The Burger Court Opinion Writing Database

Gardner v. Florida

430 U.S. 349 (1977)

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

February 15, 1977

Re: 74-6593 Gardner v. Florida

Dear John:

I share Byron's concerns with your proposed draft. I see no reason to express any views on non-capital cases. Nor am I willing to extend due process protections to sentencing procedures in noncapital cases in a case in which the parties did not argue the question. I will await Byron's concurrence.

Regards,

WRB

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

March 14, 1977

Re: 74-6593 Gardner v. Florida

Dear John:

As of now I will join only in the judgment. For me the 8th Amendment is concerned only with the punishment inflicted and not with the judicial procedures by which a verdict is needed.

Regards,

WEB

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 15, 1977

RE: No. 74-6593 Gardner v. Florida

Dear John:

I think I'd be willing to do something like the following if it would suit your purpose. Thurgood is out of town and perhaps we ought to wait until his return finally to decide. I've sent him a copy of this.

> "I agree for the reasons stated in the Court's opinion that the Due Process Clause of the Fourteenth Amendment is violated when a defendant facing a death sentence is not informed of the contents of a presentence investigation report made to the sentencing judge. However, I adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Gregg v. Georgia, ___ U.S. ___, ___ (1976) (Brennan, J., dissenting). I therefore would vacate the death sentence and I dissent from the Court's judgment insofar as it remands for further proceedings that could lead to its imposition."

Sincerely,

Bill

Mr. Justice Stevens

cc: Mr. Justice Marshall

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 16, 1977

RE: No. 74-6593 Gardner v. Florida

Dear John:

I talked with Thurgood today about the above and he'll be in touch with you about his dissent. Accordingly, I'll go ahead and have printed the short squib I suggested in my letter to you of March 15.

Sincerely,

Bill

Mr. Justice Stevens

cc: Mr. Justice Marshall

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

From: Mr. Justice Brennan

1st DRAFT

Circulated: 3/18/77

Recirculated:

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1977]

MR. JUSTICE BRENNAN.

I agree for the reasons stated in the Court's opinion that the Due Process Clause of the Fourteenth Amendment is violated when a defendant facing a death sentence is not informed of the contents of a presentence investigation report made to the sentencing judge. However, I adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg* v. *Georgia*, — U. S. —, — (1976) (BRENNAN, J., dissenting). I therefore would vacate the death sentence and I dissent from the Court's judgment insofar as it remands for further proceedings that could lead to its imposition.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 14, 1977

Re: No. 74-6593, Gardner v. Florida

Dear John,

I am in general agreement with your opinion, although the first full paragraph on page 9 gives me some problems. I understand that you are going to make some changes in that paragraph, and I shall await seeing them before reaching a final decision.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 15, 1977

Re: No. 74-6593 - Gardner

Dear John:

Although I agree with the result you reach, it is doubtful I can join your opinion in its present form, primarily because of its potential applicability to nondeath cases.

In the paragraph beginning with the word "Second" on page eight, for example, you say that since Williams it has become "clear that the sentencing process, as well as the trial itself, must satisfy the requirements of the Due Process Clause." Read literally, this says or at least implies that trial type procedures are required at the sentencing stage, whether or not the death sentence is involved. But we have never held that there must be a trial type hearing with cross-examination and confrontation at the sentencing stage in the run-of-the-mill criminal case. We have yet to hold that the Due Process Clause generally requires disclosure of all information a federal or state judge relies on for the purposes of sentencing. I would suspect that the paragraph on page eight along with other parts of the opinion will be the focus of a great deal of litigation challenging existing sentences and sentencing practices around the country.

The opinions last term sustaining the various death statutes and striking down others were Fourteenth and Eighth Amendment opinions; and it seems to me that reversal in this case is dictated by those opinions, without it being necessary to draw independently on the Due Process Clause. Perhaps not, but I shall attempt a concurrence along this this line, limiting my agreement to death penalty cases.

Sincerely,

Byron

Mr. Justice Stevens

Copies to Conference

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: 3-2-77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1977]

MR. JUSTICE WHITE, concurring.

In *Woodson* v. *North Carolina,* 44 U. S. L. W. 5267, the Court addressed the question whether the mandatory death penalty imposed under the statute involved in that case was consistent with the *Eighth Amendment*'s prohibition against cruel and unusual punishments. The plurality opinion stated:

> "The issue, like that explored in *Furman,* involves the *procedure* employed by the State to select persons for the unique and irreversible penalty of death." *Id.,* at 5269.

In holding that the failure to conduct the sort of post-trial sentencing proceeding which Florida law requires, and which was conducted in this case, rendered North Carolina's mandatory death penalty statute unconstitutional, the plurality said:

> ". . . we believe that in *capital cases* the fundamental respect for humanity underlying the *Eighth Amendment,* see *Trop* v. *Dulles,* 356 U. S., at 100 (plurality opinion), requires consideration of the character and record of the individual offender and the circumstances of the particular offense as a constitutionally indispensable part of the *process* of inflicting the penalty of death.
>
> "This conclusion rests squarely on the predicate that the penalty of death is qualitatively different from a

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida.	On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1977]

MR. JUSTICE MARSHALL dissenting.

Last Term, this Court carefully scrutinized the Florida procedures for imposing the death penalty and concluded that there were sufficient safeguards to insure that the death sentence would not be "wantonly" and "freakishly" imposed. *Proffitt* v. *Florida*, — U. S. — (1976). This case, however, belies that hope. While I continue to believe that the death penalty is unconstitutional in all circumstances, see *Furman* v. *Georgia*, 408 U. S. 238, 314 (MARSHALL, J., concurring) (1972); *Gregg* v. *Georgia*, — U. S. —, — (MARSHALL, J., dissenting), if it is ever to be applied it must be in strict accordance with the standards enunciated by this Court. I am appalled at the extent to which Florida has deviated here from the procedures upon which this Court expressly relied. It is not simply that the trial judge, in overriding the jury's recommendation of life imprisonment, relied on undisclosed portions of the presentence report. Nor is it merely that the Florida Supreme Court affirmed the sentence without discussing the omission and without concern that it did not even have the entire report before it. Obviously that alone is enough to deny due process and require reversal as the Court now holds. But the blatant disregard exhibited by the courts below for the standards devised to regulate imposition of the death penalty calls into question the very basis for this Court's approval of that system in *Proffitt*.

P 1, 2, 6, 7

STYLISTIC CHANGES THROUGHOUT.

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1977]

MR. JUSTICE MARSHALL dissenting.

Last Term, this Court carefully scrutinized the Florida procedures for imposing the death penalty and concluded that there were sufficient safeguards to insure that the death sentence would not be "wantonly" and "freakishly" imposed. *Proffitt* v. *Florida*, — U. S. — (1976). This case, however, belies that hope. While I continue to believe that the death penalty is unconstitutional in all circumstances, see *Furman* v. *Georgia*, 408 U. S. 238, 314 (MARSHALL, J., concurring) (1972); *Gregg* v. *Georgia*, — U. S. —, — (MARSHALL, J., dissenting), and therefore would remand this case for resentencing to a term of years; nevertheless, now that Florida may legally take a life, we must insist that it be in accordance with the standards enunciated by this Court. In this case I am appalled at the extent to which Florida has deviated from the procedures upon which this Court expressly relied. It is not simply that the trial judge, in overriding the jury's recommendation of life imprisonment, relied on undisclosed portions of the presentence report. Nor is it merely that the Florida Supreme Court affirmed the sentence without discussing the omission and without concern that it did not even have the entire report before it. Obviously that alone is enough to deny due process and require reversal as the Court now holds. But the blatant disregard exhibited by the courts below for the standards devised to regulate imposition of the

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner,
Petitioner,
v.
State of Florida.

On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1977]

MR. JUSTICE MARSHALL dissenting.

Last Term, this Court carefully scrutinized the Florida procedures for imposing the death penalty and concluded that there were sufficient safeguards to insure that the death sentence would not be "wantonly" and "freakishly" imposed. *Proffitt* v. *Florida*, — U. S. — (1976). This case, however, belies that hope. While I continue to believe that the death penalty is unconstitutional in all circumstances, see *Furman* v. *Georgia*, 408 U. S. 238, 314 (MARSHALL, J., concurring) (1972); *Gregg* v. *Georgia*, — U. S. —, — (MARSHALL, J., dissenting), and therefore would remand this case for resentencing to a term of years; nevertheless, now that Florida may legally take a life, we must insist that it be in accordance with the standards enunciated by this Court. In this case I am appalled at the extent to which Florida has deviated from the procedures upon which this Court expressly relied. It is not simply that the trial judge, in overriding the jury's recommendation of life imprisonment, relied on undisclosed portions of the presentence report. Nor is it merely that the Florida Supreme Court affirmed the sentence without discussing the omission and without concern that it did not even have the entire report before it. Obviously that alone is enough to deny due process and require reversal as the Court now holds. But the blatant disregard exhibited by the courts below for the standards devised to regulate imposition of the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 2, 1977

Re: No. 74-6593 - Gardner v. Florida

Dear John:

I shall still wait for Byron's writing in this case.

Sincerely,

Harry

Mr. Justice Stevens

cc: The Conference

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: 3/15/77

Recirculated: _____

No. 74-6593 - Gardner v. Florida

MR. JUSTICE BLACKMUN, concurring in the judgment.

Given the judgments of the Court in Woodson v. North Carolina, 428 U.S. _____ (1976), and in Roberts v. Louisiana, 428 U.S. _____ (1976),*/ each attained by a plurality opinion of Stewart, Powell, and Stevens, JJ., in combination with respective concurrences in the judgment by Brennan, J., and by Marshall, J., I concur in the judgment the Court reaches in the present case.

---

*/ See also Proffitt v. Florida, 428 U.S. _____ (1976); Jurek v. Texas, 428 U.S. _____ (1976); and Gregg v. Georgia, 428 U.S. _____ (1976).

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: _____

Recirculated: 3/16/77

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1977]

MR. JUSTICE BLACKMUN, concurring in the judgment.

Given the judgments of the Court in *Woodson* v. *North Carolina*, 428 U. S. — (1976), and in *Roberts* v. *Louisiana*, 428 U. S. — (1976),* each attained by a plurality opinion of STEWART, POWELL, and STEVENS, JJ., in combination with respective concurrences in the judgment by BRENNAN, J., and by MARSHALL, J., I concur in the judgment the Court reaches in the present case.

*See also *Proffitt* v. *Florida*, 428 U. S. — (1976); *Jurek* v. *Texas*, 428 U. S. — (1976); and *Gregg* v. *Georgia*, 428 U. S. — (1976).

J J

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 14, 1977

No. 74-6593 Gardner v. Florida

Dear John:

Please join me.

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

March 3, 1977

Re: No. 74-6593 Gardner v. Florida

Dear John:

I have decided to join neither you nor Byron, but will shortly circulate a separate dissenting opinion. I shall make every effort to have it in circulation by tomorrow so that I will not hold up the Conference.

Sincerely,

WHR/lfb

Mr. Justice Stevens
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 Stevens

From: Mr. Justice Rehnquist

Circulated: MAR 1 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

Had I joined the plurality opinion in last Term's *Woodson* v. *North Carolina*, — U. S. —, I would join the concurring opinion of my Brother WHITE in this case. But if capital punishment is not cruel and unusual under the Eighth and Fourteenth Amendments, as the Court held in that case, the use of particular sentencing procedures, never previously held unfair under the Due Process Clause, in a case where the death sentence is imposed cannot convert that sentence into a cruel and unusual punishment. The prohibition of the Eighth Amendment relates to the character of the punishment, and not to the process by which it is imposed. I would therefore affirm the judgment of the Supreme Court of Florida.

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: 2/9/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Petitioner was convicted of first-degree murder and sentenced to death. When the trial judge imposed the death sentence he stated that he was relying in part on information in a presentence investigation report. Portions of the report were not disclosed to counsel for the parties. Without reviewing the confidential portion of the presentence report, the Supreme Court of Florida, over the dissent of two Justices, affirmed the death sentence. *Gardner* v. *Florida,* 313 So. 2d 675 (1975). We hold that this procedure does not satisfy the constitutional command that no person shall be deprived of life without due process of law.

Why should judge charge jury recommendation of mercy at all?

I

On June 30, 1973, the petitioner assaulted his wife with a blunt instrument, causing her death. On January 10, 1974, after a trial in the Circuit Court of Citrus County, Florida, a jury found him guilty of first-degree murder.

The separate sentencing hearing required by Florida law in capital cases [1] was held later on the same day. The State

[1] Fla. Stat. Ann. § 921.141 (Supp. 1976-1977). This Court upheld the constitutionality of the statute in *Proffitt* v. *Florida,* — U. S. —, No. 75-5706 (July 2, 1976).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 16, 1977

Re: 74-6593 - Gardner v. Florida

Dear Byron:

Perhaps we could add a footnote on page 8 pointing out that a determination that due process applies does not, of course, indicate that trial-type procedures are required. For this proposition I could cite the Chief's opinion in Morrissey, 408 U.S. 471, 481, and your opinion in Goss v. Lopez, 419 U.S. 565, 577. Frankly, as the Chief pointed out at that page of Morrissey, this "has been said so often" that I thought it was not necessary to make the point explicit.

I should also point out that I intentionally emphasized the idea that death is a different kind of punishment than any other (see pages 7-8), for the purpose of making it perfectly clear that our holding is limited to capital cases.

Sincerely,

John

Mr. Justice White

Copies to the Conference

Pp. 5, 7-9, 11-12

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: MAR 1 1977

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[February —, 1977]

MR. JUSTICE STEVENS delivered the opinion of the Court.

Petitioner was convicted of first-degree murder and sentenced to death. When the trial judge imposed the death sentence he stated that he was relying in part on information in a presentence investigation report. Portions of the report were not disclosed to counsel for the parties. Without reviewing the confidential portion of the presentence report, the Supreme Court of Florida, over the dissent of two Justices, affirmed the death sentence. *Gardner* v. *Florida,* 313 So. 2d 675 (1975). We hold that this procedure does not satisfy the constitutional command that no person shall be deprived of life without due process of law.

I

On June 30, 1973, the petitioner assaulted his wife with a blunt instrument, causing her death. On January 10, 1974, after a trial in the Circuit Court of Citrus County, Florida, a jury found him guilty of first-degree murder.

The separate sentencing hearing required by Florida law in capital cases [1] was held later on the same day. The State

[1] Fla. Stat. Ann. § 921.141 (Supp. 1976–1977). This Court upheld the constitutionality of the statute in *Proffitt* v. *Florida,* — U. S. —, No. 75–5706 (July 2, 1976).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 14, 1977

Re: 74-6593 - Gardner v. Florida

Dear Bill and Thurgood:

Is there any possibility that either or both of you might consider joining my opinion if I add something like this:

> "Mr. Justice Brennan and Mr. Justice Marshall join the opinion of the Court and the judgment of the Court insofar as it vacates the death sentence of petitioner but adhere to their view that capital punishment is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments."

If something like this is acceptable, perhaps Thurgood's opinion could be a dissent from the judgment, rather than a dissent from my opinion, as there is really no inconsistency between the two opinions (in fact, I am very pleased that you have written as you have).

I, of course, can understand why this suggestion may be wholly unacceptable. I put it forth only because I think it is important to obtain a Court opinion on the procedural issue if at all possible.

Respectfully,

JPS

Mr. Justice Brennan
Mr. Justice Marshall

pp. 1, 4, 12

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: MAR 18 1977

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74–6593

Daniel Wilbur Gardner, Petitioner, *v.* State of Florida. | On Writ of Certiorari to the Supreme Court of Florida.

[March —, 1977]

MR. JUSTICE STEVENS announced the judgment of the Court and delivered an opinion in which MR. JUSTICE STEWART and MR. JUSTICE POWELL joined.

Petitioner was convicted of first-degree murder and sentenced to death. When the trial judge imposed the death sentence he stated that he was relying in part on information in a presentence investigation report. Portions of the report were not disclosed to counsel for the parties. Without reviewing the confidential portion of the presentence report, the Supreme Court of Florida, over the dissent of two Justices, affirmed the death sentence. *Gardner* v. *Florida*, 313 So. 2d 675 (1975). We conclude that this procedure does not satisfy the constitutional command that no person shall be deprived of life without due process of law.

I

On June 30, 1973, the petitioner assaulted his wife with a blunt instrument, causing her death. On January 10, 1974, after a trial in the Circuit Court of Citrus County, Florida, a jury found him guilty of first-degree murder.

The separate sentencing hearing required by Florida law in capital cases [1] was held later on the same day. The State

[1] Fla. Stat. Ann. § 921.141 (Supp. 1976–1977). This Court upheld the constitutionality of the statute in *Proffitt* v. *Florida*, — U. S. —, No. 75–5706 (July 2, 1976).

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for Gardner v. Florida, No. 74-6593

No. 75-5800, Songer v. State, Fla. S. Ct. (unanimous). Except for the fact that the jury verdict in this case was a death recommendation, this case is quite similar to Gardner, perhaps because the same trial judge was involved. The court ordered the presentence report immediately after the verdict. Upon acknowledging receipt of the report the court noted for the record that counsel had been furnished "a copy of that portion thereof to which they are entitled." The court expressly reviewed "the factual information contained in said pre-sentence investigation." Petitioner did not object or request access to the confidential portion.

Petitioner did not focus on the confidential portion of the report on appeal, arguing principally that the report as a whole should not have been ordered because it was not specifically authorized under the Florida capital sentencing procedure. However, petitioner's brief at the Florida Supreme Court contains the following:

> "The p.s.i. report is not available for the record . . . and cannot be reviewed by appellant, his counsel, or, more importantly, this Court. Consequently, the judicial review established by Fla. Stat. § 921.141 and emphasized by this court in Dixon is impossible. Moreover, the allegations contained in the p.s.i. report are subject to no standard of proof even though aggravating circumstances 'must be proved beyond a reasonable doubt before being considered' by a sentencing judge. Dixon, supra, at 9." Response App. C, at 42.

Whether the whole or only the confidential portion of the report was "not available" for review at Florida Supreme Court is not clear, but petitioner's argument certainly applies to the confidential portion. Nothing in the Florida Supreme Court