

# The Burger Court Opinion Writing Database

*Bell v. Ohio*

438 U.S. 637 (1978)

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



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  
JUN 26 1978

Circulated: \_\_\_\_\_

Recirculated: \_\_\_\_\_

No. 76-6513 - Bell v. Ohio

We granted certiorari in this case to consider whether the imposition of the death penalty upon Willie Lee Bell pursuant to Ohio Rev. Code Ann. Secs. 2929.01-.04 (1975 Rep. Vol.) violated the Eighth and Fourteenth Amendments.

I. .

Bell was convicted of aggravated murder with the specification that the murder occurred in the course of a kidnapping. He was sentenced to death.

On October 16, 1974, Bell, who was then 16 years old, met a friend, Samuel Hall, who was then 18, at a youth center in Cincinnati, Ohio. They left the center and went to Hall's home where Hall borrowed a car and proceeded to drive Bell around

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 26, 1978

HERETOFORE HELD FOR DECISIONS IN Nos. 76-6513 -  
Bell v. Ohio and 76-6997 - Lockett v. Ohio

MEMORANDUM FOR THE CONFERENCE

Re: No. 76-1308 - Woods v. Ohio

I WILL VOTE TO GRANT,  
VACATE THE SENTENCE,  
AND REMAND FOR FURTHER  
PROCEEDINGS IN LIGHT  
OF LOCKETT

Petitioners planned to rob a store but walked away from the store when they heard nearby fire sirens. Someone spotted one of them on the roof of the store and called the police. Petitioners shot the policeman who arrived and stopped them as they were leaving the store. Petitioners were convicted of aggravated murder while fleeing after attempting to commit aggravated robbery and were sentenced to death pursuant to Ohio's death penalty statute.

Petitioners contend that Ohio's death penalty statute is unconstitutional for the following reasons: (1) the statute does not permit particularized consideration of the relevant aspects of the character and record of each defendant --especially in mitigation-- and lacks the standards of accuracy and reliability that are now required, (2) the statute requires the defendant to prove mitigating factors by a preponderance of the evidence, (3) there is no jury participation in sentencing, and (4) the Ohio appellate review system fails to ensure proportionality.

Contention number 1 is similar to that found meritorious in Lockett. I will, therefore, vote to grant, vacate the sentence, and remand for further proceedings in light of Lockett.

Bren 77

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

CHAMBERS OF  
THE CHIEF JUSTICE

June 27, 1978

Re: No. 76-6513 - Bell v. Ohio; and No. 76-6997 -  
Lockett v. Ohio

Dear Bill:

I cannot fault you in the slightest on your problem of your June 27 memo. Moreover, the Print Shop is an added problem.

Regards,

CRB

Mr. Justice Rehnquist

Copies to the Conference

## CHANGES AS MARKED:

pgs. 2, 5

Mr. Justice	Welles	13
Mr. Justice	Black	13
Mr. Justice	McReynolds	13
Mr. Justice	Brandeis	13
Mr. Justice	Van Devanter	13
Mr. Justice	Stone	13

From: The Chief Justice

**Circulated:**

Recirculated: JUN 30 1978

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-6513

Willie Lee Bell, Petitioner,  
v.  
State of Ohio. } On Writ of Certiorari to the Supreme Court of Ohio.

[July 3, 1978]

THE CHIEF JUSTICE delivered the opinion of the Court with respect to the facts of the case and the proceedings below (Part I), together with an opinion (Part II) in which MR. JUSTICE STEWART, MR. JUSTICE POWELL, and MR. JUSTICE STEVENS joined, on the constitutionality of the statute under which petitioner was sentenced to death, and announced the judgment of the Court.

We granted certiorari in this case to consider whether the imposition of the death penalty upon Willie Lee Bell pursuant to Ohio Rev. Code Ann. §§ 2929.01–2929.04 (1975 Rep. Vol.) violated the Eighth and Fourteenth Amendments.

J

Bell was convicted of aggravated murder with the specification that the murder occurred in the course of a kidnapping. He was sentenced to death.

On October 16, 1974, Bell, who was then 16 years old, met a friend, Samuel Hall, who was then 18, at a youth center in Cincinnati, Ohio. They left the center and went to Hall's home where Hall borrowed a car and proceeded to drive Bell around the area. They followed a car driven by 64-year-old Julius Graber into a parking garage, and Hall, armed with a "sawed off" shotgun, forced Graber to surrender his car keys. Graber was placed, unharmed, into the trunk of his own car. Hall then drove Garber's car and Bell followed in Hall's car to

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

CHAMBERS OF  
JUSTICE Wm. J. BRENNAN, JR.

May 26, 1978

Dear John:

When you asked me yesterday whether I might join an opinion reversing in Lockett and Bell and I said that I had certainly not foreclosed that possibility I forgot that they were January cases in which I am not participating.

Sincerely,

*Bill*

Mr. Justice Stevens

*Brennan 77*

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

CHAMBERS OF  
JUSTICE POTTER STEWART

June 27, 1978

Re: No. 76-6513 - Bell v. Ohio

Dear Chief,

I am glad to join your  
opinion.

Sincerely yours,

The Chief Justice

Copies to the Conference

PS.

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

CHAMBERS OF  
JUSTICE THURGOOD MARSHALL

January 23, 1978

MEMORANDUM TO THE CONFERENCE

Re: No. 76-6513, Bell v. Ohio

I vote to reverse the judgment upholding imposition of the death penalty. I continue to adhere to my view, expressed in Furman v. Georgia, 408 U.S. 238, 314, Gregg v. Georgia, 428 U.S. 153, 1231, and Coker v. Georgia, 45 U.S.L.W. 4961, 4966, that the death penalty is a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments.

*J.M.*  
T.M.

No. 76-6513, Bell v. Ohio

Mr. JUSTICE MARSHALL, concurring in part and dissenting in part.

I continue to believe that the death penalty is, under all circumstances, a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, Furman v. Georgia, 408 U.S. 238, 314-374 (1972) (Marshall, J., concurring); Gregg v. Georgia, 428 U.S. 153, 231-241 (1976) (Marshall, J., dissenting), and thus disagree with the Court's assumption to the contrary. See Lockett v. Ohio, --- U.S. ---, --- (1978) (Marshall, J., concurring and dissenting). I join in the Court's judgment insofar as it requires that petitioner's death sentence be vacated.

29 JUN 1978

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1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-6513

Willie Lee Bell, Petitioner, } On Writ of Certiorari to the Su-  
v. } preme Court of Ohio.  
State of Ohio. }

[June —, 1978]

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

I continue to believe that the death penalty is, under all circumstances, a cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Furman v. Georgia*, 408 U. S. 238, 314-374 (1972) (MARSHALL, J., concurring); *Gregg v. Georgia*, 428 U. S. 153, 231-241 (1976) (MARSHALL, J., dissenting), and thus disagree with the Court's assumption to the contrary. See *Lockett v. Ohio*, — U. S. —, — (1978) (MARSHALL, J., concurring and dissenting). I join in the Court's judgment insofar as it requires that petitioner's death sentence be vacated.

Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Powell  
Mr. Justice Rehnquist  
Mr. Justice Stevens

From: Mr. Justice Blackmun  
Circulated: JUN 28 1978

No. 76-6513 - Bell v. Ohio

Recirculated: \_\_\_\_\_

MR. JUSTICE BLACKMUN, concurring in part and concurring  
in the judgment.

I join Part I of the Court's opinion and concur in the judgment.  
In accord with my views stated separately in Lockett v. Ohio, ante,  
p. \_\_\_, I would reverse the judgment of the Ohio Supreme Court in-  
sofar as it upheld the imposition of the death penalty on petitioner  
Bell. Petitioner was charged, inter alia, as an aider and abettor in  
the murder of Julius Graber, and the trial court's verdict was sus-  
tained on that basis by the Ohio Supreme Court. Appendix 138-139.  
Accordingly, I would find the Ohio capital penalty statute deficient in  
failing to allow consideration of the degree of petitioner's involvement,  
and the character of his mens rea, in the crime.

To: The Other Side

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: \_\_\_\_\_

Recirculated: JUN 25 1970

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 76-6513

Willie Lee Bell, Petitioner,  
v.  
State of Ohio. } On Writ of Certiorari to the Supreme Court of Ohio.

[June —, 1978]

MR. JUSTICE BLACKMUN, concurring in part and concurring in the judgment.

I join Part I of the Court's opinion and concur in the judgment. In accord with my views stated separately in *Lockett v. Ohio*, ante, p. —, I would reverse the judgment of the Ohio Supreme Court insofar as it upheld the imposition of the death penalty on petitioner Bell. Petitioner was charged, *inter alia*, as an aider and abettor in the murder of Julius Graber, and the trial court's verdict was sustained on that basis by the Ohio Supreme Court. Appendix 138-139. Accordingly, I would find the Ohio capital penalty statute deficient in failing to allow consideration of the degree of petitioner's involvement, and the character of his *mens rea*, in the crime.

*N*

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

June 27, 1978

No. 76-6513 Bell v. Ohio

Dear Chief:

Please join me.

Sincerely,

*Lewis*

The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 27, 1978

Re: No. 76-6513 - Bell v. Ohio; and No. 76-6993 - Lockett  
v. Ohio

Dear Chief:

As I told you on the telephone this morning, I found on my desk when I arrived your most recent draft in Lockett, and so far as I can tell your first circulation in Bell. I had prepared a dissent from your draft circulated last week in Lockett, which I had hoped to circulate in Xerox form this morning. The new draft, insofar as I have been able to digest it, makes a number of changes which require me to alter my draft dissent. For example, its omission to treat and reject the other attacks on the imposition of the sentence, which was a feature of last week's draft, requires me to treat and address them if I am to cast a vote to affirm or reverse in the case.

I shall work as hard as I can in order to circulate a draft dissent which will be in time to have the case come down as scheduled on Friday, but with all the other work confronting us this week I cannot guarantee that I will be successful.

Sincerely,



The Chief Justice

Copies to the 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

No. 76-6513 Bell v. Ohio

From: Mr. Justice Rehnquist

JUN 28 1978

Circulated: \_\_\_\_\_

MR. JUSTICE REHNQUIST, dissenting.

Recirculated: \_\_\_\_\_

For the reasons stated in my concurring and dissenting opinion in No. 76-6993, Lockett v. Ohio, I would affirm the judgment of the Supreme Court of Ohio in this case. I therefore dissent from the Court's judgment reversing it.

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

*J*  
CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

June 27, 1978

RE: No. 76-6513 - Bell v. Ohio

Dear Chief:

Please join me.

Respectfully,

*John*

The Chief Justice

Copies to the Conference