

The Burger Court Opinion Writing Database

Roberts v. United States

445 U.S. 552 (1980)

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

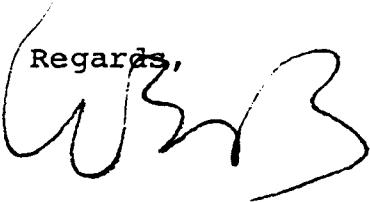
March 11, 1980

RE: 78-1793 - Roberts v. U.S.

Dear Lewis:

I join.

Regards,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

April 2, 1980

RE: No. 78-1793 Roberts v. United States

Dear Lewis:

I'll be writing separately in the above. I'll do
my best to get it out very soon.

Sincerely,

Bril

Mr. Justice Powell

cc: The Conference

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: APR 3 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1793

Winfield L. Roberts, Petitioner, v. United States. } On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[April —, 1980]

MR. JUSTICE BRENNAN, concurring.

I join the Court's opinion.

The principal divisive issue in this case is whether petitioner's silence should have been understood to imply continued solicitude for his former criminal enterprise, rather than assertion of the Fifth Amendment right against self-incrimination or fear of retaliation. I agree with the Court that the trial judge cannot be faulted for drawing a negative inference from petitioner's noncooperation when petitioner failed to suggest that other, neutral, inferences were available. And because the government questioning to which he failed to respond was not directed at incriminating him, petitioner may not stand upon a Fifth Amendment privilege that he never invoked at the time of his silence. See *United States v. Mandujano*, 425 U. S. 564, 589-594 (1976) (BRENNAN, J., concurring in the judgment); *Garner v. United States*, 424 U. S. 648, 655-661 (1976); *Vajtauer v. Commissioner of Immigration*, 273 U. S. 103, 113 (1927).*

*When the government actually seeks to incriminate the subject of questioning, failure to invoke the Fifth Amendment privilege is reviewed under the stringent "knowing and completely voluntary waiver" standard. *United States v. Mandujano*, 425 U. S. 593 (1976) (BRENNAN, J., concurring in the judgment). But when it is only the subject who is reasonably aware of the incriminating tendency of the questions, it is his responsibility to put the government on notice by formally availing himself of the privilege. *Id.*, at 589-594; *Garner v. United States*, 424 U. S. 648, 655

564,

Supreme Court of the United States
Washington 25, D. C.

CHAMBERS OF
JUSTICE POTTER STEWART

February 29, 1980.

Re: No. 78-1793, Roberts v. United States

Dear Lewis,

I am glad to join your opinion for
the Court.

Sincerely yours,

Mr. Justice Powell

Copies to the Conference

P.S.
i

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 3, 1980

Re: 78-1793 - Roberts v. United States

Dear Lewis,

Please join me.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

cmc

81 MAR 1980

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1793

Winfield L. Roberts, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the District
of Columbia Circuit.

[March —, 1980]

MR. JUSTICE MARSHALL, dissenting.

The Court today permits a term of imprisonment to be increased because of a defendant's refusal to identify others involved in criminal activities—a refusal that was not unlawful and that may have been motivated by a desire to avoid self-incrimination or by a reasonable fear of reprisal. I do not believe that a defendant's failure to inform on others may properly be used to aggravate a sentence of imprisonment, and accordingly, I dissent.

The majority does not dispute that a failure to disclose the identity of others involved in criminal activity may often stem from a desire to avoid self-incrimination. This case is an excellent illustration of that possibility. The prosecutor asked petitioner "to identify the person or persons from whom he was getting the drugs, and the location, and to lay out the conspiracy and identify other co-conspirators who were involved with them." App. 36. Disclosure of this information might well have exposed petitioner to prosecution on additional charges.¹ He was never offered immunity from such

¹ The prosecutor stated at the sentencing hearing that the Government's initial offer of leniency in exchange for petitioner's cooperation was made on the assumption that he was a relatively minor figure in the conspiracy. The Government argued for lengthy consecutive sentences, however, because "we were shown to be wrong" about that assumption. It seems plain that if petitioner had provided the information requested, he would have incriminated himself on additional charges.

Citation corrections
additional changes

11 APR 1980

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 78-1793

Winfield L. Roberts, Petitioner, | On Writ of Certiorari to the
v. | United States Court of
United States. | Appeals for the District
of Columbia Circuit.

[March —, 1980]

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 3, 1980

Re: No. 78-1793 - Roberts v. United States

Dear Lewis:

Please join me.

Sincerely,



Mr. Justice Powell
cc: The Conference

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

2-28-80

From: Mr. Justice Powell
FEB 28 1980
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1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 78-1793

Winfield L. Roberts, Petitioner, | On Writ of Certiorari to the
 v. | United States Court of
 United States. | Appeals for the District
 of Columbia Circuit.

[March —, 1980]

MR. JUSTICE POWELL delivered the opinion of the Court.

The question is whether the District Court properly considered, as one factor in imposing sentence, the petitioner's refusal to cooperate with officials investigating a criminal conspiracy in which he was a confessed participant.

I

Petitioner Winfield Roberts accompanied Cecilia Payne to the office of the United States Attorney for the District of Columbia one day in June of 1975. Government surveillance previously had revealed that a green Jaguar owned by Payne was used to transport heroin within the District. Payne told investigators that she occasionally lent the Jaguar to petitioner, who was waiting outside in the hall. At Payne's suggestion, the investigators asked petitioner if he would answer some questions. Although petitioner was present voluntarily, the investigators gave him the warnings required by *Miranda v. Arizona*, 384 U. S. 436 (1966). They also told him that he was free to leave. When petitioner indicated that he would stay, the investigators asked whether he knew "Boo" Thornton, then the principal target of the heroin investigation. Petitioner admitted that he had delivered heroin to Thornton on several occasions. Confessing also that he had discussed drug transactions with Thornton in certain intercepted tele-

Mr. Chief Justice
Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

9-10

4-2-80

From: Mr. Justice Powell

Circulated: _____

2nd DRAFT

Recirculated: APR 2 1980

SUPREME COURT OF THE UNITED STATES

No. 78-1793

Winfield L. Roberts, Petitioner,
v.
United States. On Writ of Certiorari to the
United States Court of
Appeals for the District
of Columbia Circuit.

[March —, 1980]

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18

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Supreme Court of the United States
Washington, D. C. 20542

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 17, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case held for No. 78-1793, Roberts v. United States

No. 79-261, Barnes v. United States, has been held for Roberts. The eleven petitioners were participants in a syndicate that distributed massive quantities of narcotics in Harlem and South Bronx, New York, from 1974 through 1977. After a lengthy jury trial, they were convicted of various drug offenses and sentenced severely. The ringleader, Barnes, was sentenced to life imprisonment without possibility of parole. In the course of the sentencing proceedings, the District Court twice stated that it would take failure to cooperate with the government into account in determining all of the sentences.

The CA2 upheld the sentences without extensive discussion, stating that failure to cooperate is a permissible sentencing factor "as long as all factors are considered." The original petition for certiorari did not challenge this ruling. After the Roberts petition was granted, however, petitioners filed a supplement alleging that their sentences violated the Fifth Amendment privilege against self-incrimination. Although the delay in raising the question does not appear to impose a jurisdictional bar, petitioners do not allege that they invoked the privilege before the District Court. Under Roberts, they may not raise it for the first time on appeal.

Petitioners also contend that they were denied an impartial jury when the District Court refused to require disclosure of prospective jurors' names and addresses or to inquire into their ethnic and religious backgrounds. The District Court explained that it feared for the jurors' safety in light of threats to the life of Government witnesses and the actual murder of a possible witness on the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 3, 1980

Re: No. 78-1793 - Roberts v. United States

Dear Lewis:

Please join me.

Sincerely,

Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 29, 1980

Re: 78-1793 - Roberts v. United States

Dear Lewis:

Please join me.

Respectfully,



Mr. Justice Powell

Copies to the Conference