

The Burger Court Opinion Writing Database

Coker v. Georgia

433 U.S. 584 (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

June 8, 1977

Re: 75-5444 - Coker v. Georgia

MEMORANDUM TO THE CONFERENCE:

I will have my dissent out in typed
draft in this case sometime this week.

Regards,

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

75-5444 - Coker v. Georgia

From: The Chief Justice

Circulated: JUN 15 1977

Recirculated: _____

MR. CHIEF JUSTICE BURGER, dissenting:

In a case such as this, confusion often arises as to what is the Court's proper role in reaching a decision. Our task is not to give effect to our individual views on capital punishment; rather, we have taken oaths to determine what the Constitution permits a State to do under its reserved powers. In striking down the death penalty imposed upon the petitioner in this case, the Court has overstepped the bounds of proper constitutional adjudication by substituting its policy judgment for that of the State legislature. I accept that the Eighth Amendment's concept of disproportionality bars the death penalty for minor crimes. But rape is not a minor crime; hence the Cruel and Unusual Punishments Clause does not give the Members of this Court license to engraft their conceptions of proper public policy concerning the death penalty onto the considered legislative judgments of the States. Since I cannot agree that Georgia lacked the constitutional power to impose the penalty of death for rape, I dissent from the Court's judgment.

PP 1-5, 13, 16-18

n. 17 2

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

From: The Chief Justice

Circulated:

JUN 27 1977

Recirculated:

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
 Petitioner,
 v.
 State of Georgia.

On Writ of Certiorari to the Supreme Court of Georgia.

[June —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

In a case such as this, confusion often arises as to the Court's proper role in reaching a decision. Our task is not to give effect to our individual views on capital punishment; rather, we must determine what the Constitution permits a State to do under its reserved powers. In striking down the death penalty imposed upon the petitioner in this case, the Court has overstepped the bounds of proper constitutional adjudication by substituting its policy judgment for that of the state legislature. I accept that the Eighth Amendment's concept of disproportionality bars the death penalty for minor crimes. But rape is not a minor crime; hence the Cruel and Unusual Punishment Clause does not give the Members of this Court license to engraft their conceptions of proper public policy onto the considered legislative judgments of the States. Since I cannot agree that Georgia lacked the constitutional power to impose the penalty of death for rape, I dissent from the Court's judgment.

(1)

On December 5, 1971, the petitioner, Ehrlich Anthony Coker, raped and then stabbed to death a young woman. Less than eight months later Coker kidnapped and raped a second young woman. After twice raping this 16-year-old victim, he stripped her, severely beat her with a club, and

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 10, 1977

RE: No. 75-5444 Coker v. Georgia

Dear Byron:

Will you please add the following at the foot of your opinion in the above:

"Mr. Justice Brennan, concurring in the judgment:

Adhering 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, 428 U.S. 153, 227 (1976), I concur in the judgment of the Court setting aside the death sentence imposed under the Georgia rape statute."

Sincerely,

WB

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

✓

March 31, 1977

MEMORANDUM TO THE CONFERENCE

Re: No. 75-5444, Coker v. Georgia
No. 76-5206, Roberts v. Louisiana

I was asked to assign the opinions in these two cases. Byron has agreed to undertake an opinion in Coker, and John Stevens has agreed to undertake the Per Curiam opinion in Roberts.

P.S.
P.S.

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 9, 1977

75-5444, Coker v. Georgia

Dear Byron,

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

Sincerely yours,

P. S.
P.

Mr. Justice White

Copies to the 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

1st DRAFT

From: Mr. Justice White

SUPREME COURT OF THE UNITED STATES

Circulated: 5-6-77

Recirculated: _____

No. 75-5444

Ehrlich Anthony Coker,
 Petitioner, }
 v. } On Writ of Certiorari to the Su-
 State of Georgia. } preme Court of Georgia.

[May —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

Georgia Code Ann. § 26-2001 (1972) provides that "a person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less than 20 years."¹ Punishment is determined by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty may be imposed.² Petitioner Coker was convicted of rape and sentenced to death. Both conviction and sentence were affirmed by the Georgia Supreme Court. Coker was granted a writ of certiorari, — U. S. —, limited to the single claim, rejected by the Georgia court, that the punishment of death for rape violates the Eighth Amendment, which proscribes "cruel and unusual punishments" and which must be observed by the States as well as the Federal Government. *Robinson v. California*, 370 U. S. 660 (1962).

I

While serving various sentences for murder, rape, kidnapping and aggravated assault, petitioner escaped from the Ware

¹ The section defines rape as having "carnal knowledge of a female, forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ."

² See n. 3, *infra*.

Aug. 15

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
~~Mr.~~ Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Thurgood Marshall
Mr. Justice Stevens

From: Mr. Justice White

Circulated:

Recirculated: 5-16-77

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
Petitioner,
v.
State of Georgia. } On Writ of Certiorari to the Su-
preme Court of Georgia.

[May —, 1977]

MR. JUSTICE WHITE delivered the opinion of the Court.

Georgia Code Ann. § 26-2001 (1972) provides that "a person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less than 20 years."¹ Punishment is determined by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty may be imposed.² Petitioner Coker was convicted of rape and sentenced to death. Both conviction and sentence were affirmed by the Georgia Supreme Court. Coker was granted a writ of certiorari, — U. S. —, limited to the single claim, rejected by the Georgia court, that the punishment of death for rape violates the Eighth Amendment, which proscribes "cruel and unusual punishments" and which must be observed by the States as well as the Federal Government. *Robinson v. California*, 370 U. S. 660 (1962).

1

While serving various sentences for murder, rape, kidnapping and aggravated assault, petitioner escaped from the Ware

¹ The section defines rape as having "carnal knowledge of a female, forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ."

² See n. 3, *infra*.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 21, 1977

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Coker v. Georgia, No. 75-5444.

(1) Eberheart v. Georgia, No. 74-5174. Petitioner was convicted of rape and was sentenced to death. His petition challenges the constitutionality of his sentence under Furman v. Georgia, 408 U.S. 238 (1972). I will vote to vacate and remand.

(2) Hooks v. Georgia, No. 74-5954. Petitioner pled guilty to raping the same woman who had been raped moments earlier by Eberheart. He raises similar arguments. I will also vote to vacate and remand in this case.

Sincerely,



P. 5, 7, 9, 10, 14 + technical

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:

Recirculated: 6-23-77

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
Petitioner,
v.
State of Georgia. } On Writ of Certiorari to the Supreme Court of Georgia.

[May —, 1977]

MR. JUSTICE WHITE announced the judgment of the Court and filed an opinion in which MR. JUSTICE STEWART, MR. JUSTICE BLACKMUN, and MR. JUSTICE STEVENS, joined.

Georgia Code Ann. § 26-2001 (1972) provides that “[a] person convicted of rape shall be punished by death or by imprisonment for life, or by imprisonment for not less than 20 years.”¹ Punishment is determined by a jury in a separate sentencing proceeding in which at least one of the statutory aggravating circumstances must be found before the death penalty may be imposed.² Petitioner Coker was convicted of rape and sentenced to death. Both conviction and sentence were affirmed by the Georgia Supreme Court. Coker was granted a writ of certiorari, — U. S. —, limited to the single claim, rejected by the Georgia court, that the punishment of death for rape violates the Eighth Amendment, which proscribes “cruel and unusual punishments” and which must be observed by the States as well as the Federal Government. *Robinson v. California*, 370 U. S. 660 (1962).

¹ The section defines rape as having "carnal knowledge of a female, forcibly and against her will. Carnal knowledge in rape occurs when there is any penetration of the female sex organ by the male sex organ."

² See n. 3, *infra*.

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,)
Petitioner)
) On Writ of Certiorari to the
v.) Supreme Court of Georgia
)
State of Georgia)

Mr. Justice Marshall concurring in the judgment of the Court.

In Gregg v. Georgia, 428 U.S. 153, 231 (1976), I stated, "In Furman v. Georgia, 408 U.S. 238, 314 (1972) (concurring), I set forth at some length my views on the basic issue presented to the Court in these cases. The death penalty, I concluded, is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. That continues to be my view."

I then explained in some detail my reasons for reaffirming my position. I continue to adhere to those views in concurring in the judgment of the Court in this case.

MAY 17 1977

1st Printed
1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
Petitioner, }
 v. } On Writ of Certiorari to the Su-
 State of Georgia. } preme Court of Georgia.

[May —, 1977]

MR. JUSTICE MARSHALL concurring in the judgment of the Court.

In *Gregg v. Georgia*, 428 U. S. 153, 231 (1976), I stated, "In *Furman v. Georgia*, 408 U. S. 238, 314 (1972) (concurring), I set forth at some length my views on the basic issue presented to the Court in these cases. The death penalty, I concluded, is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments. That continues to be my view."

I then explained in some detail my reasons for reaffirming my position. I continue to adhere to those views in concurring in the judgment of the Court in this case.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 10, 1977

Re: No. 75-5444 - Coker v. Georgia

Dear Byron:

Please join me.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 9, 1977

No. 75-5444 Coker v. Georgia

Dear Byron:

Although I will join the judgment and most of your excellent opinion, I will probably say something - as I did at Conference - about aggravated rape. In some circumstances, the effect is considerably worse than death itself.

Sincerely,

Lewis

Mr. Justice White

1fp/ss

cc: The Conference

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

From: Mr. Justice Powell

Circulated: MAY 26 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
Petitioner,
v.
State of Georgia. } On Writ of Certiorari to the Su-
preme Court of Georgia.

[May —, 1977]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I concur in the judgment of the Court on the facts of this case, and also in its reasoning supporting the view that ordinarily the death penalty is disproportionate for the crime of raping an adult woman. Although rape is invariably a serious crime, there is no indication that petitioner's offense was committed with excessive brutality or that the victim sustained serious or lasting injury. The Court does not, however, limit its holding to the case before us or to similar cases. Rather, in an opinion that ranges well beyond what is necessary, the Court holds that capital punishment *always*—regardless of the circumstances—is a disproportionate penalty for the crime of rape.

The Georgia statute, sustained in *Gregg v. Georgia*, 428 U. S. 153 (1976), specifies aggravating circumstances that may be considered by the jury when appropriate. With respect to the crime of rape, only three such circumstances are specified: (i) the offense was committed by a person with a prior record of conviction for a capital felony; (ii) the offense was committed while the offender was engaged in another capital felony or in aggravated battery; and (iii) the offense was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." *Ante*, at 3. Only the

p. 28

Stylistic Changes Throughout.

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

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: JUN 2 1977

SUPREME COURT OF THE UNITED STATES

No. 75-5444

Ehrlich Anthony Coker,
 Petitioner, } On Writ of Certiorari to the Su-
 v. } preme Court of Georgia.
 State of Georgia.

[May —, 1977]

MR. JUSTICE POWELL, concurring in part and dissenting in part.

I concur in the judgment of the Court on the facts of this case, and also in its reasoning supporting the view that ordinarily the death penalty is disproportionate for the crime of raping an adult woman. Although rape invariably is a reprehensible crime, there is no indication that petitioner's offense was committed with excessive brutality or that the victim sustained serious or lasting injury. The Court does not, however, limit its holding to the case before us or to similar cases. Rather, in an opinion that ranges well beyond what is necessary, the Court holds that capital punishment *always*—regardless of the circumstances—is a disproportionate penalty for the crime of rape.

The Georgia statute, sustained in *Gregg v. Georgia*, 428 U. S. 153 (1976), specifies aggravating circumstances that may be considered by the jury when appropriate. With respect to the crime of rape, only three such circumstances are specified: (i) the offense was committed by a person with a prior record of conviction for a capital felony; (ii) the offense was committed while the offender was engaged in another capital felony or in aggravated battery; and (iii) the offense was "outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind, or an aggravated battery to the victim." *Ante*, at 3. Only the third circumstance describes in general the offense of aggra-

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

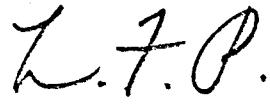
June 28, 1977

No. 75-5444 Coker v. Georgia

MEMORANDUM TO THE CONFERENCE:

In view of additions to the Chief Justice's dissent (e.g., p. 4 and 5 n. 2), I am adding to footnote 1 in my little opinion two additional paragraphs as enclosed.

I understand from the printer that this will occasion no problem.


L.F.P., Jr.

ss

lfp/ss 6/28/77

Coker

The dissent of the Chief Justice, relying on selected excerpts from my opinion in Furman, seeks to buttress the view that for sentencing purposes a meaningful distinction cannot be drawn between rapes regardless of the circumstances and effect upon the victim. Post, at 4, n. 2. The dissent emphasizes the difficulties of proof. But the jury system is designed and operates successfully to resolve precisely this type of factual issue. The law of negligence, for example, is replete with issues requiring the jury to determine degrees of culpability and the extent or permanency of physical and psychological injury.

I am complimented by the frequency with which the Chief Justice, in his dissent, cites and quotes from my opinion in Furman. That opinion, however, did not prevail, and - as with most of the writing in Furman - it now must be read in light of Gregg and Woodson, which have established the controlling general principles. But contrary to implications in the Chief Justice's dissent, my opinion in Furman did emphasize that the proportionality test as to rape should be applied on a case-by-case basis, noting that in some cases the death sentence would be "grossly excessive." Furman, supra, at 461. I remain in disagreement with the simplistic all-or-nothing views of the plurality opinion and the dissenting opinion of the Chief Justice.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1977

Re: No. 75-5444 - Coker v. Georgia

Dear Chief:

Please join me in your dissenting opinion.

Sincerely,

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 6, 1977

Re: 75-5444 - Coker v. Georgia

Dear Byron:

Please join me.

Respectfully,



Mr. Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

✓

June 17, 1977

Re: 75-5444 - Coker v. Georgia

Dear Chief:

It is a small point, but you may wish to correct the references in footnotes 8 and 18 to Potter as the author of the plurality opinion in Gregg, since it was actually a joint project.

Respectfully,



The Chief Justice

cc: Mr. Justice Stewart
Mr. Justice Powell