

The Burger Court Opinion Writing Database

Moody v. Daggett

429 U.S. 78 (1976)

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



To: Mr. Justice Brennan
Mr. Justice Chief Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice
Mr. Justice

From: The Chief Justice
Circulated: **NOV 1 1976**

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6632

Minor Moody, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Loren Daggett, Warden. } peals for the Tenth Circuit.

[November —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to decide whether a federal parolee imprisoned for a crime committed while on parole is constitutionally entitled to a prompt parole revocation hearing when a parole violator warrant is issued and lodged with the institution of his confinement but not served on him. *

(1)

In 1962 petitioner was convicted in the United States District Court for the District of Arizona of the crime of rape on a Government Reservation, in violation of 18 U. S. C. § 1153. There was no appeal, and petitioner received a 10-year prison sentence. He was paroled in 1966 with almost six years remaining to be served. While on parole, petitioner shot and killed two other persons on the Fort Apache Indian Reservation. He was convicted on a guilty plea of manslaughter as to one victim and second-degree murder as to the other, for violation of 18 U. S. C. § 1153; he received concurrent 10-year sentences for these two offenses. These crimes constituted obvious violations of the terms of petitioner's 1966 parole. See 18 U. S. C. § 4203 (a) (1974 ed.).

Soon after petitioner's incarceration for the two homicides,

*

See 1A

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

CHAMBERS OF
THE CHIEF JUSTICE

November 8, 1976

Re: 74-6632 Moody v. Daggett

Dear Harry,

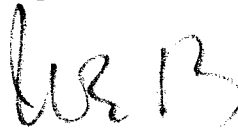
I am happy to adopt your suggestions one and two in the form you suggest.

As you noted in suggestion three, the full paragraph on page 9 does defer the question whether the granting of parole is a protected liberty interest. It thus reserves the due process issue in those cases in which different parole authorities are involved and in which it is alleged that issuance of the parole violator warrant would delay parole on the intervening sentence. Among those cases cited in footnote 1(a), this argument was mentioned only in *United States ex rel. Hahn v. Revis*, 520 F.2d at 237. In both cases, the point is discussed as a possibility, but not as if it were either seriously contended or proved as an effect of the warrant's issuance. I see nothing seriously inconsistent about citing the cases in footnote 1(a), the primary function of which is to reveal the conflict in federal cases.

As to your point four, I would not want to undertake a list of criteria, because it would be difficult to avoid its being under-inclusive. I am glad to change it to suggest behavior in confinement is one of the most important factors; it would be the most important if it were negative, and it would always be very important.

If the confinement record is neutral or positive, then the whole range of considerations including the prison record come into play.

Regards,



Mr. Justice Blackmun

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

From: Mr. Justice

Circulated:

Recirculated: 1976

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6632

Minor Moody, Petitioner, } On Writ of Certiorari to the
v. } United States Court of Ap-
Loren Daggett, Warden. } peals for the Tenth Circuit.

[November —, 1976]

MR. CHIEF JUSTICE BURGER delivered the opinion of the Court.

We granted certiorari in this case to decide whether a federal parolee imprisoned for a crime committed while on parole is constitutionally entitled to a prompt parole revocation hearing when a parole violator warrant is issued and lodged with the institution of his confinement but not served on him.¹

¹ This constitutional issue has divided the courts of appeals. Three of the circuits have concluded that a parolee convicted of crime committed while on parole is entitled to a due process hearing promptly upon issuance of the parole violator warrant and detainer. *Jones v. Johnston*, — U. S. App. D. C. —, — F. 2d — (Mar. 23, 1976); *United States ex rel. Hahn v. Revis*, 520 F. 2d 632 (CA7 1975), mandate recalled, No. 74-1057 (Aug. 27, 1975); *Cleveland v. Ciccone*, 517 F. 2d 1082 (CA8 1975). Other circuits have held that no due process requirements attach at this time. *Reese v. United States Bd. of Parole*, 530 F. 2d 231 (CA9 1976), pet. for cert. filed May 3, 1976, No. 75-6703; *Gaddy v. Michael*, 519 F. 2d 669 (CA4 1975), pet. for cert. filed Aug. 5, 1975, No. 75-5215; *Orr v. Saxbe*, No. 74-341 (MD Pa. Nov. 27, 1974), aff'd without opinion, 517 F. 2d 1399 (CA3 1975), pet. for cert. filed sub nom. *Reese v. Levy*, Oct. 10, 1975, No. 75-5594; *Colangelo v. United States Bd. of Parole*, No. 74-251 (WD Ohio Dec. 11, 1974), aff'd without opinion, 517 F. 2d 1404 (CA6 1975); *Small v. Britton*, 500 F. 2d 299 (CA10 1974); *Cook v. United States Attorney General*, 488 F. 2d 667 (CA5), cert. denied, 419 U. S. 846 (1974).

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

CHAMBERS OF
THE CHIEF JUSTICE

December 2, 1976

Re: No. 74-6632 - Moody v. Daggett

MEMORANDUM TO THE CONFERENCE:

The following cases were held for Moody v. Daggett. My recommendations for their disposition are as follows:

(1) 75-5215 - Gaddy v. Michael. (I will deny.)

Petitioner was convicted on state charges committed while on federal parole. A federal parole violator warrant was issued against him and executed on his release from state custody, when a parole revocation hearing was held. Petitioner claims no prejudice from the delay unique to his case which was not disposed of by Moody. CA 4 denied relief, and I will deny the petition.

(2) 75-5594 - Orr v. Levi. (I will deny.)

Petitioner was convicted of state crime committed while on federal parole. The U.S. Parole Board issued a parole violator warrant but executed it only after petitioner's release from state prison. Unsuccessful in CA 3, petitioner makes most of the contentions presented in Moody, except that there is no allegation that his state parole was adversely affected by issuance of the federal parole violator warrant; like Moody, he suggests no mitigating evidence he might have shown had an earlier hearing been granted. Petitioner's scheduled release date was March 12, 1976, so the case is surely moot by now. I will deny the petition.

(3) 75-5831 - Williams v. United States. (Possible G.V.&R.)

After petitioner was indicted for a state offense committed while on federal parole, the U.S. Parole Board issued a parole violator warrant against him. A year later upon petitioner's release by the state, the warrant was executed, a hearing was held, and parole revoked. Petitioner contends that the delay

- 2 -

was unreasonable in light of Barker v. Wingo and that two witnesses became unavailable in the interim. He does not explain the relevance of the witnesses, and there is no mention of them in the CA 5 opinion denying petitioner relief. I could grant the petition, vacate the judgment below and remand for reconsideration in light of Moody so that CA 5 might have the opportunity to review this claim; I could also simply deny the petition because he gives no suggestion as to what the "missing witnesses" would say.

- (4) 75-6603 - McDaniels v. California Adult Authority.
(I will deny.)

Petitioner was convicted and sentenced of federal crime committed while on state parole. California then issued a parole violator warrant and lodged it as a detainer with federal authorities. Petitioner unsuccessfully requested a parole revocation hearing, then petitioned the California Supreme Court for an original writ of habeas corpus. The California Court denied the petition, but noting its own decision in In re Shapiro, 14 Cal. 3d 711 (1975), requiring a prompt parole revocation hearing, directed petitioner to reapply to respondent for a hearing. Petitioner has come here instead, claiming the delay has deprived him of favorable conditions of confinement and of the opportunity to serve concurrent sentences. Shapiro was a federal constitutional decision. I will vote to deny the petition.

- (5) 75-6621 - Dorman v. United States Parole Comm'n.
(I will deny.)

Petitioner, on federal parole, was convicted on state charges and imprisoned. Respondent issued a parole violator warrant against him but declined to execute it. Petitioner then brought this habeas action. He has since been reparaoled on his federal sentence, but the case is apparently not moot because the delay has postponed the termination date of his parole until 1985. Petitioner makes no arguments not disposed of in Moody and demonstrates no prejudice. I will vote to deny the petition.

- (6) 75-6703 - Reese v. United States Parole Comm'n.
(I will deny.)

While on parole from a federal conviction petitioner was convicted of a state crime and imprisoned. Respondent issued a parole violator warrant against him and lodged it as a detainer.

- 3 -

Petitioner brought this habeas action seeking a prompt parole revocation hearing. CA 9 denied relief. Petitioner makes no particularized claims of prejudice aside from his argument that he is entitled to a speedy hearing. I will vote to deny the petition.

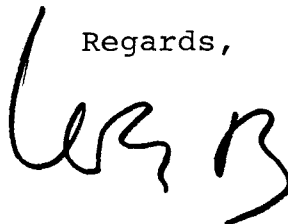
(7) 75-6872 - Gonzales v. United States. (I will deny)

While petitioner was confined on a state conviction, a federal parole violator warrant was issued against him and executed upon his release from state custody five months later. Petitioner's argument that Morrissey requires a prompt parole revocation hearing was rejected in Moody. CA 9 denied petitioner relief below, and I will vote to deny the petition.

(8) 76-355 - Sigler v. Byrd. (G.V. & R.)

Respondents are incarcerated in the District of Columbia's penal facility at Lorton. A federal parole violator warrant has been issued against them and lodged as a detainer. Respondents contend that delay in executing the warrants frustrates the intent of the sentencing courts to have their intervening sentences run concurrently. CADC held that Morrissey requires a prompt parole revocation hearing. Moody decides adversely to respondents both the Morrissey issue and the question of concurrent sentencing where the United States is the parole authority. I would grant the petition, vacate the judgment below, and remand for reconsideration in light of Moody.

Regards,



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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1976

RE: No. 74-6632 Moody v. Daggett

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

November 8, 1976

Re: No. 74-6632, Moody v. Daggett

Dear Chief,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.
/

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 4, 1976

Re: No. 74-6632 - Moody v. Daggett

Dear Chief:

Please join me.

Sincerely,



The Chief Justice

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 10, 1976

Re: No. 74-6632, Minor Moody v. Loren Daggett

Dear Chief:

Please join me.

Sincerely,

TM

T. M.

The Chief Justice

cc: The Conference

November 5, 1976

Re: No. 74-6632 - Moody v. Daggett

Dear Chief:

Here are some "nit-picking" suggestions:

1. The present footnote 1 defines detainer. A detainer is also used, I understand, when another charge is pending. In fact, I believe this use is the more common one. What do you think, therefore, of inserting the words "in this context" after the first two words of the footnote?

2. I mildly wonder about the phrase that follows the dash in the first sentence of the present footnote 1. I think I would prefer to insert the words "taking the inmate into custody or by" after the fourth word of the material following the dash. This, I believe, would be more in line with Morrissey.

3. The last sentence of the full paragraph on page 9 reserves the question where different parole authorities are involved. I believe, however, that some of the cases cited in the footnote to be inserted by page 1a involve that very situation, and are cited to point out the conflict. Perhaps you do not regard this as important.

4. In the center of the first paragraph on page 10 is the sentence, "In making this prophecy, a parolee's institutional record is perhaps the most significant factor." I am not at all sure. It is my understanding that parole boards have found more objective criteria (age, marital status, employment, educational level) to be better indicators. What do you think of replacing your sentence with the following: "This prophecy is based in part on such factors as institutional record and employment prospects which are best evaluated at the time release is actually contemplated"?

By separate note I am joining you, but I hope you will consider the above suggestions, particularly the last.

Sincerely,

HAB

The Chief Justice

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 5, 1976

Re: No. 74-6632 - Moody v. Daggett

Dear Chief:

Please join me.

Sincerely,

H. A. B.
—

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 4, 1976

No. 74-6632 Moody v. Daggett

Dear Chief:

Please join me.

Sincerely,

Lewis

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 4, 1976

Re: No. 74-6632 - Moody v. Daggett

Dear Chief:

Please join me.

Sincerely,

WR

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 2, 1976

Re: 74-6632 - Moody v. Daggett

Dear Chief:

In two or three days I hope to be able to
circulate my dissent.

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 Rahnquist

From: Mr. Justice Stevens

Circulated: 11/9/76

2nd DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 74-6632

Minor Moody, Petitioner, | On Writ of Certiorari to the
 v. | United States Court of Ap-
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[November —, 1976]

MR. JUSTICE STEVENS, dissenting.

The Court holds that the lodging of a detainer with an institution in which a parolee is confined does not have the kind of impact on his custodial status that requires a due process hearing. That holding does not answer the question which I regard as critical in this case. For it is clear that sooner or later a parole revocation hearing will be held; the question is whether the timing of that hearing is an element of the procedural fairness to which the parolee is constitutionally entitled. I am persuaded that it is.

I start from the premise that parole revocation is a deprivation of liberty within the meaning of the Fourteenth Amendment and therefore must be preceded by due process. The Court so held in *Morrissey v. Brewer*, 408 U. S. 471. In that case the revocation resulted in the return of the parolee to prison whereas in this case the parolee is already incarcerated for a separate offense. But in both situations the revocation affects the length of his confinement and therefore may result in a "grievous loss" of liberty.¹ Accordingly, it

¹ In *Wolff v. McDonald*, 418 U. S. 539, 558, the Court held that loss of "good-time credits" was a deprivation of liberty which required due process protections because the loss of credits could lengthen confinement. "We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 U. S. 114, 123 (1889). Since prisoners in

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

pp. 1-3, 6-7

From: Mr. Justice Stevens

Circulated: _____

Recirculated: 11/11/76

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 74-6632

Minor Moody, Petitioner, | On Writ of Certiorari to the
 v. | United States Court of Ap-
 Loren Daggett, Warden. | peals for the Tenth Circuit.

[November —, 1976]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN /
 joins, dissenting.

The Court holds that the lodging of a detainee with an institution in which a parolee is confined does not have the kind of impact on his custodial status that requires a due process hearing. That holding does not answer the question which I regard as critical in this case. For it is clear that sooner or later a parole revocation hearing will be held; the question is whether the timing of that hearing is an element of the procedural fairness to which the parolee is constitutionally entitled. I am persuaded that it is.

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¹ In *Wolff v. McDonnell*, 418 U. S. 539, 558, the Court held that loss of "good-time credits" was a deprivation of liberty which required due process protections because the loss of credits could lengthen confinement. "We think a person's liberty is equally protected, even when the liberty itself is a statutory creation of the State. The touchstone of due process is protection of the individual against arbitrary action of government, *Dent v. West Virginia*, 129 U. S. 114, 123 (1889). Since prisoners in