

The Burger Court Opinion Writing Database

Jurek v. Texas

428 U.S. 262 (1976)

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



To: The Chief Justice

Mr. Justice Brennan ✓

Mr. Justice White ✓

Mr. Justice Marshall

Mr. Justice Blackmun

Mr. Justice S. J. Hall

Mr. Justice A. J. Quist

Mr. Justice J. S. S. S.

From: Mr. J. S. Stewart

Circulation JUN 1979

Recirculation

NO. 75-5394, JUREK v. TEXAS

MR. JUSTICE STEWART, MR. JUSTICE POWELL,
and MR. JUSTICE STEVENS:

The issue in this case is whether the imposition
of the sentence of death for the crime of murder under
the law of Texas violates the Eighth and Fourteenth Amendments
to the Constitution.

I

The petitioner in this case, Jerry Lane Jurek, was
charged by indictment with the killing ^{1/} of Wendy Adams "by
choking and strangling her with his hands, and by drowning her
in the water, by throwing her into a river . . . in the course of
committing and attempting to commit kidnapping of and forcible
rape upon the said Wendy Adams."

The evidence at trial consisted of certain statements ^{2/}
made by the petitioner, the testimony of several people who saw
the petitioner and Wendy during the day, and the technical evidence.
This evidence established that the petitioner, 22 years old at the

To:

STYLISH CHANGES

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5394

Jerry Lane Jurek, Petitioner, } On Writ of Certiorari to
v. } the Court of Criminal
State of Texas. } Appeals of Texas.

[July 2, 1976]

Opinion of Mr. JUSTICE STEWART, Mr. JUSTICE POWELL,
and Mr. JUSTICE STEVENS announcing the judgment of
the Court, delivered by Mr. JUSTICE STEVENS.

The issue in this case is whether the imposition of the
sentence of death for the crime of murder under the law
of Texas violates the Eighth and Fourteenth Amend-
ments to the Constitution.

I

The petitioner in this case, Jerry Lane Jurek, was
charged by indictment with the killing of Wendy Adams
"by choking and strangling her with his hands, and by
drowning her in the water, by throwing her into a
river . . . in the course of committing and attempting to
commit kidnapping of and forcible rape upon the said
Wendy Adams."¹

¹ At the time of the charged offense, Texas law provided that
"[w]hoever shall voluntarily kill any person within this state shall
be guilty of murder. Murder shall be distinguished from every
other species of homicide by the absence of circumstances which
reduce the offense to negligent homicide or which excuse or justify
the killing." Texas Penal Code, Art. 1256 (1973).

Under the new Texas Penal Code (effective January 1, 1974),
murder is now defined by § 19.02 (a):

"A person commits an offense if he:

"(1) intentionally or knowingly causes the death of an individual;

No. 75-5394 — Jurek v. Texas

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: 6-17-76

Recirculated: _____

MR. JUSTICE WHITE, concurring.

Following the invalidation of the Texas capital punishment statute in Branch v. Texas, decided with Furman v. Georgia, 408 U.S. 238 (1972), the Texas legislature reenacted the death penalty for five types of murder, including murders committed in the course of certain felonies and required that it be imposed providing that, after returning a guilty verdict in such murder cases and after a sentencing proceeding at which all relevant evidence is admissible, the jury answers two questions in the affirmative -- or three if raised by the evidence:

"(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the

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

STYLISTIC CHANGES THROUGHOUT.

From: Mr. Justice White

Circulated: _____

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5394

Jerry Lane Jurek, Petitioner, | On Writ of Certiorari to
 v. | the Court of Criminal
 State of Texas. | Appeals of Texas.

[June —, 1976]

MR. JUSTICE WHITE, with whom MR. JUSTICE REHN-
 QUIST joins, concurring in the judgment.

Following the invalidation of the Texas capital punishment statute in *Branch v. Texas*, decided with *Furman v. Georgia*, 408 U. S. 238 (1972), the Texas Legislature re-enacted the death penalty for five types of murder, including murders committed in the course of certain felonies and required that it be imposed providing that, after returning a guilty verdict in such murder cases and after a sentencing proceeding at which all relevant evidence is admissible, the jury answers two questions in the affirmative—and a third if raised by the evidence:

“(1) whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of the deceased or another would result; (2) whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society; and (3) if raised by the evidence, whether the conduct of the defendant in killing the deceased was unreasonable in response to the provocation, if any, by the deceased.”

The question in this case is whether the death penalty imposed on Jerry Lane Jurek for the crime of felony murder may be carried out consistently with the Eighth and Fourteenth Amendments.

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: 6/29/76

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No. 75-5394 - Jurek v. Texas

MR. JUSTICE BLACKMUN, concurring.

I concur in the result. See Furman v. Georgia, 408 U.S.

238, 405-414 (1972) (Blackmun, J., dissenting), and id., at 375,

414 and 465.

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

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5394

Jerry Lane Jurek, Petitioner,	}	On Writ of Certiorari to
v.		the Court of Criminal
State of Texas.		Appeals of Texas.

[June —, 1976]

MR. JUSTICE BLACKMUN, concurring.

I concur in the result. See *Furman v. Georgia*, 408 U. S. 238, 405-414 (1972) (BLACKMUN, J., dissenting), and *id.*, at 375, 414, and 465.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 29, 1976

Re: No. 75-5394 - Jurek v. Texas

Dear Byron:

Please join me in your concurring opinion.

Sincerely,



Mr. Justice White

Copies to the Conference