

The Burger Court Opinion Writing Database

Woodson v. North Carolina

428 U.S. 280 (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 Stewart
Mr. Justice White
Mr. Justice Marshal
Mr. Justice Blackmu
Mr. Justice Powell
Mr. Justice Rehnqui
Mr. Justice Stevens

From: Mr. Justice Brenn

Circulated: 6/30/76

Recirculated: _____

No. 75-5491 Woodson v. North Carolina

MR. JUSTICE BRENNAN, concurring in the judgment.

For the reasons stated in my dissenting opinion in Gregg

v. Georgia, ____ U.S. ____, ____ (1976), I concur in the

judgment that sets aside the death sentences imposed under

the North Carolina death sentence statute as violative of the

Eighth and Fourteenth Amendments.

To: The Chief Justice
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Burger

1st DRAFT *6/30/76*

SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
and Luby Waxton,
Petitioners,
v.
State of North Carolina. } On Writ of Certiorari to the
Supreme Court of North
Carolina.

[June —, 1976]

MR. JUSTICE BRENNAN, concurring in the judgment.

For the reasons stated in my dissenting opinion in *Gregg v. Georgia*, — U. S. —, — (1976), I concur in the judgment that sets aside the death sentences imposed under the North Carolina death sentence statute as violative of the Eighth and Fourteenth Amendments.

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

From: Mr. Justice Stewart

Circulated: JUN 7

NO. 75-5491, WOODSON v. NORTH CAROLINA

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

The question in this case is whether the imposition of a death sentence for the crime of first degree murder under the law of North Carolina violates the Eighth and Fourteenth Amendments.

I

The petitioners in this case were convicted of participation in an armed robbery of a convenience food store, in the course of which the cashier was killed and a customer seriously wounded. There were four participants in the robbery: the petitioners Tyrone Woodson and Luby Waxton, and two others, Leonard Tucker and Johnnie Lee Carroll. Tucker and Carroll testified for the prosecution after being permitted to plead guilty to lesser offenses; Woodson and Waxton testified on their own behalf.

To: The Chief Justice

Mr. Justice Brennan

Mr. Justice White

Mr. Justice Marshall

Mr. Justice Blackmun

Mr. Justice Powell

Mr. Justice Rehnquist

Mr. Justice Stevens

From: Mr. Justice Stewart

Circulated: JUN 28 1976

Recd.:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
and Luby Waxton, Petitioners, } On Writ of Certiorari to the
Petitioners, } Supreme Court of North
v, Carolina.
State of North Carolina.

[June —, 1976]

delivered an opinion
and announced the judgment of the Court. MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS

The question in this case is whether the imposition of a death sentence for the crime of first-degree murder under the law of North Carolina violates the Eighth and Fourteenth Amendments.

I

The petitioners were convicted of first-degree murder as the result of their participation in an armed robbery of a convenience food store, in the course of which the cashier was killed and a customer seriously wounded. There were four participants in the robbery: the petitioners Tyrone Woodson and Luby Waxton and two others, Leonard Tucker and Johnnie Lee Carroll. At the petitioners' trial Tucker and Carroll testified for the prosecution after having been permitted to plead guilty to lesser offenses; the petitioners testified in their own defense.

The evidence for the prosecution established that the four men had been discussing a possible robbery for some time. On the fatal day Woodson had been drinking heavily. About 9:30 p. m., Waxton and Tucker came

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

From: Mr. Justice Stewart

Circulated: JUN 29 1976

Received

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
and Luby Waxton, Petitioners, v.
State of North Carolina. } On Writ of Certiorari to the
Supreme Court of North Carolina.

[June —, 1976]

delivered an opinion
and announced the
judgment of the
Court.

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

The question in this case is whether the imposition of a death sentence for the crime of first-degree murder under the law of North Carolina violates the Eighth and Fourteenth Amendments.

I

The petitioners were convicted of first-degree murder as the result of their participation in an armed robbery of a convenience food store, in the course of which the cashier was killed and a customer seriously wounded. There were four participants in the robbery: the petitioners Tyrone Woodson and Luby Waxton and two others, Leonard Tucker and Johnnie Lee Carroll. At the petitioners' trial Tucker and Carroll testified for the prosecution after having been permitted to plead guilty to lesser offenses; the petitioners testified in their own defense.

The evidence for the prosecution established that the four men had been discussing a possible robbery for some time. On the fatal day Woodson had been drinking heavily. About 9:30 p. m., Waxton and Tucker came

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: 6-16-76

Recirculated: _____

No. 75-5491 - Woodson v. North Carolina

Mr. Justice White, dissenting.

Following Furman v. Georgia, 408 U.S. 238 (1972), the North Carolina Supreme Court considered the effect of that case on the North Carolina criminal statutes which imposed the death penalty for first degree murder and other crimes but which provided that "if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury." State v. Wadell, 282 N.C. 431, 194 S.E. 2d (1973), determined that Furman v. Georgia invalidated only the proviso giving the jury the power to limit the penalty to life imprisonment and that thenceforward death was the mandatory penalty for the specified capital crimes. Thereafter N.C. Gen. Stat. § 14-17 was amended to eliminate the express dispensing power of the jury and to add kidnapping to the underlying felonies for which death is the specified penalty. As amended, the section reads as follows:

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1st DRAFT

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: _____

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SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
 and Luby Waxton,
 Petitioners, } On Writ of Certiorari to the
 v. } Supreme Court of North
 State of North Carolina. } Carolina.

[June —, 1976]

MR. JUSTICE WHITE, with whom THE CHIEF JUSTICE
 and MR. JUSTICE REHNQUIST join, dissenting.

Following *Furman v. Georgia*, 408 U. S. 238 (1972), the North Carolina Supreme Court considered the effect of that case on the North Carolina criminal statutes which imposed the death penalty for first-degree murder and other crimes but which provided that "if the jury shall so recommend at the time of rendering its verdict in open court, the punishment shall be imprisonment for life in the State's prison, and the court shall so instruct the jury." *State v. Waddell*, 282 N. C. 431, 194 S. E. 2d 19 (1973), determined that *Furman v. Georgia* invalidated only the proviso giving the jury the power to limit the penalty to life imprisonment and that thenceforward death was the mandatory penalty for the specified capital crimes. Thereafter N. C. Gen. Stat. § 14-17 was amended to eliminate the express dispensing power of the jury and to add kidnapping to the underlying felonies for which death is the specified penalty. As amended, the section reads as follows:

"A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate and premeditated killing, or which shall be committed

JUN 29 1976

No. 75-5491, Woodson v. North Carolina

MR. JUSTICE MARSHALL, concurring in the judgment.

For the reasons stated in my dissenting opinion in Gregg v. Georgia, ___ U.S. ___, ___ (1976), I am of the view that the death penalty is a cruel and unusual punishment forbidden by the Eighth and Fourteenth Amendments. I therefore concur in the Court's judgment.

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

From: Mr. Justice Marshall
Circulated: JUN 30 1976

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
and Luby Waxton, } On Writ of Certiorari to the
Petitioners, } Supreme Court of North
v. } Carolina.
State of North Carolina.

[June —, 1976]

MR. JUSTICE MARSHALL, concurring in the judgment.
For the reasons stated in my dissenting opinion in
Gregg v. Georgia, — U. S. —, — (1976), I am of
the view that the death penalty is a cruel and unusual
punishment forbidden by the Eighth and Fourteenth
Amendments. I therefore concur in the Court's
judgment.

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

Recirculated: _____

No. 75-5491 - Woodson v. North Carolina

MR. JUSTICE BLACKMUN, dissenting.

I dissent for the reasons set forth in my dissent in Furman

v. Georgia, 408 U.S. 238, 405-414 (1972), and in the other dissenting

opinions I joined in that case. 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

Circulated: _____

1st DRAFT

Recirculated: 6/30/76

SUPREME COURT OF THE UNITED STATES

No. 75-5491

James Tyrone Woodson
and Luby Waxton,
Petitioners,
v.
State of North Carolina. } On Writ of Certiorari to the
Supreme Court of North
Carolina.

[June —, 1976]

MR. JUSTICE BLACKMUN, dissenting.

I dissent for the reasons set forth in my dissent in *Furman v. Georgia*, 408 U. S. 238, 405-414 (1972), and in the other dissenting opinions I joined in that case, *Id.*, at 375, 414, and 465.

NO. 75- 5491

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

James Tyrone Woodson and Luby Waxton, Petitioners v. Mr. Justice Stevens

v.

From: Mr. Justice Rehnquist

North Carolina

Circulated: JUN 23 1976

On Writ of Certiorari to the Supreme Court of North Carolina

Recirculated: _____

MR. JUSTICE REHNQUIST, dissenting.

I.

The difficulties which attend the plurality's explanation for the result it reaches tend at first to obscure difficulties at least as significant which inhere in the unarticulated premises which necessarily underlie that explanation. I advert to the latter only briefly, in order to devote the major and following portion of this dissent to those issues which the plurality actually considers.

As an original proposition, it is by no means clear that the prohibition against cruel and unusual punishments embodied in the Eighth Amendment, and made applicable to the states by the Fourteenth Amendment, Robinson v. California, 370 U.S. 660 (1962) was not limited to those punishments deemed cruel and unusual at the time of the adoption of the Bill of Rights. McGautha v. California, 402 U.S. 183, 225 (1971) (Black, J. concurring). If

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 29, 1976

MEMORANDUM TO THE CONFERENCE

Re: No. 75-5491 - Woodson, et al., Petitioners v.
North Carolina

Attached is a Xerox revision of Part III of my dissenting opinion in this case. Pages 10 through the third line of page 18 of the attached are a substitute for pages 10 through the sentence ending on the seventh line of page 14 of the original.

Sincerely,

W. H. R.

Attachment

(Woodson, cont'd
6/28/76)

- 10 -

III.

The second constitutional flaw which the plurality finds in North Carolina's mandatory system is that it has simply "papered over" the problem of unchecked jury discretion. The plurality states that, ante, at 19, "there is general agreement that American juries have persistently refused to convict a significant portion of first degree murderers under mandatory death penalty statutes. The plurality also states, ante, at 19, that "as a matter of historic fact, juries operating under discretionary sentencing statutes have consistently returned death sentences in only a minority of first degree murder cases." The basic factual assumption of the plurality seems to be that for any given number of first degree murder defendants subject to capital punishment, there will be a certain number of jurors who will be unwilling to impose the death penalty even though they are entirely satisfied that the necessary elements of the substantive offense are made out.

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

✓ CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 29, 1976

Re: No. 75-5491 - Woodson v. North Carolina

Dear Byron:

Please join me in your dissenting opinion in this case.

Sincerely,

WR

Mr. Justice White

Copies to the Conference