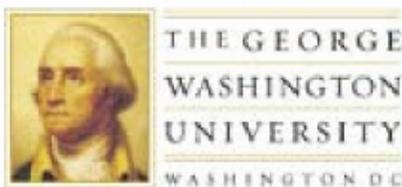


The Burger Court Opinion Writing Database

Vincent v. Texas

449 U.S. 199 (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

November 22, 1980

Re: No. 79-5962 -- Vincent v. Texas

MEMORANDUM TO THE CONFERENCE:

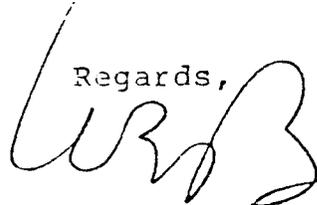
John's memorandum suggests that we dispose of this case by dismissing for want of a properly presented federal question. I question this disposition.

We postponed jurisdiction in this case to oral argument on the merits. The votes at conference indicated a substantial consensus in favor of dismissing this appeal without an opinion. However, I question whether dismissal for want of a properly presented federal question is correct. The federal question involved here was properly presented to the Texas courts. The defect is that the notice of appeal was filed in the wrong court. The proper filing of a notice of appeal is a jurisdictional requirement, and, hence, I would dismiss for want of jurisdiction.

The remaining issue is whether the jurisdictional statement, which was filed within the requisite 90-day period under the former rules of this Court, should then be treated as a petition for certiorari. First, nothing requires this Court to take such action. 28 U.S.C. § 2103 concerns "improvident" appeals, but this appeal was proper in terms of its subject matter -- the problem is simply that the notice of appeal was not filed in the court possessed of the record. Second, if the papers are treated as a petition for certiorari and the Court wants to be rid of this case, certiorari must be denied; but a denial of certiorari is somewhat troublesome at this time since the case has already been briefed and argued. Therefore, I recommend that the appeal be dismissed for want of jurisdiction without any reference to treating the papers as a petition for certiorari.

I suggest the following order: "79-5962. Vincent v. Texas. Appeal from Texas Court of Criminal Appeals, dismissed for want of jurisdiction."

Regards,



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

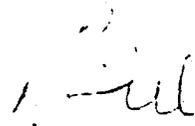
November 24, 1980

RE: No. 79-5962 Vincent v. Texas

Dear John:

I agree with your proposed disposition in the above.

Sincerely,



Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

December 4, 1980

RE: No. 79-5962 Vincent v. Texas

Dear John:

I agree with the Per Curiam you have prepared in the
above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE POTTER STEWART

November 21, 1980

Re: No. 79-5962 - Vincent v. Texas

Dear John,

Your proposed order coincides with my understanding of what we decided at the Conference discussion of this case, and I am glad to join it.

Sincerely yours,

P.S.
/

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 24, 1980

Re: 79-5962 - Vincent v. Texas

Dear John,

I agree.

Sincerely yours,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 1, 1980

Re: No. 79-5962 - Vincent v. Texas

Dear John:

I agree.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 24, 1980

Re: No. 79-5962 - Vincent v. Texas

Dear John:

I agree.

Sincerely,

Handwritten signature of H.A.B. in cursive script.

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 24, 1980

79-5962 Vincent v. Texas

Dear Chief:

I agree with your proposed order.

Sincerely,



The Chief Justice

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 4, 1980

79-5962 Vincent v. Texas

Dear John:

Your proposed order is fine with me.

Sincerely,



Mr. Justice Stevens

lfp/ss

cc: The Conference

RECORDS SECTION
U.S. SUPREME COURT
WASHINGTON, D.C. 20543

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 24, 1980

Re: No. 79-5962 Vincent v. Texas

MEMORANDUM TO THE CONFERENCE

As I understand it, we are confronted with two slightly varying dispositions of the appeal in the above entitled case. The one proposed by the Chief is "dismissed for want of jurisdiction". The one proposed by John is "dismissed for want of a properly presented federal question".

I think that the jurisdictional matters in this case are entirely questions of state law -- whether the notice of appeal was filed in the court which was in possession of the record, and the like -- and the fact that the Texas Court of Criminal Appeals chose to pass on the merits of appellant's contentions, and for me that is sufficient to resolve the "jurisdictional question" in favor of jurisdiction in the Court of Criminal Appeals. Since that is the highest court in the State of Texas in which a decision may be had in a case such as this, I think this is a proper appeal.

The Chief suggests that the requisite jurisdictional statement having been filed within the 90-day period provided for under the former Rules of this Court should not then be treated as a petition for certiorari. This raises the old "dismiss and deny" distinction which has been with us since I have been here, and presumably long before. If a petition for review here is improperly styled as an "appeal", but fails to meet the statutory requirement for an appeal, may we nonetheless treat it as a petition for certiorari notwithstanding? I suspect I am not alone in not wanting to replot this ground.

As things stand now, I would prefer a simple order dismissing the appeal for want of a substantial federal question, which I believe is the correct disposition. I

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have trouble with the Chief's proposed dismissal for want of jurisdiction, since in that case I think we would be deciding a question of state procedural appellate law contrary to the way in which the highest court of the state has decided it. I have trouble with John's proposed disposition because I simply do not think that the case presents other than an insubstantial federal question.

However, so close to Thanksgiving, I do not want to carp unnecessarily, and will cheerfully form a majority for whatever disposition the majority of my colleagues choose.

Sincerely,

A handwritten signature in cursive script, appearing to be 'W. H. H.', written in dark ink.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 3, 1980

Re: No. 79-5962 Vincent v. Texas

Dear John:

Your proposed order in this case is agreeable to me.

Sincerely,



Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 21, 1980

Re: 79-5962 - Vincent v. Texas

Dear Chief:

My conference notes indicate that there was a substantial consensus in favor of simply dismissing this appeal without an opinion. If that is incorrect, I will of course be happy to prepare a draft. Before doing so, however, I would like to propose the following disposition:

"79-5962. Vincent v. Texas. Appeal from Texas Court of Criminal Appeals, dismissed for want of a properly presented federal question."

Respectfully,



The Chief Justice
Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 24, 1980

MEMORANDUM TO THE CONFERENCE

Re: 79-5962 - Vincent v. Texas

It seems to me that the question whether a state has a duty to provide both of the hearings described in Morrissey in the probation revocation context is a substantial federal question. However, in this case I do not believe that question is properly presented in view of the fact that the full hearing that was eventually provided to this appellant by Texas eliminated any possible harm by reason of not holding the first hearing. I should think that the question that the appellant seeks to raise could properly be presented in a 1983 action for damages in which he might recover a couple of peppercorns. But since there would be no way to grant relief on his theory in this case, I still favor the disposition on the ground that the federal question is not properly presented here.

If this disposition is used, I think the order also explains why there would be no inclination to treat the jurisdictional statement as a petition for certiorari and to grant certiorari.

Respectfully,

JPS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 2, 1980

Re: 79-5962 - Vincent v. Texas

Dear Chief:

As I understand the responses to my proposed order, the following disposition would be appropriate:

"79-5962. Vincent v. Texas. Appeal from Texas Court of Criminal Appeals, dismissed for want of a properly presented federal question.

"The Chief Justice and Justice Powell would dismiss for want of jurisdiction."

Respectfully,



The Chief Justice

Copies to the Conference

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

From: Mr. Justice Stevens

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SUPREME COURT OF THE UNITED STATES

No. 79-5962

Danny Vincent, Appellant, |
v. | On Appeal from the Court of
State of Texas. | Criminal Appeals of Texas.

[December —, 1980]

PER CURIAM.

The appeal is dismissed for want of a properly presented federal question.

THE CHIEF JUSTICE and JUSTICE POWELL would dismiss for want of jurisdiction.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 11, 1980

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 79-5962, Vincent v. Texas

One case, Morris v. Georgia, No. 79-6799, has been held for Vincent.

In this case the petitioner, while on probation in Georgia, was arrested on charges of violating the Georgia Controlled Substances Act. After a probation revocation hearing, at which petitioner was represented by counsel and allowed to cross-examine the State's witnesses, his probation was revoked. Petitioner contends that the probation revocation procedure used in his case did not comport with the requirements of due process.

Petitioner presents a number of objections to the Georgia procedure, only one of which is related to Vincent. Petitioner was given a single-stage probation revocation hearing without any preliminary hearing. He contends that, under Morrissey v. Brewer and Gagnon v. Scarpelli, the State of Georgia was constitutionally required to conduct a preliminary hearing to determine whether there was probable cause to conduct a probation revocation hearing. Petitioner does not contend that his probation revocation hearing was in any way defective or that he was prejudiced by the denial of a preliminary hearing. Petitioner received prompt written notice of the charges against him and the hearing was held approximately one month after his arrest; it is unclear from the papers filed in this Court whether petitioner was incarcerated during this period. Petitioner's argument is simply that a preliminary hearing is an essential element of due process.

Petitioner did not present this objection at the revocation hearing or on appeal to the Georgia Court of Appeals (McMurray, Banke, Sognier). The Georgia courts have held (Ware v. State, 137 Ga. App. 673, 224 S.E.2d