

The Burger Court Opinion Writing Database

Sumner v. Mata

449 U.S. 539 (1981)

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

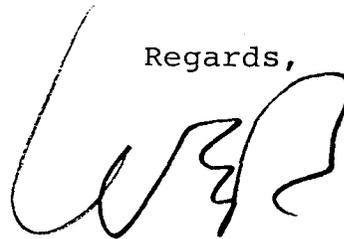
January 13, 1981

RE: 79-1601 - Sumner v. Mata

Dear Bill:

I. join.

Regards,

A handwritten signature in black ink, appearing to be 'WR', written in a cursive style.

Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 8, 1981

RE: No. 79-1601 Sumner v. Mata

Dear Bill:

I shall in due course circulate a dissent in the
above.

Sincerely,



Mr. Justice Rehnquist

cc: The Conference

Handwritten notes and initials, including "WJB" and "III".

Sumner v. Mata

No. 79-1601

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

JUSTICE BRENNAN, dissenting:

Circulated: JAN 14 1981

The Court holds today that an order of a federal habeas court requiring release or retrial of a state prisoner because of constitutional violations at his trial must be vacated if the court does not explain in its order why 28 U.S.C. §2254(d) does not bar reexamination of issues decided by the state courts-- even if the State did not contest the order on the ground of §2254(d), and even if §2254(d) is plainly inapplicable under decisions of this Court. I dissent.

Recirculated: _____

I

Respondent was convicted of first-degree murder of another prisoner, largely on the strength of identification testimony by three fellow inmates at a California penitentiary. Two of these witnesses had been shown photo identification arrays on three occasions, under circumstances that led the United States Court of Appeals for the Ninth Circuit to conclude that it was "obvious that there was a grave likelihood of irreparable misidentification." 611 F.2d 754, 758 (9th Cir. 1979). Respondent did not object at trial to admission of this identification testimony. On appeal to the California Court of Appeals, respondent argued that the use of this identification evidence violated his due process rights as defined in Simmons v. United States, 390 U.S. 377 (1968). The Court considered this

Stylistic changes throughout
See pp. 1, 2, 3, 5, 6, 7

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

1st PRINTED DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: JAN 19 1981

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

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

The Court holds today that an order of a federal habeas court requiring release or retrial of a state prisoner because of constitutional violations at his trial must be vacated if the court does not explain in its order why 28 U. S. C. § 2254 (d) does not bar re-examination of issues decided by the state courts—even if the State did not contest the order on the ground of § 2254 (d), and even if § 2254 (d) is plainly inapplicable under decisions of this Court. I dissent.

I

Respondent was convicted of first-degree murder of another prisoner, largely on the strength of identification testimony by three fellow inmates at a California penitentiary. Two of these witnesses had been shown photo identification arrays on three occasions, under circumstances that led the United States Court of Appeals for the Ninth Circuit to conclude that it was "obvious that there was a grave likelihood of irreparable misidentification." 611 F. 2d 754, 758 (CA9 1979). Respondent did not object at trial to admission of this identification testimony. On appeal to the California Court of Appeal, respondent argued that the use of this identification evidence violated his due process rights as defined in *Simmons v. United States*, 390 U. S. 377 (1968). The Court considered this claim on the merits, and rejected it.

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 9, 1981

Re: No. 79-1601, Sumner v. Mata

Dear Bill,

I am glad to join your opinion for the
Court.

Sincerely yours,

P.S.
/

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 9, 1981

Re: 79-1601 - Sumner v. Mata

Dear Bill,

I agree.

Sincerely yours,



Mr. Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 9, 1981

Re: No. 79-1601 - Sumner v. Mata

Dear Bill:

I await the dissent.

Sincerely,

T.M.

T.M.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 14, 1981

Re: No. 79-1601 - Sumner v. Mata

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 15, 1981

Re: No. 79-1601 - Sumner v. Mata

Dear Bill:

At the end of your opinion, would you please add the following:

"JUSTICE BLACKMUN concurs in the result. He would vacate the judgment of the Court of Appeals and merely remand the case to that Court for reconsideration in light of 28 U.S.C. §2254(d)."

Sincerely,



Harry

Justice Rehnquist
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 13, 1981

79-1601 Sumner v. Mata

Dear Bill:

Please join me.

Sincerely,



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: JAN 2 1981

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

A divided Court of Appeals for the Ninth Circuit held that respondent's state court murder conviction was constitutionally invalid. Its holding has two bases: (1) the pre-trial photographic identification procedure employed by state police was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable in-court misidentification of the [respondent]"; and (2) the admission of the in-court identification "constituted error of constitutional dimension." *Mata v. Sumner*, 611 F. 2d 754, 755 (1979). The question before us is whether the Court of Appeals properly analyzed respondent's challenge to his state court murder conviction given the limited nature of the review provided federal courts by 28 U. S. C. § 2254.

I

In 1973, respondent was convicted in the Superior Court of Kern County, Cal. of the first-degree murder of one of his fellow inmates at a California correctional institution. At trial, three witnesses testified that they had witnessed all or part of the attack on the inmate and identified respondent as participating in the murder. Respondent offered as an alibi three other witnesses who testified that respondent was in bed at the time the stabbing occurred. At no point did

8-11

STYLISTIC CHANGES THROUGHOUT

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: _____

Recirculated: JAN 13 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

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8 78, 11412

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: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

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In 1973, respondent was convicted in the Superior Court of Kern County, Cal. of the first-degree murder of one of his fellow inmates at a California correctional institution. At trial, three witnesses testified that they had witnessed all or part of the attack on the inmate and identified respondent as participating in the murder. Respondent offered as an alibi three other witnesses who testified that respondent was in bed at the time the stabbing occurred. At no point did

P. 12

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Rehnquist
Mr. Justice Marshall
Mr. Justice Burger
Mr. Justice Black

From: Mr. Justice Rehnquist

Circulated: _____

JAN 6 1981

Reintroduced: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

A divided Court of Appeals for the Ninth Circuit held that respondent's state court murder conviction was constitutionally invalid. Its holding has two bases: (1) the pre-trial photographic identification procedure employed by state police was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable in-court misidentification of the [respondent]"; and (2) the admission of the in-court identification "constituted error of constitutional dimension." *Mata v. Sumner*, 611 F. 2d 754, 755 (1979). The question before us is whether the Court of Appeals properly analyzed respondent's challenge to his state court murder conviction given the limited nature of the review provided federal courts by 28 U. S. C. § 2254.

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In 1973, respondent was convicted in the Superior Court of Kern County, Cal. of the first-degree murder of one of his fellow inmates at a California correctional institution. At trial, three witnesses testified that they had witnessed all or part of the attack on the inmate and identified respondent as participating in the murder. Respondent offered as an alibi three other witnesses who testified that respondent was in bed at the time the stabbing occurred. At no point did

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice S. P. O'Connor

From: Mr. Justice Rehnquist

Circulated: _____

Recirculated: _____

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~~5th~~ DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-1601

George Sumner, Warden, }
Petitioner, } On Writ of Certiorari to the United
v. } States Court of Appeals for the
Robert Mata. } Ninth Circuit.

[January —, 1981]

JUSTICE REHNQUIST delivered the opinion of the Court.

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In 1973, respondent was convicted in the Superior Court of Kern County, Cal. of the first-degree murder of one of his fellow inmates at a California correctional institution. At trial, three witnesses testified that they had witnessed all or part of the attack on the inmate and identified respondent as participating in the murder. Respondent offered as an alibi three other witnesses who testified that respondent was in bed at the time the stabbing occurred. At no point did

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 12, 1981

Re: 79-1601 - Sumner v. Mata

Dear Bill:

Partly because of the concern I had about this case last spring, I will wait to see what Bill Brennan writes in dissent. I am inclined to think I will probably end up joining your opinion.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 15, 1981

Re: 79-1601 - Sumner v. Mata

Dear Bill:

You have written an exceptionally persuasive dissent. As you know, I have been somewhat indecisive in this case because I am inclined to think that in final analysis the Ninth Circuit was wrong on the merits. Nevertheless, on the 2254(d) issue--which is perhaps not the most important question the Court has ever been called upon to decide--I am now satisfied that you have the better of the argument. I am therefore in the position where I would like to join at least the first three parts of your dissent, and am wondering if you would be willing to make a couple of language changes in the last paragraph that would enable me to join your whole opinion. What I have in mind is rewriting the second and third sentence to read something like this:

"It is therefore not necessary to review the portions of the record and the precedents of this Court that support the conclusion of the Court of Appeals. Nevertheless, today's decision denies respondent the relief to which that court found that he is entitled. Since petitioner"

I would thoroughly understand if you prefer to leave the entire opinion as it is. In that event I could write something brief about the merits and state that I agree with what you say in Parts I, II, and III.

Respectfully,

Justice Brennan



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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 16, 1981

Re: 79-1601 - Sumner v. Mata

Dear Bill:

After further study, and assuming you will make a few minor changes in the last paragraph, I have finally decided to join your most persuasive dissent.

Respectfully,



Justice Brennan

Copies to the Conference