The Burger Court Opinion Writing Database

Henderson v. Morgan

426 U.S. 637 (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 14, 1976

Re: 74-1529 - Henderson v. Morgan

MEMORANDUM TO THE CONFERENCE:

This has been in "limbo" for more than a month since John advised that he had changed his view and could not execute the Conference decision to affirm.

Bill has now circulated a dissent which in effect articulates the original Conference vote.

Nothing of the "new matter" suggested bears on the basis of my vote and I will therefore dissent.

Since there are four votes for Byron's position and three for John's position, it appears that Potter should now reassign for at least a plurality opinion.

Regards,

WEB

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

CHAMBERS OF
THE CHIEF JUSTICE

June 15, 1976

Re: 74-1529 - Henderson v. Morgan

Dear Bill:

Please show me as joining your dissent.

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 3, 1976

RE: No. 74-1529 Henderson v. Morgan

Dear John:

I fully agree with your memorandum and proposed disposition of this case.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 4, 1976

No. 74-1529, Henderson v. Morgan

Dear John,

At the Conference I expressed the view that the writ should be dismissed as improvidently granted, and I continue to be of the firm belief that this would be the wisest disposition of this case. If, however, a majority subscribe to your memorandum, I shall not dissent.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 10, 1976

74-1529 - Henderson v. Morgan

Dear Byron,

Please add my name to your concurring opinion in the above case.

Sincerely yours,

P. S.

Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

June 14, 1976

Re: No. 74-1529, Henderson v. Morgan

Dear Chief,

There is no need to consider reassigning the opinion in this case, since in the last line of Byron's concurring opinion he expressly joins John's opinion for the Court.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 4, 1976

Re: No. 74-1529 - Henderson v. Morgan

Dear John:

I shall write separately in this case.

Sincerely,

Mr. Justice Stevens

Copies to Conference

Henderson v. Morgan — No. 74-1529

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

From: Mr. Justice White

Circulated: 6-9-76

Recirculated: _____

MR. JUSTICE WHITE, concurring.

There are essentially two ways under our system of criminal justice in which the factual guilt of a defendant may be established such that he may be deprived of his liberty consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The first is by a verdict of a jury which or judge who concludes after trial that the elements of the crime have been proven beyond a reasonable doubt. The second is by the defendant's own solemn admission "in open court that he is in fact guilty of the offense with which

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

From: Mr. Justice White

Circulated: _____

Recirculated: 6-15-76

p. 1

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1529

Robert J. Henderson, Superintendent, Auburn Correctional Facility, Petitioner, *v.* Timothy G. Morgan.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE STEWART, Mr Justice Blackmun and MR. JUSTICE POWELL join, concurring.

There are essentially two ways under our system of criminal justice in which the factual guilt of a defendant may be established such that he may be deprived of his liberty consistent with the Due Process Clause of the Fourteenth Amendment to the United States Constitution. The first is by a verdict of a jury which or judge who concludes after trial that the elements of the crime have been proven beyond a reasonable doubt. The second is by the defendant's own solemn admission "in open court that he is *in fact guilty* of the offense with which he is charged," *Tollett* v. *Henderson*, 411 U. S. 258, 267, *i. e.*, by plea of guilty. The Court has repeatedly emphasized that "a guilty plea for federal purposes is a judicial *admission of guilt* conclusively establishing a defendant's factual guilt." (Emphasis added.) *Lefkowitz* v. *Newsome*, 420 U. S. 283, 299 (dissenting opinion of WHITE, J.). We said in *Brady* v. *United States*, 397 U. S. 742, 748, "Central to the plea and the foundation for entering judgment against the defendant is the defendant's admission in open court that he committed the acts charged in the indictment." In *McMann* v. *Rich-*

✓

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 5, 1976

Re: No. 74-1529 -- Robert J. Henderson v. Timothy G. Morgan

Dear John:

I agree with your memorandum.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 14, 1976

Re: No. 74-1529 - Henderson v. Morgan

Dear Byron:

Would you please also add my name to your concurring opinion in this case.

Sincerely,

H.A.B./ws

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 4, 1976

No. 74-1529 Henderson v. Morgan

Dear John:

I am about where Potter is in this case.

In short, my view remains substantially as expressed at Conference.

Sincerely,

Lewis

Mr. Justice Stevens

CC: The Conference

LFP/gg

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 10, 1976

No. 74-1529 Henderson v. Morgan

Dear Byron:

Please add my name to your concurring opinion in the above case.

Sincerely,

Lewis

Mr. Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1976

Re: No. 74-1529, Henderson v. Morgan

Dear John:

Having voted at conference contrary to your presently proposed disposition of this case, I think I will at least try my hand at writing to that effect.

Sincerely,

WHR

Mr. Justice Stevens

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

cp. 2, 3, 4, 5, 6

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1529

Robert J. Henderson, Superintendent, Auburn Correctional Facility, Petitioner, *v.* Timothy G. Morgan.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion affirms a judgment which directs the release on federal habeas of a state prisoner who, on advice of counsel, pleaded guilty in the New York State courts 11 years ago to a charge of second-degree murder. The Court declares its agreement with petitioner's contention that the test for reviewing the constitutional validity of a counselled plea of guilty should be "the totality of the circumstances," *ante,* p. 7. But the Court's holding can be justified only if the Constitution requires that "a ritualistic litany of the formal legal elements of an offense [be] read to the defendant," *ante,* p. 7, a requirement which it purports to eschew.[1] The Court accomplishes this result by imposing on state courts, as a constitutional requirement, a definition of "voluntariness" announced by this Court in *McCarthy* v. *United States,* 394 U. S. 459 (1969), in which the Court interpreted a provision of the Federal Rules of Criminal Procedure. Yet that case has been held to have only

[1] Admittedly the Court does not require that this litany be performed on the record, but the requirement that it be performed at some point in the proceedings, whether by counsel or by the court, is clear.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1976

Re: No. 74-1529, Henderson v. Morgan

Dear John:

In response to your response to my dissent in Henderson, I have made the following changes: on p. 5, the 9th line of the first full paragraph, we changed "45" to "many" and made it clear that the warden, whatever his other sins, did not wield the knife.

On p. 4 before the first full paragraph we added a new paragraph as follows:

But the Court refers to "voluntary in a constitutional sense" stating that the term includes the requirement of "real notice of the true charge" (ante. p. 7) citing the pre-Boykin case of Smith v. O'Grady, 312 U.S. 329 (1941).[1] Smith involved an "uneducated" defendant "without counsel, bewildered by court processes strange and unfamiliar to him and inveigled by false statements of state law enforcement officers into entering a plea of guilty." 312 U.S., at 334. The Court further observed that Smith's plea was involuntary because he had not received any "real notice of the true nature of the true charge against him" id. That is, he was told he was pleading to "simple burglary" and would receive a three year sentence when in fact he was tricked into pleading to "burglary with explosives" and was sentenced to twenty years. Thus the "notice" required by Smith is accurate information as to the offense and sentence to which one is pleading, which respondent received.

Sincerely,

WWW

Mr. Justice Stevens
cc: The Conference

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

Circulated: JUN 7 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1529

Robert J. Henderson, Superintendent, Auburn Correctional Facility, Petitioner, *v.* Timothy G. Morgan.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[June —, 1976]

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion affirms a judgment which directs the release on federal habeas of a state prisoner who, on advice of counsel, pleaded guilty in the New York State courts 11 years ago to a charge of second-degree murder. The Court declares its agreement with petitioner's contention that the test for reviewing the constitutional validity of a counselled plea of guilty should be "the totality of the circumstances," *ante*, p. 7. But the Court's holding can be justified only if the Constitution requires that "a ritualistic litany of the formal legal elements of an offense [be] read to the defendant," *ante*, p. 7, a requirement which it purports to eschew.[1] The Court accomplishes this result by imposing on state courts, as a constitutional requirement, a definition of "voluntariness" announced by this Court in *McCarthy* v. *United States*, 394 U. S. 459 (1969), in which the Court interpreted a provision of the Federal Rules of Criminal Procedure. Yet that case has been held to have only

[1] Admittedly the Court does not require that this litany be performed on the record, but the requirement that it be performed at some point in the proceedings, whether by counsel or by the court, is clear.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 30, 1976

Re: No. 74-1529 - Henderson v. Morgan

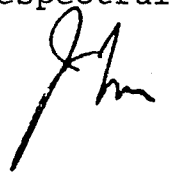
MEMORANDUM TO THE CONFERENCE

At the time of our Conference I voted to reverse because I was under the impression that (a) the record unequivocally established that the respondent had stabbed his victim over forty times; and (b) as a matter of New York law, intent to cause the death of the victim would be presumed from that fact. My study of the record disclosed that it contained no such proof. More importantly, our examination of New York law made it perfectly clear that the requisite intent could not be presumed as a matter of law; the law merely authorizes the jury to draw the necessary inferences from the objective facts.

In addition, I was struck in reading the record by the fact that the lawyers for the respondent, who were obviously competent and relatively disinterested since they were appointed rather than employed counsel, unequivocally testified on more than one occasion that in their judgment the offense really should have been treated as a manslaughter because the respondent had panicked at the time his victim screamed. I am not necessarily persuaded that their appraisal is correct, but it certainly helped to undermine my original appraisal of this case as an out-and-out obvious second degree murder at the very least.

In all events, after trying conscientiously to write the opinion the other way, I concluded that the case must be affirmed. I have therefore prepared the enclosed memorandum in the form of a draft opinion affirming, hoping that it will be acceptable to a majority of the Court.

Respectfully,



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: 4/30/76

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-1529

Robert J. Henderson Superintendent, Auburn Correctional Facility, Petitioner, *v.* Timothy G. Morgan.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1976]

Memorandum of MR. JUSTICE STEVENS.

The question presented is whether a defendant may enter a voluntary plea of guilty to a charge of second-degree murder without being informed that intent to cause the death of his victim was an element of the offense.

The case arises out of a collateral attack on a judgment entered by a state trial court in Fulton County, New York in 1965. Respondent, having been indicted on a charge of first-degree murder, pleaded guilty to second-degree murder and was sentenced to an indeterminate term of imprisonment of 25 years to life. He did not appeal.

In 1970, respondent initiated proceedings in the New York courts seeking to have his conviction vacated on the ground that his plea of guilty was involuntary.[1] The state courts denied relief on the basis of the written

[1] On August 7, 1970, he filed both a "Notice of Motion to Withdraw Guilty Plea" and a "Petition for Writ of Error Coram Nobis."

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 4, 1976

Re: 74-1529 - Henderson v. Morgan

Dear Bill:

In response to your dissenting opinion, I have these comments:

(1) On page 5 of your dissent you state:

> Respondent's attorney at the habeas hearing testified that "respondent had stabbed his victim 45 times ...."

Of course, at the habeas hearing, the respondent was the warden, not Timothy Morgan. Therefore, if you correctly quote the transcript, the witness was testifying that the warden killed Mrs. Francisco. I am inclined to believe the quotation actually is from footnote 8 on page 4 of my memorandum which, I believe, states the evidence as strongly in favor of the warden as the record would permit.

(2) Since your three-pronged analysis completely ignores the importance of adequate notice as a component of due process, I propose to add the following footnote at the bottom of page 7 of my memorandum immediately after the quote from Smith v. O'Grady:

> In North Carolina v. Alford, 400 U.S. 25, the defendant "acknowledged that his counsel had informed him of the difference between second- and first-degree murder and of his rights in case he chose to go to trial." Id., at 28-29. The holding that a defendant who has such understanding may voluntarily

plead guilty notwithstanding his denial of the factual basis for the charge sheds no light on the question whether a defendant who has not received such notice may enter a voluntary plea.

Sincerely,

Mr. Justice Rehnquist

Copies to the Conference

Pg. 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: JUN 9 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–1529

Robert J. Henderson, Superintendent, Auburn Correctional Facility, Petitioner, *v.* Timothy G. Morgan.	On Writ of Certiorari to the United States Court of Appeals for the Second Circuit.

[May —, 1976]

Memorandum of MR. JUSTICE STEVENS.

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