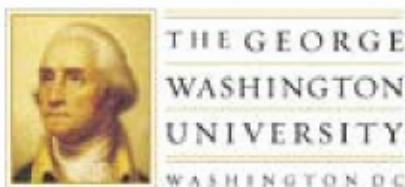


The Burger Court Opinion Writing Database

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



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

CHAMBERS OF
THE CHIEF JUSTICE

December 27, 1977

Dear Lewis:

Re: 76-5325 Browder v. Dir., Dept. of Corrections, Ill.

I join.

The result is a gross miscarriage of justice, but we have a choice between rules and chaos. This is more of the problem of overworked prosecutors and some incompetent ones.

Regards,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 28, 1977

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

Dear Lewis:

I agree.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 3, 1978

Re: No. 76-5325, Browder v. Director,
Ill. Dept. of Corrections

Dear Lewis,

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

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

P.S.
✓

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 27, 1977

Re: No. 76-5325 - Browder v. Director, Dept. of
Corrections of Illinois

Dear Lewis:

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1977

Re: No. 76-5325 -- Browder v. Dir., Dept. of
Corrections of Illinois

Dear Lewis:

Please join me.

Sincerely,

T.M.
T.M.

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 3, 1978

Re: No. 76-5325 - Browder v. Director

Dear Lewis:

I am sending to the Printer today a short separate concurrence. Nevertheless, I join your opinion.

Sincerely,



Mr. Justice Powell

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: 1/4/78

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5325

Ben Earl Browder, Petitioner,	}	On Writ of Certiorari to
v.		the United States Court of
Director, Department of		Appeals for the Seventh
Corrections of Illinois.		Circuit.

[January —, 1978]

MR. JUSTICE BLACKMUN, concurring.

I join the Court's opinion but add the comment that, under slightly altered circumstances, respondent's position might be sustained under Fed. Rule Civ. Proc. 60 (b)(1) or (6). This would be done by treating the District Court's December 8, 1975, order as an order granting relief from judgment and the post-evidentiary-hearing order dated January 26, 1976, and entered January 28, as an order reinstating judgment. With a judgment thus newly entered, respondent's notice of appeal would have been timely under Fed. Rule App. Proc. 4 (a) when it was filed on January 27. See *Edwards v. Louisiana*, 520 F. 2d 321 (CA5 1975), cert. denied, 423 U. S. 1089 (1976).

I would not decline to treat the matter under Rule 60 (b) merely because respondent did not *label* its initial motion for a new evidentiary hearing as a "Rule 60 (b) motion," for that would exalt nomenclature over substance. 7 Moore, Federal Practice ¶ 60.42, at 903 ("[M]islabelled moving papers may be treated as a motion under 60 (b), in the absence of prejudice"). Certainly petitioner recognized in the District Court that Rule 60 (b) might provide a basis for the December 8 order; petitioner moved there unsuccessfully to vacate the order on the ground that respondent's motion did not satisfy the "reasonable time" standard nor meet the substantive categories of Rule 60 (b). Petitioner's Memorandum of Law in Support of Motion to Vacate 2-3; Brief for Petitioner in the Court of Appeals 13.

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: 12/21/77

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5325

Ben Earl Browder, Petitioner,	}	On Writ of Certiorari to
<i>v.</i>		the United States Court of
Director, Department of Corrections of Illinois.		Appeals for the Seventh Circuit.

[January —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide whether the Court of Appeals lacked jurisdiction to review an order directing petitioner's discharge from respondent's custody because respondent's appeal was untimely. In order to resolve this question, we must consider the applicability of Federal Rules of Civil Procedure 52 (b) and 59 in habeas corpus proceedings. Because we conclude that the Court of Appeals lacked jurisdiction, we reverse.¹

¹ In light of this disposition, it is unnecessary to reach any of the other questions presented. In addition to his jurisdictional point, petitioner contended that the Court of Appeals erred in finding the facts *de novo* on the issue of probable cause and in concluding that petitioner's arrest was lawful. On the latter point, petitioner maintained that the arrest of four youths in the Browder home violated the Fourth Amendment's requirement of probable cause, *Davis v. Mississippi*, 394 U. S. 721 (1969), and, even assuming the existence of probable cause, that the Fourth and Fourteenth Amendments required the police to obtain an arrest warrant before entering the Browder home to make the arrests. The parties also have disputed whether litigation of petitioner's Fourth Amendment claim on federal habeas corpus was barred either by *Wainwright v. Sykes*, 97 S. Ct. 2497 (1977), or by *Stone v. Powell*, 428 U. S. 465 (1976), and whether the Seventh Circuit's "unpublished opinion" rule is valid. We leave these questions to another day.

○
 Finally, petitioner
 questioned the
 validity of / s

Stylistic Changes Throughout.

See pp. 5, 6, 13

L. J. [unclear]

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

2nd DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES DEC 29 1977

No. 76-5325

Ben Earl Browder, Petitioner, <i>v.</i> Director, Department of Corrections of Illinois.	}	On Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit.
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[January —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide whether the Court of Appeals lacked jurisdiction to review an order directing petitioner's discharge from respondent's custody because respondent's appeal was untimely. In order to resolve this question, we must consider the applicability of Federal Rules of Civil Procedure 52 (b) and 59 in habeas corpus proceedings. Because we conclude that the Court of Appeals lacked jurisdiction, we reverse.¹

¹ In light of this disposition, it is unnecessary to reach any of the other questions presented. In addition to his jurisdictional point, petitioner contended that the Court of Appeals erred in finding the facts *de novo* on the issue of probable cause and in concluding that petitioner's arrest was lawful. On the latter point, petitioner maintained that the arrest of four youths in the Browder home violated the Fourth and Fourteenth Amendments' requirement of probable cause, *Davis v. Mississippi*, 394 U. S. 721 (1969), and, even assuming the existence of probable cause, that the Fourth and Fourteenth Amendments required the police to obtain an arrest warrant before entering the Browder home to make the arrests. The parties also have disputed whether litigation of petitioner's Fourth Amendment claim on federal habeas corpus was barred either by *Wainwright v. Sykes*, 97 S. Ct. 2497 (1977), or by *Stone v. Powell*, 428 U. S. 465 (1976). Finally, petitioner questioned the validity of the Seventh Circuit's "unpublished opinion" rule. We leave these questions to another day.

Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall ✓
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: _____

Recirculated: 1-5-78

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5325

Ben Earl Browder, Petitioner,	}	On Writ of Certiorari to
v.		the United States Court of
Director, Department of Corrections of Illinois.		Appeals for the Seventh Circuit.

[January —, 1978]

MR. JUSTICE POWELL delivered the opinion of the Court.

This case requires us to decide whether the Court of Appeals lacked jurisdiction to review an order directing petitioner's discharge from respondent's custody because respondent's appeal was untimely. In order to resolve this question, we must consider the applicability of Federal Rules of Civil Procedure 52 (b) and 59 in habeas corpus proceedings. Because we conclude that the Court of Appeals lacked jurisdiction, we reverse.¹

¹ In light of this disposition, it is unnecessary to reach any of the other questions presented. In addition to his jurisdictional point, petitioner contended that the Court of Appeals erred in finding the facts *de novo* on the issue of probable cause and in concluding that petitioner's arrest was lawful. On the latter point, petitioner maintained that the arrest of four youths in the Browder home violated the Fourth and Fourteenth Amendments' requirement of probable cause, *Davis v. Mississippi*, 394 U. S. 721 (1969), and, even assuming the existence of probable cause, that the Fourth and Fourteenth Amendments required the police to obtain an arrest warrant before entering the Browder home to make the arrests. The parties also have disputed whether litigation of petitioner's Fourth Amendment claim on federal habeas corpus was barred either by *Wainwright v. Sykes*, 97 S. Ct. 2497 (1977), or by *Stone v. Powell*, 428 U. S. 465 (1976). Finally, petitioner questioned the validity of the Seventh Circuit's "unpublished opinion" rule. We leave these questions to another day.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 4, 1977

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

Dear Harry:

Please join me in your concurring opinion in this case. Since you state in your opinion that you are joining Lewis' opinion for the Court, I, too, of course, join Lewis' opinion for the Court.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

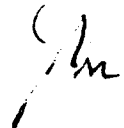
December 27, 1977

Re: 76-5325 - Browder v. Director, Dept. of
Corrections of Illinois

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference