

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

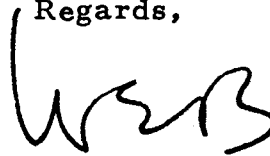
Re: 74-6438 - Scott v. Kentucky

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,



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

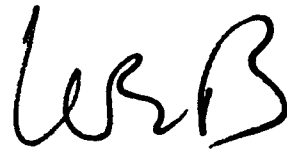
October 21, 1976

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,

A handwritten signature in dark ink, appearing to be 'WRB' in a stylized, cursive script.

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

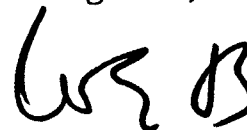
RE: 74-6438 - Scott v. Kentucky Board of Parole

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,

A handwritten signature in dark ink, appearing to be "WRB", written in a cursive, stylized script.

Mr. Justice Marshall

To: Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Burger
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Marshall
Mr. Justice Souter

From: The Clerk of the Court

printed
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Resubmitted: OCT 29 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 Ap- |
| Kentucky Parole Board et al. | | peals for the Sixth Circuit. |

[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.

44

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

CHAMBERS OF
THE CHIEF JUSTICE

November 9, 1976

file 7
✓

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,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

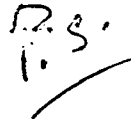
October 18, 1976

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,

R.S.


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

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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,

A handwritten signature in cursive script, appearing to read "Harry", written in dark ink.

The Chief Justice

cc: The Conference



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,



The Chief Justice

cc: The Conference

SW

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

lfp/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,



The Chief Justice

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

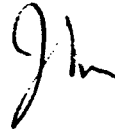
October 19, 1976

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,

A handwritten signature in dark ink, appearing to be "JPS", written in a cursive style.

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.¹ This case, however, is not moot, as a brief reference to the facts will demonstrate.

¹ 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);

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: OCT 29 76

3rd DRAFT

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,¹ it has been fully

¹ 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