19th day of July, which is the day he was released. So that the only way he got any due process in this case was by filing of the writ.

Sincerely,



T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 22, 1976

Re: No. 74-1409 -- North v. Russell

Dear Potter:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Mr. Justice Stewart

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 21, 1976

Re: No. 74-1409 - North v. Russell

Dear Chief:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath it.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 8, 1976

No. 74-1409 North v. Russell

Dear Chief:

I am inclined to join your opinion for the Court. But there is one point that troubles me somewhat.

At the police court level in the system, it is likely that a good many defendants sentenced by lay judges are uncounseled and unaware of their right to a trial de novo. In theory they are presumed to know the law. Yet, it is safe to assume that most persons charged with misdemeanors (other than traffic offenses) have little knowledge of procedural rights.

In view of this, I suggest the addition at least of some precatory language to the effect that we assume judges at the first-tier level recognize an obligation to inform convicted defendants of their right to a trial de novo under Kentucky law.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

✓
CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 9, 1976

No. 74-1409 North v. Russell

Dear Chief:

Your proposed additional paragraph accommodates my suggestion, and I join your opinion.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1976

Re: No. 74-1409 - North v. Russell

Dear Chief:

Please join me.

Sincerely,

WR

The Chief Justice

Copies to the Conference