

The Burger Court Opinion Writing Database

Hunter v. Dean

439 U.S. 281 (1978)

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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

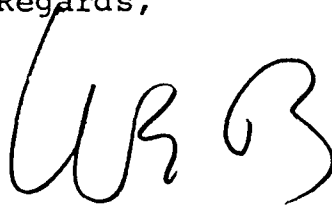
November 2, 1978

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,



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,

123.
/

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, } On Petition for Writ of
77-477 v. } Certiorari to the United
Tyrone F. Barnett. } 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,¹ in my judgment the

¹ The apparent reason for dismissing this case is that the record is somewhat ambiguous on two factual matters: First, whether petitioner in