The Burger Court Opinion Writing Database

Baker v. McCollan

443 U.S. 137 (1979)

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

June 12, 1979

Re: 78-752 - Baker v. McCollan

Dear Bill:

I join. I appreciate your added footnote which, of course, is not earth shaking.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 1, 1979

RE: No. 78-752 Baker v. McCollan

Dear John:

You and I are in dissent in this case. Would you care to take on the dissent?

Sincerely,

Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 11, 1979

RE: No. 78-752 Baker v. McCollan

Dear John:

Please join me in the dissenting opinion you have prepared in the above.

Sincerely,

/Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 24, 1979

Re: 78-753 - Great American Fed. S & L. Assn. v. Novotny

Memorandum to: Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

The addition to footnote 6 on page 3 in yesterday's circulation was made in response to a suggestion from Harry Blackmun. Although, as the author of the dissenting opinion in United States v. Johnson, I was not enthusiastic about this addition, I was nonetheless quite willing to accommodate Harry, particularly in order to persuade him to join the opinion.

It now appears that both Lewis and Bill Rehnquist find the new language in footnote 6 unacceptable. Lewis has suggested a revised version, a copy of which is enclosed. If none of you objects within a reasonable time, I shall send the revised version to the printer. I shall then retire to a neutral corner.

P.S.

lfp/ss 5/ ?/79 Rider A, fn 6 (Novc y)

We note the relative narrowness of the specific issue before the Court. It ~~therefore~~ is unnecessary for us to consider whether a plaintiff would have a cause of action under §1985(c) where the defendant was not subject to suit under Title VII or a comparable statute. Cf. United States v. Johnson, 390 U.S. 563. Nor do we think it necessary to consider whether §1985(c) creates a remedy for statutory rights other than those fundamental rights derived from the Constitution. Cf., Griffin v. Breckenridge, 403 U.S. 88 (1971).

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

CHAMBERS OF
JUSTICE POTTER STEWART

May 31, 1979

Re: 78-752, Baker v. McCollan

Dear Bill,

Upon the understanding that you will make the minor changes that we discussed, I am glad to join your opinion for the Court.

Sincerely yours,

P.S.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 31, 1979

Re: 78-752 - Baker v. McCollan

Dear Bill,

Please join me.

Sincerely yours,

Mr. Justice Rehnquist

Copies to the Conference

cmc

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 29, 1979

Re: No. 78-752 - Baker v. McCollan

Dear Bill:

I await the dissent.

Sincerely,

T.M.

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 11, 1979

Re: No. 78-752 - Baker v. McCollan

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

No. 78-752

Baker v. McCollan

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

From: Mr. Justice Marshall

Circulated: 12 JUN 1979

Recirculated: _____

MR. JUSTICE MARSHALL, dissenting.

While I join the dissenting opinion of my Brother STEVENS, I would add one or two additional words. As I view this case, neither "negligence" nor "mere negligence " is involved. Respondent was arrested and not released. This constituted intentional action and not, under these circumstances, negligence. For despite respondent's repeated protests of misidentification, as well as information possessed by the Potter County Sherriff suggesting that the name in the arrest warrant was incorrect, see ante, at 3 (STEVENS, J., dissenting), petitioners made absolutely no effort for eight days to determine whether they were unlawfully holding an innocent man in violation of his constitutionally protected rights.

15 JUN 1979

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE MARSHALL, dissenting.

While I join the dissenting opinion of my Brother STEVENS, I would add one or two additional words. As I view this case, neither "negligence" nor "mere negligence" is involved. Respondent was arrested and not released. This constituted intentional action and not, under these circumstances, negligence. For despite respondent's repeated protests of misidentification, as well as information possessed by the Potter County Sheriff suggesting that the name in the arrest warrant was incorrect, see *ante*, at 3 (STEVENS, J., dissenting), petitioner and his deputies made absolutely no effort for eight days to determine whether they were holding an innocent man in violation of his constitutionally protected rights.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 24, 1979

Re: No. 78-753 - Great American Federal S & L v. Novotny

Dear Potter:

Perhaps it is the time of year, but I must confess that in my obtuseness I detect no significant difference in the addition to footnote 6 in your recirculation of May 23, on the one hand, and the first two sentences of the revision proposed by Lewis. The last sentence, I suspect, relates to the position Lewis took in Chapman.

If a distinction occurs to me over the weekend, I shall, of course, withdraw my joinder and concur only in the result.

Sincerely,

Mr. Justice Stewart

cc: Mr. Justice Powell
Mr. Justice Rehnquist
Mr. Justice Stevens

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 1, 1979

Re: No. 78-752 - Baker v. McCollan

Dear Bill:

For now, I shall wait to see what John has to say.

Sincerely,

Harry

Mr. Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 13, 1979

Re: No. 78-752 - Baker v. McCollan

Dear Bill:

Please join me.

I shall, however, write a few paragraphs. I shall get them to you as soon as possible.

Sincerely,

HAB

Mr. Justice Rehnquist

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: 18 JUN 1979

Recirculated: _____

No. 78-752 - Baker v. McCollan

MR. JUSTICE BLACKMUN, concurring.

The Court long has struggled to define the "liberty" protected by the Due Process Clause of the Fourteenth Amendment. The Court today looks to the provisions of the Bill of Rights that have been "incorporated" into the Due Process Clause, including the right to be free from unreasonable seizures, the right to bail, and the right to a speedy trial, and, finding that none of those specifically incorporated rights apply here, concludes that petitioner did not deny respondent due process in holding him in jail during a holiday weekend. Ante, at 7.

Printed

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-752

T. L. Baker, Petitioner, v. Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE BLACKMUN, concurring.

The Court long has struggled to define the "liberty" protected by the Due Process Clause of the Fourteenth Amendment. The Court today looks to the provisions of the Bill of Rights that have been "incorporated" into the Due Process Clause, including the right to be free from unreasonable seizures, the right to bail, and the right to a speedy trial, and, finding that none of those specifically incorporated rights apply here, concludes that petitioner did not deny respondent due process in holding him in jail during a holiday weekend. *Ante,* at 7.

The Court's cases upon occasion have defined "liberty" without specific guidance from the Bill of Rights. For example, it has defined conduct which "shocks the conscience" as a denial of due process. *Rochin* v. *California,* 342 U. S. 165, 172 (1952). Mr. Justice Harlan once wrote, "This 'liberty' is not a series of isolated points pricked out in terms of [the Bill of Rights]. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints." *Poe* v. *Ullman,* 367 U. S. 497, 543 (1961) (dissenting opinion). See also *Roe* v. *Wade,* 410 U. S. 113, 152–156 (1973).

The Court today does not consider whether petitioner's conduct "shocks the conscience" or is so otherwise offensive to the "concept of ordered liberty," *Palko* v. *Connecticut,* 302 U. S. 319, 325 (1932), as to warrant a finding that petitioner denied respondent due process of law. Nothing in petitioner's

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 26, 1979

78-752 Baker v. McCollan

Dear Bill:

Please join me.

Sincerely,

Lewis

Mr. Justice Rehnquist

lfp/ss

cc: 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

From: Mr. Justice Rehnquist

Circulated: MAY 1979

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Two Terms ago, in *Procunier* v. *Navarette,* 434 U. S. 555 (1978), we granted certiorari to consider the question whether negligent conduct can form the basis of an award of damages under 42 U. S. C. § 1983. The constitutional violation alleged in *Procunier* was interference on the part of prison officials with a prisoner's outgoing mail. The complaint alleged that the prison officials had acted with every conceivable state of mind, from "knowingly" and in "bad faith" to "negligently and inadvertently." We granted certiorari, however, only on the question "[w]hether negligent failure to mail certain of a prisoner's outgoing letters states a cause of action under § 1983." 434 U. S., at 559 n. 6.

Following oral argument and briefing on the merits, the Court held that since the constitutional right allegedly violated had not been authoritatively declared at the time the prison officials acted, the officials were entitled, as a matter of law, to prevail on their claim of qualified immunity. Quoting from *Wood* v. *Strickland,* 420 U. S. 308, 322 (1975), we observed: "Because [the prison officials] could not reasonably have been expected to be aware of a constitutional right that had not yet been declared, [they] did not act with such disregard for the established law that their conduct cannot reasonably be characterized as in good faith." It was thus

Pp 1, 5, 7

Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Stevens

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: 31 MAY 1979

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Last Term, in *Procunier* v. *Navarette,* 434 U. S. 555 (1978), we granted certiorari to consider the question whether negligent conduct can form the basis of an award of damages under 42 U. S. C. § 1983. The constitutional violation alleged in *Procunier* was interference on the part of prison officials with a prisoner's outgoing mail. The complaint alleged that the prison officials had acted with every conceivable state of mind, from "knowingly" and in "bad faith" to "negligently and inadvertently." We granted certiorari, however, only on the question "[w]hether negligent failure to mail certain of a prisoner's outgoing letters states a cause of action under § 1983." 434 U. S., at 559 n. 6.

Following oral argument and briefing on the merits, the Court held that since the constitutional right allegedly violated had not been authoritatively declared at the time the prison officials acted, the officials were entitled, as a matter of law, to prevail on their claim of qualified immunity. Quoting from *Wood* v. *Strickland,* 420 U. S. 308, 322 (1975), we observed: "Because [the prison officials] could not reasonably have been expected to be aware of a constitutional right that had not yet been declared, [they] did not act with such disregard for the established law that their conduct cannot reasonably be characterized as in good faith." It was thus

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 11, 1979

Re: No. 78-752 - Baker v. McCollan

Dear John:

In response to your dissent in this case, I propose to add two footnotes to my presently circulating second draft. Because of the time pressure, I am sending them around in typed form at the same time as I am sending them to the printer.

New footnote 3, to go on page 7 following the citation to United States v. Marion: "We of course agree with the dissent's quotation of the statement from Schilb v. Kuebel, 404 U.S. 363, 365, that 'the Eighth Amendment's proscription of excessive bail has been assumed to have application to the states through the Fourteenth Amendment.' Post, page 1, fn. 1. But the inference which the dissent draws from this statement -- that states are required by the United States Constitution to release an accused criminal defendant on bail -- would if correct merely supply one more possibility of release from incarceration by resort to procedures specifically set out in the Bill of Rights, over and above those guarantees discussed in the text. It is for violations of such constitutional and statutory rights that 42 U.S.C. § 1983 authorizes redress; that section is not itself a source of substantive rights, but a method for vindicating federal rights elsewhere conferred by those parts of the United States Constitution and federal statutes which it describes. Cases such as Neil v. Biggers,

409 U.S. 188, 198 (1973), relied upon by the dissent, post, in no way contradict this view. The discussion of misidentification in Neil was in the context of the use of eyewitness identification testimony at the trial which the United States Constitution guarantees to any accused defendant before he may be punished. Bell v. Wolfish, No. 77-1829, decided May 14, 1979."

Footnote 4, to go at the end of the paragraph beginning on page 6 and ending on page 7: "In view of the substantive analysis employed by the dissent, it would seem virtually impossible to reach a conclusion other than that any case of misidentification in connection with an arrest made pursuant to an admittedly valid warrant or on concededly probable cause would be a deprivation of liberty without due process of law."

Sincerely,

Mr. Justice Stevens

Copies to the Conference

Pp 2, 3, 9

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78–752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Last Term, in *Procunier* v. *Navarette,* 434 U. S. 555 (1978), we granted certiorari to consider the question whether negligent conduct can form the basis of an award of damages under 42 U. S. C. § 1983. The constitutional violation alleged in *Procunier* was interference on the part of prison officials with a prisoner's outgoing mail. The complaint alleged that the prison officials had acted with every conceivable state of mind, from "knowingly" and in "bad faith" to "negligently and inadvertently." We granted certiorari, however, only on the question "[w]hether negligent failure to mail certain of a prisoner's outgoing letters states a cause of action under § 1983." 434 U. S., at 559 n. 6.

Following oral argument and briefing on the merits, the Court held that since the constitutional right allegedly violated had not been authoritatively declared at the time the prison officials acted, the officials were entitled, as a matter of law, to prevail on their claim of qualified immunity. Quoting from *Wood* v. *Strickland,* 420 U. S. 308, 322 (1975), we observed: "Because [the prison officials] could not reasonably have been expected to be aware of a constitutional right that had not yet been declared, [they] did not act with such disregard for the established law that their conduct cannot reasonably be characterized as in good faith." It was thus

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1979

RE: No. 78-752 - Baker v. McCollan

Dear Bill:

Thank you for asking me to do the dissent in this case. It is one in which I am particularly interested.

Respectfully,

Mr. Justice Brennan

...be announced next Order List)

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 24, 1979

Re: 78-752 - Baker v. McCollan

Dear Bill:

In due course I shall circulate a dissent.

Respectfully,

JPS

Mr. Justice Rehnquist

Copies to the Conference

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: JAN 8 '79

Recirculated: _____

78-752 - Baker v. McCollan

MR. JUSTICE STEVENS, dissenting.

When a State deprives a person of his liberty after his arrest, the Constitution requires that it be prepared to justify not only the initial arrest, but the continued detention as well.[1/] Respondent's arrest on December 26, 1972 was authorized by a valid warrant, and no claim is raised that it violated his Fourth Amendment rights. The question is whether the deprivation of his liberty during the next eight days--despite his protests of mistaken identity--was "without due process of law" within the meaning of the Fourteenth Amendment. The record in this case makes clear that the procedures employed by the Sheriff of Potter County, Texas at the time were not reasonably calculated to establish that a person being detained for the alleged commission of a crime was

1/ See Gerstein v. Pugh, 420 U.S. 103, 113-114. See also Schilb v. Kuebel, 404 U.S. 357, 365 ("the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."); Stack v. Boyle, 342 U.S. 1, 4 ("[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.")

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN joins, dissenting.

When a State deprives a person of his liberty after his arrest, the Constitution requires that it be prepared to justify not only the initial arrest, but the continued detention as well.[1] Respondent's arrest on December 26, 1872, was authorized by a valid warrant, and no claim is raised that it violated his Fourth Amendment rights. The question is whether the deprivation of his liberty during the next eight days—despite his protests of mistaken identity—was "without due process of law" within the meaning of the Fourteenth Amendment. The record in this case makes clear that the procedures employed by the Sheriff of Potter County, Tex., at the time were not reasonably calculated to establish that a person being detained for the alleged commission of a crime was in fact the person believed to be guilty of the offense. In my judgment, such procedures are required by the Due Process Clause, and the deprivation of respondent's liberty occasioned by their absence is a violation of his Fourteenth Amendment rights.

[1] See *Gerstein* v. *Pugh*, 420 U. S. 103, 113–114. See also *Schilb* v. *Kuebel*, 404 U. S. 357, 365 ("the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."); *Stack* v. *Boyle*, 342 U. S. 1, 4 ("[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.").

P.1

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: _____

2nd DRAFT

Recirculated: JUN 14 '79

SUPREME COURT OF THE UNITED STATES

No. 78-752

T. L. Baker, Petitioner, *v.* Linnie Carl McCollan. | On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit.

[June —, 1979]

MR. JUSTICE STEVENS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL join, dissenting.

When a State deprives a person of his liberty after his arrest, the Constitution requires that it be prepared to justify not only the initial arrest, but the continued detention as well.[1] Respondent's arrest on December 26, 1872, was authorized by a valid warrant, and no claim is raised that it violated his Fourth Amendment rights. The question is whether the deprivation of his liberty during the next eight days—despite his protests of mistaken identity—was "without due process of law" within the meaning of the Fourteenth Amendment. The record in this case makes clear that the procedures employed by the Sheriff of Potter County, Tex., at the time were not reasonably calculated to establish that a person being detained for the alleged commission of a crime was in fact the person believed to be guilty of the offense. In my judgment, such procedures are required by the Due Process Clause, and the deprivation of respondent's liberty occasioned by their absence is a violation of his Fourteenth Amendment rights.

[1] See *Gerstein* v. *Pugh*, 420 U. S. 103, 113–114. See also *Schilb* v. *Kuebel*, 404 U. S. 357, 365 ("the Eighth Amendment's proscription of excessive bail has been assumed to have application to the States through the Fourteenth Amendment."); *Stack* v. *Boyle*, 342 U. S. 1, 4 ("[u]nless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.").