The Burger Court Opinion Writing Database

Bounds v. Smith

430 U.S. 817 (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: 75-915 Vernon Lee Bounds v. Robert (Bobby) Smith

Dear Thurgood:

I will await the dissent.

Regards,

WEB

Mr. Justice Marshall

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

CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1977

PERSONAL

No. 75-915 - Bounds v. Smith

Dear Harry:

Since you joined me in my Swain v. Pressley concurrence (3/22/77), I wonder if we have given adequate focus to the non-constitutional nature of federal habeas in state cases.

I enclose a work draft of a dissent which has been in "limbo" since I got sidetracked from this case ten days ago.

Both Potter and Bill Rehnquist probed at the flaw in Thurgood's treatment and the Court's result but, I do not think, sharply enough.

Where am I off track?

Regards,

WEB

Mr. Justice Blackmun

1. [illegible] - both [illegible] - [illegible]
2. [illegible] - other better alternatives

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

CHAMBERS OF
THE CHIEF JUSTICE

April 11, 1977

PERSONAL

Re: 75-915 - Bounds v. Smith

Dear Lewis:

I am troubled by what this case would do to us generally, and specifically to your Stone v. Powell.

The Court blandly equates a statutory right with a constitutional guarantee, and from that premise its result seems plausible.

What am I missing?

Enclosed is my first draft analysis.

Regards,

WEB

Mr. Justice Powell

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: APR 14 1977

Recirculated: _____

Re: 75-915 - Bounds v. Smith

MR. CHIEF JUSTICE BURGER, dissenting.

I am in general agreement with Mr. Justice Stewart and Mr. Justice Rehnquist, and join in their opinions. I write only to emphasize the theoretical and practical difficulties raised by the Court's opinion. The Court leaves us unenlightened as to the source of the "right of access to the courts" which it perceives or of the requirement that States "foot the bill" for assuring such access for prisoners who want to act as legal researchers and brief writers. The holding, in my view, has far-reaching implications which I doubt have been fully analyzed or their consequences adequately assessed in terms of practical realities.

It should be noted, first, that the access to the courts which these respondents are seeking is not for the purpose of direct appellate review of their criminal convictions. Abundant access for such purposes has been guaranteed by our prior decisions and by the States independently, e.g., Douglas v. California, 372 U.S. 353 (1953), and Griffin v. Illinois, 351 U.S. 12 (1956). Rather, the substantive right here is that of providing law libraries so that prisoners can mount collateral attacks on state convictions.

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: _____

Recirculated: APR 18 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[April —, 1977]

MR. CHIEF JUSTICE BURGER, dissenting.

I am in general agreement with MR. JUSTICE STEWART and MR. JUSTICE REHNQUIST, and join in their opinions. I write only to emphasize the theoretical and practical difficulties raised by the Court's holding. The Court leaves us unenlightened as to the source of the "right of access to the courts" which it perceives or of the requirement that States "foot the bill" for assuring such access for prisoners who want to act as legal researchers and brief writers. The holding, in my view, has far-reaching implications which I doubt have been fully analyzed or their consequences adequately assessed.

It should be noted, first, that the access to the courts which these respondents are seeking is not for the purpose of direct appellate review of their criminal convictions. Abundant access for such purposes has been guaranteed by our prior decisions *e. g., Douglas* v. *California,* 372 U. S. 353 (1953), and *Griffin* v. *Illinois,* 351 U. S. 12 (1956), and by the States independently. Rather, the underlying substantive right here is that of prisoners to mount collateral attacks on their state convictions. The Court is ordering the State to expend resources in support of the federally created right of collateral review.

This would be understandable if the federal right in question were constitutional in nature. For example, the State

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

November 5, 1976

RE: No. 75-915 Bounds v. Smith

Dear Chief:

I have assigned the above to Thurgood.

Sincerely,

Bill

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 2, 1977

RE: No. 75-915 Bounds v. Smith

Dear Thurgood:

I agree.

Sincerely,

Bill

Mr. Justice Marshall

cc: The Conference

✓

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 1, 1977

Re: No. 75-915, Bounds v. Smith

Dear Thurgood,

I shall await Bill Rehnquist's dissent.

Sincerely yours,

P.S.I.

Mr. Justice Marshall

Copies to the Conference

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

From: Mr. Justice Stewart

Circulated: APR 5 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[April —, 1977]

MR. JUSTICE STEWART, dissenting.

In view of the importance of the writ of habeas corpus in our constitutional scheme, "it is fundamental that access of prisoners to the courts for the purpose of presenting their complaints may not be denied or obstructed." *Wolff* v. *McDonnell,* 418 U. S. 539, 578, quoting *Johnson* v. *Avery,* 393 U. S. 483, 485. From this basic principle the Court five years ago made a quantum jump to the conclusion that a State has a constitutional obligation to provide law libraries for prisoners in its custody. *Younger* v. *Gilmore,* 404 U. S. 15.

Today the Court seeks to bridge the gap in analysis that made *Gilmore*'s authority questionable. Despite the Court's valiant efforts, I find its reasoning unpersuasive.

If, as the Court says, there is a constitutional duty upon a State to provide its prisoners with "meaningful access" to the federal courts, that duty is not effectuated by adhering to the unexplained judgment in the *Gilmore* case. More than 20 years of experience with *pro se* habeas corpus petitions as a Member of this Court and as a Circuit Judge have convinced me that "meaningful access" to the federal courts can seldom be realistically advanced by the device of making law libraries available to prison inmates untutored in their use. In the vast majority of cases, access to a law library will, I am convinced, simply result in the filing of pleadings heavily larded

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 14, 1977

Re: No. 75-915 - Bounds v. Smith

Dear Thurgood:

I shall await the dissent in this case.

Sincerely,

Byron

Mr. Justice Marshall

Copies to Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 29, 1977

Re: No. 75-915 — Vernon Lee Bounds, et al.
v. Robert (Bobby) Smith,
et al.

Dear Thurgood:

Please join me.

Sincerely,

Mr. Justice Marshall

Copies to the Conference

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

The issue in this case is whether States must protect the right of prisoners to access to the courts by providing them with law libraries or alternative sources of legal knowledge. In *Younger* v. *Gilmore*, 404 U. S. 15 (1971), we held *per curiam* that such services are constitutionally mandated. Petitioners, officials of the State of North Carolina, ask us to overrule that recent case, but for reasons explained below, we decline the invitation and reaffirm our previous decision.

I

Respondents are inmates incarcerated in correctional facilities of the Division of Prisons of the North Carolina Department of Corrections. They filed three separate actions under 42 U. S. C. § 1983, all eventually consolidated in the District Court for the Eastern District of North Carolina. Respondents alleged, in pertinent part, that they were denied access to the courts in violation of their Fourteenth Amendment rights by the State's failure to provide legal research facilities.[1]

[1] The complaints also alleged a number of other constitutional violations not relevant to the issue now before us.

— 1 J

p 12, 13

STYLISTIC CHANGES THROUGHOUT.

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

From: Mr. Justice Marshall

Circulated: _____

Recirculated: FEB 14 1977

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al. | On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February —, 1977]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

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[1] The complaints also alleged a number of other constitutional violations not relevant to the issue now before us.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 17, 1977

Re: No. 75-915 - Bounds v. Smith

Dear Bill:

Forget about it. Take care of your health. On at least two other occasions the healthy Justices have held up opinions of mine for 6 to 8 months. Take it easy.

Sincerely,

TM

T. M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 3, 1977

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 75-915, Bounds v. Smith: No. 76-525, Schanbarger v. McNulty

Petitioner claims that his Fourteenth Amendment rights were violated when he was confined in the Albany, N.Y., County Jail "without access to a library with criminal law books that would be needed to defend one's self from incarceration." In the District Court, petitioner sought injunctive relief against confinement of anyone in such circumstances (there were also a number of other claimed constitutional violations alleged, none of which warrant review), punitive damages and attorney's fees. District Judge Foley denied relief, finding that the "law book deprivation is lacking . . . detail and substance in the form made and does not rise to constitutional stature. See Johnson v. Avery, 393 U.S. 483 (1969); Younger v. Gilmore, 404 U.S. 15 (1971)." The Court of Appeals affirmed on this opinion. The petition provides no further factual illumination of the claim, and the response asserts that the jail did have a library containing criminal law books, but that they were not of assistance to petitioner with his particular problem.

Petitioner was released from the jail on October 30, 1974, after a three-week incarceration, and there was no class action certification. Accordingly, his claim for injunctive relief appears to be moot. A claim for punitive damages for failure to provide law books pertinent to petitioner's case during a three-week jail term seems plainly without merit, even after Bounds. Accordingly, I will vote to deny the petition when it is discussed at the May 12 Conference.

TM

T. M.

1

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

(3)

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 10, 1977

Re: No. 75-915 - Bounds v. Smith

Dear Thurgood:

Please join me.

Sincerely,

Harry

Mr. Justice Marshall

cc: The Conference

April 12, 1977

Re: No. 75-915 - Bounds v. Smith

Dear Chief:

I do not believe that you are "off the track."

My hangup is Younger v. Gilmore, which was an argued case decided by a unanimous Court. In addition, North Carolina was given a number of choices and opted for prison libraries. The choice, I think, was a poor one, for other better alternatives were available.

Potter has faced Gilmore squarely. Perhaps it should be overruled. So long as it is on the books, however, I felt I had no choice other than to join Thurgood's opinion.

Sincerely,

HAB

The Chief Justice

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

called + agreed to change — LFP will [illegible]
2/11

February 11, 1977

75-915 Bounds v. Smith

Dear Thurgood:

I have one language suggestion for your fine opinion for the Court.

The first sentence on page 12 now reads as follows:

> "We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to insure that inmates are able to prepare and file meaningful legal papers by providing prisoners with adequate law libraries or adequate assistance from persons trained in the law."

The holding that the Constitution requires the state "to insure" that inmates are able to "prepare and file meaningful legal papers" can be read (although I am sure you do not so intend it) as imposing a virtually impossible burden on the state. All of us know that even with experienced jail house lawyers, a substantial percentage of legal papers filed by prisoners are not "meaningful". Indeed, access to our library here at the Supreme Court would not "insure" the ability of inmates to prepare "meaningful legal papers." I am afraid, however, that the language above would be construed as imposing a far heavier duty on states than the remainder of your opinion appears to require.

Possibly the sentence could be reframed along the following lines:

> "We hold, therefore, that the fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers . . ."

If you are disposed to make this modest change in language, I will be happy to join you.

Sincerely,

L Lewis

Mr. Justice Marshall

LFP/lab

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 11, 1977

No. 75-915 Bounds v. Smith

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Mr. Justice Marshall

lfp/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: APR 15 1977

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[April —, 1977]

MR. JUSTICE POWELL, concurring.

The decision today recognizes that a prison inmate has a constitutional right of access to the courts to assert such procedural and substantive rights as may be available to him under state and federal law. It does not purport to pass on the kinds of claims that the Constitution requires state or federal courts to hear. In *Wolff* v. *McDonnell*, 418 U. S. 539, 577–580 (1974), where we extended the right of access recognized in *Johnson* v. *Avery*, 393 U. S. 483 (1969), to civil rights actions arising under the Civil Rights Act of 1891, we did not suggest that the Constitution required such actions to be heard in federal court. And in *Griffin* v. *Illinois*, 351 U. S. 12 (1956), and *Douglas* v. *California*, 372 U. S. 353 (1963), where the Court required the States to provide trial records and appellate counsel for indigents, the opinions explicitly recognized that the Constitution does not require any appellate review of state convictions. Similarly, the holding here implies nothing as to the constitutionally required scope of review of prisoners' claims in state or federal court.

With this understanding, I join the opinion of the Court.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 31, 1977

Re: No. 75-915 - Bounds v. Smith

Dear Thurgood:

In due course I will try to get out a dissent in this case.

Sincerely,

WHR

Mr. Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 16, 1977

Re: <u>No. 75-915 - Bounds v. Smith</u>

Dear Thurgood:

I regret to say that I fear my dissent in this case will not be forthcoming for a week or two. I am genuinely sorry to have held you up in this way, but for some reason or other my mental energy has flagged in the same way that my physical energy did as a result of my back problem.

Sincerely,

Bill

Mr. Justice Marshall

Copies to the Conference

Dear Bill

Forget about it. Take care of your health. On at least two other occasions ~~[illegible]~~ healthy justices have held up opinions of mine for 6 to 8 months. Take it easy

TM

cc 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: 3 MAR

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 75-915

Vernon Lee Bounds, etc., et al., Petitioners, *v.* Robert (Bobby) Smith et al.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[March —, 1977]

MR. JUSTICE REHNQUIST, dissenting.

The Court's opinion in this case serves the unusual purpose of supplying as good line of reasoning as is available to support a two paragraph *per curiam* opinion six years ago in *Younger* v. *Gilmore,* 404 U. S. 15 (1971), which made no pretence of containing any reasoning at all. The Court's reasoning today appears to be that we have long held that prisoners have a "right of access" to the courts in order to file petitions for habeas corpus, and that subsequent decisions have expanded this concept into what the Court today describes as a "meaningful right of access." So, we are told, the right of a convicted prisoner to "meaningful access" extends to requiring the State to furnish such prisoners law libraries to aid them in piecing together complaints to be filed in the courts. This analysis places questions of prisoner access on a "slippery slope," and I would reject it because I believe that the early cases upon which the Court relies have a totally different rationale than underlies the present holding.

There is nothing in the United States Constitution which requires that a convict serving a term of imprisonment pursuant to a final judgment of a court of competent jurisdiction in a state penal institution have a "right of access" to the federal courts in order to attack his sentence. In the first case upon which the Court's opinion relies, *Ex parte Hull,* 312

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 1, 1977

Re: 75-915 - Bounds v. Smith

Dear Thurgood:

Please join me.

Respectfully,

John

Mr. Justice Marshall

Copies to the Conference