

# The Burger Court Opinion Writing Database

*Scott v. Kentucky Parole Board*  
429 U.S. 60 (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

October 18, 1976

Re: 74-6438 - Scott v. Kentucky

MEMORANDUM TO THE CONFERENCE:

I vote to vacate and remand for consideration of mootness since that reflects the vote of Rehnquist, Blackmun, White, Stewart, and now my own view.

This assumes Potter's vote to reverse as moot  
embraces a remand for mootness consideration.

Regards,

WRB

OF - S - X - M - W - K

HA

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

CHAMBERS OF  
THE CHIEF JUSTICE

October 19, 1976

Re: 74-6438 Scott v. Kentucky Board of Parole

MEMORANDUM TO THE CONFERENCE:

I believe that the following will implement the Conference action of last week:

Per Curiam

It appearing that petitioner Bell has died and that petitioner Scott has been granted parole by the Kentucky Board of Parole, the judgment of the United States Court of Appeals for the Sixth Circuit is hereby vacated, and the case is remanded to the Court of Appeals for consideration of the question of mootness.

I will await responses.

Regards,

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

CHAMBERS OF  
THE CHIEF JUSTICE

October 21, 1976

RE: 74-6438 - Scott v. Kentucky Board of Parole

Dear Bill:

I will add the cite to Weinstein v. Bradford unless it costs some votes, which I doubt.

Regards,

WRB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

October 22, 1976

RE: 74-6438 - Scott v. Kentucky Board of Parole

Dear Thurgood:

I have your note and you recall I said I'd cite Weinstein "unless it costs some votes."

I will drop it.

Regards,

WSB

Mr. Justice Marshall

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

From: The Clerk

1st *printed*  
DRAFT

Circulated:

Recirculated: OCT 26 1976

## SUPREME COURT OF THE UNITED STATES

EWELL SCOTT, ETC. v. KENTUCKY PAROLE BOARD  
ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 74-6438. Decided November —, 1976

PER CURIAM.

It appearing that petitioner Bell has died and that petitioner Scott has been granted parole by the Kentucky Board of Parole, the judgment of the United States Court of Appeals for the Sixth Circuit is hereby vacated, and the case is remanded to the Court of Appeals for consideration of the question of mootness.

REVISED

**NOTICE** : This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

**SUPREME COURT OF THE UNITED STATES**

No. 74-6438

Ewell Scott, etc., Petitioner, | On Writ of Certiorari to the  
v. | United States Court of Appeals for the Sixth Circuit.  
Kentucky Parole Board et al. |

[November 2, 1976]

**PER CURIAM.**

It appearing that petitioner Scott has been granted parole by the Kentucky Parole Board, the judgment of the United States Court of Appeals for the Sixth Circuit is hereby vacated, and the case is remanded to the Court of Appeals for consideration of the question of mootness.

H A

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 9, 1976

filed  
V

Re: Cases held for No. 74-6438 - Scott v. Kentucky Parole Board

MEMORANDUM TO THE CONFERENCE:

(1) No. 75-6227 - Allegretti v. New York.

In December 1971, petitioner was convicted of robbery and sentenced to an indeterminate term of three years, four months to ten years. Under New York law, he became eligible for parole in July 1974. At that time, he received a hearing before the parole board which resulted in a decision to deny him parole for at least another 16 months. Petitioner was again considered for, and denied parole in November 1975. His case will again be considered by the parole board in November 1976.

Immediately after the initial adverse parole decision, petitioner instituted this habeas action in the state courts challenging the denial of parole. Although he claims to have challenged the decision on the ground that it had been made arbitrarily and in derogation of his due process rights, the only specific complaint mentioned in the brief memorandum opinion denying him relief is his assertion that the parole board failed to have before it recent medical and aptitude reports in considering his case as required by state law. Indeed, the court only held that no violation of a pertinent statutory requirement had occurred. Thereafter, the State Supreme Court, Appellate Division, affirmed without opinion and the Court of Appeals denied review. (It appears that petitioner did maintain that the parole procedures violated due process in his application for leave to appeal to the New York Court of Appeals.)

While the portions of the New York parole laws set out in the papers do seem rather similar to those of Kentucky, I doubt that this is the case in which to resolve the due process issues left open by our

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 20, 1976

MEMORANDUM TO: Mr. Justice Powell  
Mr. Justice Stevens

RE: No. 74-6438 Scott v. Kentucky Parole Board

My records show that the three of us are dissenting from the remand for mootness. John has already said he would undertake a dissent.

W.J.B. Jr.

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

October 27, 1976

RE: No. 74-6438 Scott v. Kentucky Parole Board

Dear John:

Please join me in the dissenting opinion you have  
prepared in the above.

Sincerely,

*W. J. B.*

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 18, 1976

74-6438 - Scott v. Kentucky

Dear Chief,

I would join four or more others  
in voting to vacate the judgment and remand  
this case for consideration of the question of  
mootness.

Sincerely yours,

P. S.  
P.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 19, 1976

Re: No. 74-6438, Scott v. Kentucky Board of Parole

Dear Chief,

The proposed Per Curiam you have circulated is  
satisfactory to me.

Sincerely yours,

P.S.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

October 21, 1976

Re: No. 74-6438, Scott v. Kentucky  
Board of Parole

Dear Chief,

I think Bill Rehnquist's suggestion that the  
Weinstein case be cited in the Per Curiam is a  
good one.

Sincerely yours,

RS,  
1/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

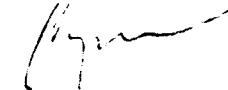
October 19, 1976

Re: No. 74-6438 - Scott v. Kentucky Board of  
Parole

Dear Chief:

I agree.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 20, 1976

Re: No. 74-6438 -- Scott v. Kentucky Board of Parole

Dear Chief:

I agree with your Per Curiam in this case.

Sincerely,



T. M.

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

October 22, 1976

Re: No. 74-6438 - Scott v. Kentucky Board of Parole

Dear Chief:

I do not agree to citing Weinstein v. Bradford in the per curiam.

Weinstein clearly stated:

". . . It is undisputed that respondent was temporarily paroled on December 18, 1974, and that this status ripened into a complete release from supervision on March 25, 1975. From that date forward it is plain that respondent can have no interest whatever in the procedures followed by petitioners in granting parole."

I cannot and will not agree that Weinstein has any bearing on a case where a man is released on parole subjected to close supervision.

Sincerely,

  
T. M.

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 18, 1976

Re: No. 74-6438 - Scott v. Kentucky Parole Board

Dear Chief:

This will confirm my telephone conversation to you on Saturday morning.

I have given further consideration to this case and to the fractured vote that greeted it at Friday's conference. Although, as I stated at conference, I am presently of the view that the case is not moot, I would be willing, if it would create a majority, to vacate and remand for the Sixth Circuit to consider mootness. We then would have the benefit of their fresh look at the situation, with such bearing as the Kentucky law might have upon the matter.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 20, 1976

Re: No. 74-6438 - Scott v. Kentucky Board of Parole

Dear Chief:

Your proposed per curiam is all right with me.

Sincerely,



The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

October 22, 1976

Re: No. 74-6438 - Scott v. Kentucky Board of Parole

Dear Chief:

As my initial vote at conference indicated, I am inclined to agree with Thurgood in his letter to you of today.

Sincerely,

*HAB*

The Chief Justice

cc: The Conference

*L.F.P.*  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 22, 1976

No. 74-6438 Scott v. Kentucky Parole Board

MEMORANDUM TO THE CONFERENCE:

As I am unpersuaded that a remand for consideration of the question of mootness is necessary, and as I think the issue in this case should be resolved by this Court without further delay, I will await the dissent that I understand John has in preparation.

*L.F.P.*  
L.F.P., Jr.

ss

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 27, 1976

No. 74-6438 Scott v. Kentucky Parole Board

Dear John:

Please join me in your dissent.

Sincerely,

*Lewis*

Mr. Justice Stevens

1fp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 21, 1976

Re: No. 74-6438 - Scott v. Kentucky Board of Parole

Dear Chief:

The per curiam which you have prepared is agreeable to me. I think it would help focus the attention of the Court of Appeals in the right area if you were to add at the end of the full paragraph the following sentence:

"See Weinstein v. Bradford, 423 U.S. 147 (1975)."

While in this case Scott remains subject to parole supervision, whereas in Weinstein he had been completely released from that supervision, Weinstein nonetheless is the most recent expression of our views on the doctrine of mootness as they are applied in a parole situation.

If you or anyone who has already joined the per curiam would prefer not to insert this language, however, it is quite agreeable to me to have the per curiam remain as drafted by you.

Sincerely,

*W.W.*

The Chief Justice

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 19, 1976

Re: 74-6438 - Scott v. Kentucky Board of Parole

Dear Chief:

After talking to Bill Brennan, I have decided to write a short dissent which I hope to circulate in the next few days.

Respectfully,



The Chief Justice

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: 10/26/76

1st DRAFT

Recirculated: \_\_\_\_\_

## SUPREME COURT OF THE UNITED STATES

EWELL SCOTT, ETC. v. KENTUCKY PAROLE BOARD  
ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
COURT OF APPEALS FOR THE SIXTH CIRCUIT

No. 74-6438. Decided November —, 1976

MR. JUSTICE STEVENS, dissenting.

The Court granted certiorari to decide whether any constitutionally mandated procedural safeguards apply to parole release hearings. At such a hearing a prisoner may be denied parole, or he may be released subject to specified conditions. The constitutional issue is whether either the outright denial, or the imposition of parole conditions, has the kind of impact on liberty that must be preceded by "due process." The question is extremely important, it has been fully briefed and argued and, in my opinion, should now be decided.

The Court postpones decision of the issue by sending the case back to the Court of Appeals for its advice on the question whether the litigation is now moot. The action is taken on the authority of *Weinstein v. Bradford*, 423 U. S. 147 (1975), a case which became moot because the petitioner's sentence terminated prior to our decision thus entirely eliminating his interest in any controversy with his parole board.<sup>1</sup> This case, however, is not moot, as a brief reference to the facts will demonstrate.

<sup>1</sup> The *Weinstein* opinion is unambiguous:

"... It is undisputed that respondent was temporarily paroled on December 18, 1974, and that this status ripened into a complete release from supervision on March 25, 1975. From that date forward it is plain that respondent can have no interest whatever in the procedures followed by petitioners in granting parole." 423 U. S., at 148.

This rationale is, of course, inapplicable to this petitioner who remains in legal custody. See *In re Sturm*, 521 P. 2d 97, 101 (Cal. 1974); *Ramer v. Saxbe*, — U. S. App. D. C., —, 522 F. 2d 695, 703-705 (1975);

*J. P. B.*

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: \_\_\_\_\_

3rd DRAFT

Recirculated: OCT 29 76

## SUPREME COURT OF THE UNITED STATES

No. 74-6438

Ewell Scott, etc., Petitioner, } On Writ of Certiorari to the  
 v. } United States Court of Ap-  
 Kentucky Parole Board et al. } peals for the Sixth Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE POWELL join, dissenting.

The Court granted certiorari to decide whether any constitutionally mandated procedural safeguards apply to parole release hearings. At such a hearing a prisoner may be denied parole, or he may be released subject to specified conditions. The constitutional issue is whether either the outright denial, or the imposition of parole conditions, has the kind of impact on liberty that must be preceded by "due process." The question is extremely important,<sup>1</sup> it has been fully

<sup>1</sup> Its manifest importance is demonstrated by (a) the vast number of parole release decisions that are made every year; (b) the importance of each such decision to the person affected by it; and (c) the extensive litigation, with varying results, which has developed in the federal courts. The conflict in the circuits over this question is more than evident. Compare the present case, *Scott v. Kentucky Board of Parole*, No. 74-1899 (unpublished order January 15, 1975) in which the Sixth Circuit held that the requirements of due process are not applicable to parole release hearings with the following: *Brown v. Lundgren*, 528 F. 2d 1050 (CA5 1976) (due process does not apply); *United States ex rel. Richerson v. Wolff*, 525 F. 2d 797 (CA7 1975) (due process applies to the extent that a written statement of reasons must be given for denial of parole), cert. denied, 425 U. S. 914 (1976); *Bradford v. Weinstein*, 519 F. 2d 728 (CA4 1974) (due process applies), vacated as moot 423 U. S. 147 (1975); *Childs v. United States Board of Parole*, — U. S. App. D. C. —, 511 F. 2d 1270 (1974) (due process applies to the extent that reasons must be given); *Johnson v. Chairman, New York State Board of Parole*, 500 F. 2d 925 (CA2) (due process applies to the extent that reasons must be given), vacated as moot *sub nom. Regan v. Johnson*, 419 U. S. 1015