The Burger Court Opinion Writing Database

United States v. MacCollom

426 U.S. 317 (1976)

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

June 2, 1976

Re: 74-1487 - United States v. MacCollom

Dear Bill:

I join your June 1 circulation.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 27, 1976

RE: No.74-1487 United States v. MacCollom

Dear John:

Please join me in your fine dissent in the above. Time permitting I may add a few words of my own addressing the constitutional question.

Sincerely,

Mr. Justice Stevens

cc: The Conference

6/1/76

No. 74-1487 United States v. MacCollom

MR. JUSTICE BRENNAN, dissenting.

I join my Brother Stevens' dissent but add this separate dissent to record my disagreement with the Court's holding that the Government's refusal to furnish an indigent defendant a free trial transcript in a proceeding under 28 U.S.C. § 2255, upon merely a showing of indigency, does not deny respondent Equal Protection of the law secured against the federal government, as the Court concedes, through the Due Process Clause of the Fifth Amendment, see Buckley v. Valeo, 424 U.S. 1, 87 (1976); Weinberger v. Wiesenfeld, 420 U.S. 636, 638 n. 2 (1975).

"[T]he central aim of our entire judicial system [is that] all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court,'" Griffin v. Illinois, 351 U.S. 12, 17 (1956), for this is a "country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law." Id., at 19. "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." Roberts v. LaVallee, 389 U.S. 40, 42, (1967). Thus, in Griffin, the Court held that "[d]estitute defendants must be afforded as adequate appellate review as defendants who have money enough to buy transcripts,"

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

From: Mr. Justice Brennan

Circulated: 6/4/76

1st printed DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1487

United States, Petitioner, *v.* Colin F. MacCollom. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

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

I join my Brother STEVENS' dissent but add this separate dissent to record my disagreement with the Court's holding that the Government's refusal to furnish an indigent defendant a free trial transcript in a proceeding under 28 U. S. C. § 2255, upon merely a showing of indigency, does not deny respondent equal protection of the law secured against the Federal Government, as the Court concedes, through the Due Process Clause of the Fifth Amendment. See *Buckley* v. *Valeo*, 424 U. S. 1, 87 (1976); *Weinberger* v. *Wiesenfeld*, 420 U. S. 636, 638 n. 2 (1975).

"[T]he central aim of our entire judicial system [is that] all people charged with crime must, so far as the law is concerned, 'stand on an equality before the bar of justice in every American court,'" *Griffin* v. *Illinois*, 351 U. S. 12, 17 (1956), for this is a "country dedicated to affording equal justice to all and special privileges to none in the administration of its criminal law." *Id.*, at 19. "Our decisions for more than a decade now have made clear that differences in access to the instruments needed to vindicate legal rights, when based upon the financial situation of the defendant, are repugnant to the Constitution." *Roberts* v. *LaVallee*, 389 U. S. 40,

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 1, 1976

Re: No. 74-1487 - U. S. v. MacCollom

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

May 14, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear Bill:

I shall await John's dissent in this case.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 1, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear John:

Please join me in your dissent in this case.

Sincerely,

Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 1, 1976

Re: No. 74-1487 -- United States v. Colin F. MacCollom

Dear John:

Please join me.

Sincerely,

TM

T. M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 2, 1976

Re: No. 74-1487 -- United States v. MacCollom

Dear Bill:

Please join me.

Sincerely,

T.M.

Mr. Justice Brennan

cc: The Conference

May 18, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear Bill:

You don't know how mortally you wound me when you fail to cite on page 4 of your proposed opinion the weighty and unassailable authority found at 43 F. R. D. 343, 356-357 (1967). But then, life is full of these deep disappointments.

Should I also twit you a bit about the penultimate sentence in the very first paragraph of your opinion? See the last sentence and note 2 on page 5 of my slip opinion dissent in Rizzo v. Goode.

Sincerely,

HAB

Mr. Justice Rehnquist

P.S. I wouldn't take the above too seriously.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 18, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear Bill:

I, too, shall wait for John's dissent in this case.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 21, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear Bill:

I have now decided to concur in the judgment, but I am writing separately and briefly.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

From: Mr. Justice Blackmun

Circulated: 5/24/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1487

United States, Petitioner, *v.* Colin F. MacCollom. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE BLACKMUN, concurring in the judgment.

I join in the judgment of the Court but write separately to express my views concerning the nature of the question before us. The Court's opinion suggests that the issue is whether the Constitution requires the Government, under any set of circumstances, to furnish an indigent a trial transcript in a proceeding instituted pursuant to 28 U. S. C. § 2255.

The issue seems to me to be more narrow, namely, whether the Constitution requires that a transcript be provided when an indigent makes no showing, with any degree of particularity, that he requires the transcript in order to make an effective collateral attack on his conviction. The crucial inquiry is whether 28 U. S. C. § 753 (f) affords indigents "an adequate opportunity to present their claims fairly within the adversary system." *Ross v. Moffitt*, 417 U. S. 600, 612 (1974).

In this case, of course, respondent could have obtained a transcript upon his demand had he taken a direct appeal from his conviction. More importantly, there is no need to go beyond the requirements of § 753 (f) in order to afford an indigent an opportunity to present his claims fairly in a § 2255 proceeding. Here, for example, respondent was permitted to proceed *in forma pauperis*. In order for him to obtain a transcript of his trial, he was

HAB

June 4, 1976

Re: No. 74-1487 - United States v. MacCollom

Dear Bill:

Some time ago, when we were on the bench, you asked why I was having difficulties with the opinion in this case. I belatedly respond to that inquiry.

The enclosure, which is a revision of what I circulated in print on May 24, is self-explanatory and, I think, indicates the primary reason for my not going along. I prefer when we can, as we are able to do so here, to confine ourselves with the standard established in Ross v. Moffitt. I feel that your opinion goes beyond Ross even though it is not necessary to do so in this case. I have no particular objection to this, but generally I like to follow the narrow rather than the broad road.

I am also troubled with the paragraph on page 9 concerning the weight to be given to decisions of the courts of appeals. I am not so sure that that is a sound principle of constitutional construction. I say this because this Court has the ultimate responsibility for interpreting the Constitution. Although opinions of the courts of appeals may be helpful, and indeed usually are, they are entitled to weight not because of their numbers but because of the force of their reasoning. I kidded you before about your doing precisely the opposite thing in Rizzo v. Goode.

There may be another point or so, but these two items are the main reason I did not join. Because the first point presents a rather fundamental difference, I doubt if accommodation is possible.

Sincerely,

HAB

Mr. Justice Rehnquist

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Blackmun

Circulated: _____

No. 74-1487 - United States v. MacCollom

Recirculated: 6/4/76

MR. JUSTICE BLACKMUN, concurring in the judgment.

I am in complete accord with what is said in n. 1 of the plurality opinion, ante, p. 4, regarding Mr. Justice Stevens' dissent. It is not this Court's function to rewrite 28 U. S. C. § 753(f) in order to reflect -- as that dissent appears to me to urge -- what may be regarded as sound policy for the administration of our criminal justice system.

I write separately, however, to emphasize the narrowness of the constitutional issue that is before us and the ease of its resolution. The answer to this case lies, I think, in the fact that respondent MacCollom has a current opportunity to present his claims fairly, and we need not consider the constitutional significance of what he might have done at the time a direct appeal from his conviction could have been taken.

For me, the issue in this case is whether the Constitution requires that a transcript be provided when an indigent makes no showing, with any degree of particularity, that he requires the transcript in order to make an effective collateral attack on his

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

From: Mr. Justice Blackmun

Circulated: _____

Recirculated: 6/7/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1487

United States, Petitioner, *v.* Colin F. MacCollom. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE BLACKMUN, concurring in the judgment.

I am in complete accord with what is said in n. 1 of the plurality opinion, *ante*, p. 4, regarding MR. JUSTICE STEVENS' dissent. It is not this Court's function to rewrite 28 U. S. C. § 753 (f) in order to reflect—as that dissent appears to me to urge—what may be regarded as sound policy for the administration of our criminal justice system.

I write separately, however, to emphasize the narrowness of the constitutional issue that is before us and the ease of its resolution. The answer to this case lies, I think, in the fact that respondent MacCollom has a *current* opportunity to present his claims fairly, and we need not consider the constitutional significance of what he might have done at the time a direct appeal from his conviction could have been taken.

For me, the issue in this case is whether the Constitution requires that a transcript be provided when an indigent makes no showing, with any degree of particularity, that he requires the transcript in order to make an effective collateral attack on his conviction. The crucial inquiry, as the Court said in the analogous Fourteenth Amendment context, is whether § 753 (f) affords indigents "an adequate opportunity to present their claims fairly within the adversary system." *Ross* v. *Moffitt*, 417 U. S. 600, 612 (1974).

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 2, 1976

No. 74-1487 United States v. MacCollom

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

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 Stevens

From: Mr Justice Rehnquist

Circulated: MAY 1 1976

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question, posed but not decided in *Wade* v. *Wilson,* 396 U. S. 282, 286 (1970), of whether there are circumstances in which the Government is constitutionally required to furnish an indigent prisoner with a free transcript of his trial to aid him in preparing a petition for collateral relief. The Court of Appeals for the Ninth Circuit, in contrast to every other court of appeals which has ruled on the issue, held that respondent did have a right to such a transcript. We reverse.

I

Respondent was convicted of uttering forged currency in violation of 18 U. S. C. § 842 after a jury trial in the United States District Court for the Western District of Washington. On June 4, 1970, he was sentenced to 10 years' imprisonment. He did not appeal. Nearly two years later respondent, acting *pro se,* filed in the District Court a paper designated "Motion for Transcript in Forma Pauperis." This was returned to respondent with the advice that he must first file a motion pursuant to 28 U. S. C. § 2255 before the court could act on his request for a transcript.

Respondent then filed a "complaint for Declaratory Judgment and Injunctive Relief" in which he alleged

1 —

P. 4 & 10

To: The Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

From: Mr. Justice

Circulated:

Recirculated: MAY 26 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question, posed but not decided in *Wade* v. *Wilson,* 396 U. S. 282, 286 (1970), of whether there are circumstances in which the Government is constitutionally required to furnish an indigent prisoner with a free transcript of his trial to aid him in preparing a petition for collateral relief. The Court of Appeals for the Ninth Circuit, in contrast to every other court of appeals which has ruled on the issue, held that respondent did have a right to such a transcript. We reverse.

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Respondent then filed a "complaint for Declaratory Judgment and Injunctive Relief" in which he alleged

J

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
Mr. Justice Stevens

3rd DRAFT

MAY 25 1976

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of whether the restrictions imposed by 28 U. S. C. § 753 on the availability to an indigent prisoner of a free trial transcript to aid him in preparing a petition for collateral relief are consistent with the Fifth Amendment to the Constitution. The Court of Appeals for the Ninth Circuit, in contrast to every other court of appeals which has ruled on the issue, held that such prisoners have an absolute right to a transcript. We reverse.

I

Respondent was convicted of uttering forged currency in violation of 18 U. S. C. § 842 after a jury trial in the United States District Court for the Western District of Washington. On June 4, 1970, he was sentenced to 10 years' imprisonment. He did not appeal. Nearly two years later respondent, acting *pro se,* filed in the District Court a paper designated "Motion for Transcript in Forma Pauperis." This was returned to respondent with the advice that he must first file a motion pursuant to 28 U. S. C. § 2255 before the court could act on his request for a transcript.

Respondent then filed a "complaint for Declaratory Judgment and Injunctive Relief" in which he alleged

J

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 27, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 74-1487 - United States v. MacCollom

In response to John's dissenting opinion in this case, I propose to add to my present third draft a new footnote at the end of the paragraph which begins on page 3 and ends on page 4 with the citation to Passenger Corp., which will read as follows:

> "Our Brother Stevens would construe the pertinent part of § 753f to 'make transcripts available almost automatically in § 2255 proceedings . . .', post, page 4. We think such a construction would do violence to the intent of Congress which clearly appears from the language of that section, ante, pages 2-3. Congress did in that section make transcripts available automatically on direct appeal, but in the same section limited their availability in § 2255 motions to cases where the trial judge certifies that the § 2255 suit is not frivolous and that the transcript is needed to decide the issue presented by the suit. Our Brother Stevens advances what may well be very sound policy reasons for furnishing free transcripts

as a matter of course to § 2255 plaintiffs, as well as to convicted defendants pursuing direct appeals. But it is plain from a reading of § 753f that these considerations have not yet commended themselves to Congress."

Sincerely,

CP 4,5

To: The Chief Justice

From: Mr.

Circulated:

Recirculated: JUN 1 1976

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of whether the restrictions imposed by 28 U. S. C. § 753 on the availability to an indigent prisoner of a free trial transcript to aid him in preparing a petition for collateral relief are consistent with the Fifth Amendment to the Constitution. The Court of Appeals for the Ninth Circuit, in contrast to every other court of appeals which has ruled on the issue, held that such prisoners have an absolute right to a transcript. We reverse.

I

Respondent was convicted of uttering forged currency in violation of 18 U. S. C. § 842 after a jury trial in the United States District Court for the Western District of Washington. On June 4, 1970, he was sentenced to 10 years' imprisonment. He did not appeal. Nearly two years later respondent, acting *pro se*, filed in the District Court a paper designated "Motion for Transcript in Forma Pauperis." This was returned to respondent with the advice that he must first file a motion pursuant to 28 U. S. C. § 2255 before the court could act on his request for a transcript.

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom.	On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[May —, 1976]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

This case presents the question of whether the restrictions imposed by 28 U. S. C. § 753 on the availability to an indigent prisoner of a free trial transcript to aid him in preparing a petition for collateral relief are consistent with the Fifth Amendment to the Constitution. The Court of Appeals for the Ninth Circuit, in contrast to every other court of appeals which has ruled on the issue, held that such prisoners have an absolute right to a transcript. We reverse.

I

Respondent was convicted of uttering forged currency in violation of 18 U. S. C. § 842 after a jury trial in the United States District Court for the Western District of Washington. On June 4, 1970, he was sentenced to 10 years' imprisonment. He did not appeal. Nearly two years later respondent, acting *pro se*, filed in the District Court a paper designated "Motion for Transcript in Forma Pauperis." This was returned to respondent with the advice that he must first file a motion pursuant to 28 U. S. C. § 2255 before the court could act on his request for a transcript.

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1976

MEMORANDUM TO THE CONFERENCE

Re: Cases Held for No. 74-1487, United States v. MacCollom

There are two cases held for MacCollom:

1) Mallory v. Alabama, No. 75-6065. After two mistrials, appellant was convicted of robbery in Alabama state courts. He claims that he was entitled to transcripts of the two mistrials and that Alabama's statutory scheme that gives relatively fewer peremptory jury challenges to defendants in counties with more than 400,000 people violates the Equal Protection Clause. The transcript contention is only marginally related to MacCollom, and the jury challenge contention is wholly unrelated to it.

The statute in question, App. Vol. 14 § 714 Alabama Code (1940) provides that in counties of over 400,000 population (which is one county - Jefferson) the defendant and the prosecution receive equal numbers of peremptory challenges to the jury panel (six each). In other counties the defendant receives two for each one which the prosecution exercises (the statute doesn't specify how many total).

The reason for this setup is, apparently, to "strengthen . . . the arm of the law enforcing agencies in such counties," because there is more crime. Dixon v. State, 27 Ala. App. 64, 69, 167 So. 340 cert. den. 167 So. 349 (1936).

This case is similar to Hayes v. Missouri, 120 U.S. 68 (1887) in which the Court approved a Missouri statute which gave the prosecution 8 peremptory challenges to jurors

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1976

Re: 74-1487 - United States v. MacCollom

Dear Bill:

In due course I propose to circulate a dissent which will not reach the constitutional question decided in Part III of your opinion.

Respectfully,

JPS

Mr. Justice Rehnquist

Copies to 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

From: Mr. Justice Stevens

Circulated: 5/26/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, v. Colin F. MacCollom. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE STEVENS, dissenting.

The decisive question in this case is whether, in judging the sufficiency of respondent's motion, we should assume that his allegations are true.

He has alleged that there was insufficient evidence to support his conviction, but that he did not appeal. If he had appealed, respondent would have obtained the transcript of the trial at Government expense.[1] He has also alleged that his lawyer did not provide him with the effective representation at trial that the Sixth Amendment requires, and that this conclusion would be supported by an examination of the trial transcript. Respondent has neither the training nor the memory to allege the factual basis for that conclusion. If, however, that conclusion is accurate, he is entitled not only to a transcript but to a new trial.

As the Court points out, there are legitimate reasons for holding that respondent's allegations are not specific enough. In most cases the pleader should be able to set forth more factual details to support his ultimate conclusion. If respondent's pleading is adequate, almost any general statement claiming ineffective assistance of counsel would entitle a prisoner to a transcript in a proceeding under § 2255. In short, the right to a tran-

[1] 28 U. S. C. § 753 (f), 18 U. S. C. §§ 3006A (a), (c), (d)(6).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 27, 1976

Re: 74-1487 - United States v. MacCollom

MEMORANDUM TO THE CONFERENCE

In rejoinder to Bill's response in his memorandum of May 27, 1976, I propose to add the following as a new footnote on page 4 right after the citation of Coppedge.

Sincerely,

Attachment

5/ Although I have described that right as "almost" the equivalent of the absolute right to a full transcript on direct appeal, the difference between the two is significant. Before Congress amended § 753(f) to provide for automatic availability of transcripts, Pub. L. 91-545, 84 Stat. 1412, the statute already authorized transcripts for indigent appellants, 28 U.S.C. § 753(f) (1964 ed., Supp. V)] but, under Coppedge, supra, at 446, the appellant was only entitled to a transcript sufficient to determine nonfrivolousness. The fact that Congress amended the statute to give the appellant the right to a complete transcript demonstrates (a) that Congress was aware of this difference, and (b) that recognition of a right in a § 2255 context which is only "almost" as valuable as the right on direct appeal is consistent with the intent of Congress.

pg. 1, 4

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 6/1/76

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1487

United States, Petitioner, *v.* Colin F. MacCollom. } On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

The decisive question in this case is whether, in judging the sufficiency of respondent's motion, we should assume that his allegations are true.

He has alleged that there was insufficient evidence to support his conviction, but that he did not appeal. If he had appealed, respondent would have obtained the transcript of the trial at Government expense.[1] He has also alleged that his lawyer did not provide him with the effective representation at trial that the Sixth Amendment requires, and that this conclusion would be supported by an examination of the trial transcript. Respondent has neither the training nor the memory to allege the factual basis for that conclusion. If, however, that conclusion is accurate, he is entitled not only to a transcript but to a new trial.

As the Court points out, there are legitimate reasons for holding that respondent's allegations are not specific enough. In most cases the pleader should be able to set forth more factual details to support his ultimate conclusion. If respondent's pleading is adequate, almost any general statement claiming ineffective assistance of counsel would entitle a prisoner to a transcript in a proceeding under § 2255. In short, the right to a tran-

[1] 28 U. S. C. § 753 (f); 18 U. S. C. §§ 3006A (a), (c), (d)(6).

Pg. 1-4, 6

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

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 6/3/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1487

United States, Petitioner, *v.* Colin F. MacCollom. | On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN, MR. JUSTICE WHITE, and MR. JUSTICE MARSHALL join, dissenting.

The decisive question in this case is whether, in judging the sufficiency of respondent's motion, we should assume that his allegations are true.

He has alleged that there was insufficient evidence to support his conviction, but that he did not appeal. If he had appealed, respondent would have obtained the transcript of the trial at Government expense.[1] He has also alleged that his lawyer did not provide him with the effective representation at trial that the Sixth Amendment requires, and that this conclusion would be supported by an examination of the trial transcript. Respondent has neither the training nor the memory to allege the factual basis for that conclusion. If, however, that conclusion is accurate, he is entitled not only to a transcript but to a new trial.

As the Court points out, there are legitimate reasons for holding that respondent's allegations are not specific enough. In most cases the pleader should be able to set forth more factual details to support his ultimate conclusion. If respondent's pleading is adequate, almost any general statement claiming ineffective assistance of counsel would entitle a prisoner to a transcript in a pro-

[1] 28 U. S. C. § 753 (f); 18 U. S. C. §§ 3006A (a), (c), (d)(6).