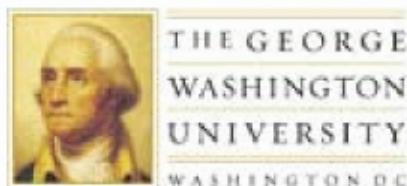


# The Burger Court Opinion Writing Database

*Hunter v. Dean*

439 U.S. 281 (1978)

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



1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 77-6248

Jacquelyn E. Hunter, Petitioner, | On Writ of Certiorari to  
v. | the Supreme Court of  
Gerald Wallace Dean, Sheriff. | Georgia.

[November —, 1978]

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

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: NOV 1 1978

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

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

CHAMBERS OF  
THE CHIEF JUSTICE

✓

November 2, 1978

Re: No. 77-6248 - Hunter v. Dean  
77-477 - Hopper v. Barnett

Dear Potter:

77-6248 will be on the "Circulating Opinions" List  
and 77-477 is already on the Friday Conference List.  
This was the purpose of my sending the P.C. disposing of  
77-6248 as "D.I.G."

Regards,

URB

Mr. Justice Stewart

Copies to the Conference

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

CHAMBERS OF  
JUSTICE POTTER STEWART

November 2, 1978

Re: No. 77-6248, Hunter v. Dean

Dear Chief,

Although I was originally of the firm view that the writ of certiorari should be dismissed in this case, Bill Rehnquist and John Stevens have given me considerable pause. Could we perhaps discuss this case as well as 77-477, Hopper v. Barnett, at the Conference on Friday?

Sincerely yours,

PS.

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 Rehnquist

From: Mr. Justice Stevens

Circulated:

Recirculated:

NOV 3 1978

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

Nos. 77-6248 AND 77-477

Jacquelyn E. Hunter, Petitioner, } On Writ of Certiorari to  
77-6248      *v.*      } the Supreme Court of  
Gerald Wallace Dean, Sheriff.      Georgia.

Joseph Hopper, Warden,  
77-477 v.  
Tyrone F. Barnett. } On Petition for Writ of  
 } Certiorari to the United  
 } States Court of Appeals  
 } for the Fifth Circuit.

[November —, 1978]

MR. JUSTICE STEVENS, dissenting.

In each of these cases a convicted person was placed on probation conditioned upon the payment of a fine. In each, the defendant was unable to pay the fine and a prison sentence was therefore imposed. In each, the defendant challenges the constitutionality of incarceration based solely on the inability to pay a fine.

In *Hunter v. Dean*, 240 Ga. 214, 239 S. E. 2d 791 (1977), the Georgia Supreme Court rejected the petitioner's constitutional challenge. In *Barnett v. Hopper*, 548 F. 2d 550 (1970), the United States Court of Appeals for the Fifth Circuit held the Georgia practice unconstitutional. We granted certiorari in *Hunter* to resolve this conflict, and we held the certiorari petition in *Barnett* pending decision in *Hunter*. The *Hunter* case has been fully briefed and argued orally.

Today the Court dismisses the writ in *Hunter* as improvidently granted and remands the petition in *Barnett* to the Fifth Circuit to consider whether the case is moot. Although the Court's action in *Hunter* is arguably supported by the fact that the record is somewhat unclear,<sup>1</sup> in my judgment the

The apparent reason for dismissing this case is that the record is somewhat ambiguous on two factual matters: First, whether petitioner in