

The Burger Court Opinion Writing Database

Durst v. United States

434 U.S. 542 (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

February 15, 1978

Dear Bill:

Re: 76-5935 Durst v. United States

I join.

Regards,

WEB

Mr. Justice Brennan

cc: The Conference

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Black
 Mr. Justice Powell
 Mr. Justice Rehnquist
 Mr. Justice Stevens

From: Mr. Justice Brennan
 Circulated

Recirculated

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5935

Rickey Lee Durst et al,
 Petitioners,
 v.
 United States. } On Writ of Certiorari to the
 United States Court of Appeals
 for the Fourth Circuit.

[February —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We granted certiorari, — U. S. — (1977), to decide whether a trial judge who suspends a sentence of commitment and places a youth offender on probation pursuant to § 5010 (a) of the Federal Youth Corrections Act, 18 U. S. C. § 5005 *et seq.*, may impose a fine, or require restitution, or both, as conditions of probation.¹

Each of the five petitioners pleaded guilty in a separate proceeding before a United States Magistrate to an offense for which penalties of fine or imprisonment or both are provided. Petitioners Durst and Rice pleaded guilty to obstruction of the mails in violation of 18 U. S. C. § 1701. Petitioners Bly-

¹ Courts of Appeals have reached conflicting conclusions concerning whether a fine is a permissible condition of a § 5010 (a) sentence. The Court of Appeals for the Ninth Circuit, *United States v. Bowens*, 514 F. 2d 440 (1975); *United States v. Mollet*, 510 F. 2d 625 (1975), in disagreement with the Court of Appeals for the Fourth Circuit in the instant case, has held that imposition of a fine is improper. The Ninth Circuit, *United States v. Hayes*, 474 F. 2d 965 (1973), and the Fifth Circuit, *Cramer v. Wise*, 501 F. 2d 959 (1974), have held that a fine is not permissible in conjunction with a § 5010 (b) sentence. With respect to orders of restitution, however, the Courts of Appeals that have addressed the question, the Ninth Circuit in *United States v. Hix*, 545 F. 2d 1247 (1976), and the Third Circuit in *United States v. Buechler*, 557 F. 2d 1002 (1977), agree with the Court of Appeals in this case that an order of restitution is proper.

Stylistic changes throughout

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

From: Mr. Justice Brennan

Circulated: _____

Recirculated: 2/16/78

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 76-5935

Rickey Lee Durst et al, Petitioners, *v.* United States. } On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit.

[February —, 1978]

MR. JUSTICE BRENNAN delivered the opinion of the Court.

We granted certiorari, 430 U. S. 929 (1977), to decide whether a trial judge who suspends a sentence of commitment and places a youth offender on probation pursuant to § 5010 (a) of the Federal Youth Corrections Act, 18 U. S. C. § 5005 *et seq.*, may impose a fine, or require restitution, or both, as conditions of probation.¹

Each of the five petitioners pleaded guilty in a separate proceeding before a United States Magistrate to an offense for which penalties of fine or imprisonment or both are provided. Petitioners Durst and Rice pleaded guilty to obstruction of the mails in violation of 18 U. S. C. § 1701. Petitioners Bly-

¹ Courts of Appeals have reached conflicting conclusions concerning whether a fine is a permissible condition of a § 5010 (a) sentence. The Court of Appeals for the Ninth Circuit, *United States v. Bowens*, 514 F. 2d 440 (1975); *United States v. Mollet*, 510 F. 2d 625 (1975), in disagreement with the Court of Appeals for the Fourth Circuit in the instant case, has held that imposition of a fine is improper. The Ninth Circuit, *United States v. Hayes*, 474 F. 2d 965 (1973), and the Fifth Circuit, *Cramer v. Wise*, 501 F. 2d 959 (1974), have held that a fine is not permissible in conjunction with a § 5010 (b) sentence. With respect to orders of restitution, however, the Courts of Appeals that have addressed the question, the Ninth Circuit in *United States v. Hix*, 545 F. 2d 1247 (1976), and the Third Circuit in *United States v. Buechler*, 557 F. 2d 1002 (1977), agree with the Court of Appeals in this case that an order of restitution properly may be imposed in conjunction with a sentence under § 5010 (a).

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

CHAMBERS OF
JUSTICE W.H. J. BRENNAN, JR.

February 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 76-5935, Durst v. United States

No. 76-5632, Oliver v. United States

Oliver, which was decided by the Fourth Circuit prior to its decision in Durst, held that imposition of a fine as a condition of probation imposed under 18 U.S.C. § 5010 is consistent with the Youth Corrections Act. The Fourth Circuit relied on the reasoning in Oliver in deciding that both a fine and restitution are permissible conditions of probation under § 5010 (a) in Durst. Our opinion in Durst notes this fact, and it should be clear that our affirmance in Durst indicates that Oliver was correctly decided.

Accordingly, I shall vote to deny cert.

Sincerely,

WJB, Jr.

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

CHAMBERS OF
JUSTICE POTTER STEWART

February 8, 1978

No. 76-5935, Durst v. U. S.

Dear Bill,

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

Sincerely yours,

P. S.
1

Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 8, 1978

Re: 76-5935 - Durst v. U. S.

Dear Bill,

I agree.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 9, 1978

Re: No. 76-5935, Durst v. U. S.

Dear Bill:

Please join me.

Sincerely,



T. M.

Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 8, 1978

Re: No. 76-5935 - Durst v. United States

Dear Bill:

At the end of your opinion will you please affix a notation that I took no part in the consideration or decision of this case.

Sincerely,



Mr. Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 8, 1978

No. 76-5935 Durst v. United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 9, 1978

Re: No. 76-5935 Durst v. United States

Dear Bill:

Please join me.

Sincerely,



Mr. Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 8, 1978

Re: 76-5935 - Durst v. United States

Dear Bill:

Please join me.

Respectfully,



Mr. Justice Brennan

Copies to the Conference