

# The Burger Court Opinion Writing Database

## *Browder v. Director, Department of Corrections of Illinois*

434 U.S. 257 (1978)

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



DM

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.


January 19, 1977

RE: No. 76-5325 Browder v. Director, Department of  
Corrections of Illinois

Dear Byron:

Please join me.

Sincerely,



Mr. Justice White

cc: 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

From: Mr. Justice White

1st DRAFT

Circulated: 1-18-77

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# **SUPREME COURT OF THE UNITED STATES**

**BEN EARL BROWDER v. DIRECTOR, DEPARTMENT  
 OF CORRECTIONS OF ILLINOIS**

**ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES  
 COURT OF APPEALS FOR THE SEVENTH CIRCUIT**

No. 76-5325. Decided January —, 1977

MR. JUSTICE WHITE, dissenting.

Petitioner in this case was convicted of rape in 1971 after a jury trial in Illinois state court; he was sentenced to 15 years' imprisonment. In January of 1975, he petitioned for a writ of habeas corpus in federal district court claiming that his conviction was obtained by use of evidence resulting from an unlawful arrest. In February, respondent filed a motion to dismiss the petition; respondent did not request an evidentiary hearing on the lawfulness of the arrest but apparently chose to rely on the record of the state-court proceedings. On October 21, 1975, the District Court denied respondent's motion, ordered that the habeas corpus petition be granted, and stayed execution of the writ for 60 days so that the State might have an opportunity to retry petitioner. Respondent did not take a timely appeal from this final order.

On November 18, 28 days after the District Court's order, respondent filed a motion styled "Motion to Further Stay of Execution of the Writ of Habeas Corpus and to Conduct an Evidentiary Hearing." On December 8, the District Court, over petitioner's objection, further stayed execution of the writ pending an evidentiary hearing; the Court noted, without explanation, that the hearing request should not be denied solely because it was untimely. After a hearing, the Court denied, on January 26, 1976, what it characterized as the "motion to reconsider," found that the writ was properly issued on October 21, and stayed execution of the writ for five days. The next day, and 98 days after the October 21 order, respondent filed a notice of appeal. Without address-

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 19, 1977

Re: No. 76-5325, Ben Earl Browder v. Director, Department  
of Corrections of Illinois

Dear Byron:

Please join me in your dissent.

Sincerely,



T. M.

Mr. Justice White

cc: The Conference

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

January 19, 1977

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

No. 76-5325 Browder v. Director, Department  
of Corrections

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Dear Byron:

Your dissenting opinion, circulated January 18, is quite persuasive.

I would be glad to join a summary reversal based on your opinion as a Per Curiam.

I do not think, however, that the issue is of sufficient general importance, or likely to occur with sufficient frequency, to warrant our giving the case the "full treatment

Sincerely,



Mr. Justice White

lfp/ss

cc: The Conference