

The Burger Court Opinion Writing Database

Wood v. Georgia

450 U.S. 261 (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 7, 1981

RE: 79-6027 - Wood v. Georgia

Dear Lewis:

I agree generally with your analysis and could join
a disposition along the lines you propose.

Regards,



Mr. Justice Powell

Copies to the Conference

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

January 9, 1981

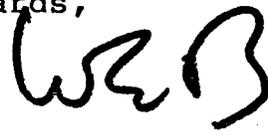
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 79-6027, Wood v. Georgia

Dear Lewis:

I join.

Regards,

Handwritten signature of Warren E. Burger, consisting of the letters 'W', 'E', and 'B' in a stylized, cursive script.

Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 10, 1980

RE: No. 79-6027 Wood v. Georgia

Dear Chief:

Lewis will undertake the opinion for the Court
in the above.

Sincerely,

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

The Chief Justice
cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

November 12, 1980

RE: No. 79-6027 Wood v. Georgia

Dear Lewis:

I stand corrected. I apologize for not calling you before I circulated the note. Upon reflection, Byron's statement to me is more consistent with your circulation of a memo. I shall certainly read it with the hope that Byron's prediction of its reception by him, Thurgood and me proves to be accurate.

Sincerely,



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

SUPREME COURT OF THE UNITED STATES

No. 79-6027

From: Mr. Justice Brennan

Circulated: 1-13-81

Recirculated: _____

Raymond Wood et al.,
Petitioners,

v.

State of Georgia

On Writ of Certiorari to
the Court of Appeals of
Georgia

(January ___ 1981)

BRENNAN, J, dissenting.

While I agree with the Court that "there is a clear possibility of conflict of interest" shown on this record, ante p. 5, and that the Court has the option to remand on this issue, I would nevertheless finally dispose of this case. That can be done, as Justice White concludes, by reversing the judgment of the Georgia Court of Appeals, for the reason that Tate v. Short, 401 U.S. 395 (1971) compels that conclusion. I would, however, reverse the conviction for distributing obscene materials in violation of Ga. Code Sec. 26-2101 under the view I have frequently expressed, and to which I adhere, that such an obscenity statute is facially unconstitutional. See Paris Adult Theatre I v. Slaton, 413 U.S. 49, 73, 113 (1973) (Brennan, J. dissenting); McKinney v. Alabama, 424 U.S. 669, 678 (1976) (separate opinion of Brennan, J.).

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

Printed
 1st DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: JAN 14 1981

No. 79-6027

Raymond Wood et al., Petitioners, v. State of Georgia.	}	On Writ of Certiorari to the Court of Appeals of Georgia.
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[January —, 1981]

JUSTICE BRENNAN, dissenting.

While I agree with the Court that "there is a clear possibility of conflict of interest" shown on this record, *ante*, p. 5, and that the Court has the option to remand on this issue, I would nevertheless finally dispose of this case. That can be done, as JUSTICE WHITE concludes, by reversing the judgment of the Georgia Court of Appeals, for the reason that *Tate v. Short*, 401 U. S. 395 (1971) compels that conclusion. I would, however, reverse the conviction for distributing obscene materials in violation of Ga. Code § 26-2101 under the view I have frequently expressed, and to which I adhere, that such an obscenity statute is facially unconstitutional. See *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73, 113 (1973) (BRENNAN, J., dissenting); *McKinney v. Alabama*, 424 U. S. 669, 678 (1976) (separate opinion of BRENNAN, J.).

To: The Chief Justice
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice Brennan
 Mr. Justice Sotomayor

From: Mr. Justice Brennan

2nd DRAFT

Circulated _____

SUPREME COURT OF THE UNITED STATES

JAN 28 1981

No. 79-6027

Raymond Wood et al., Petitioners, | On Writ of Certiorari to
 v. | the Court of Appeals of
 State of Georgia. | Georgia.

[January —, 1981]

JUSTICE BRENNAN, with whom JUSTICE MARSHALL joins, concurring and dissenting.

While I agree with the Court that "there is a clear possibility of conflict of interest" shown on this record, *ante*, p. 5, and that the Court has the option to remand on this issue, I would nevertheless finally dispose of this case. That can be done, as JUSTICE WHITE concludes, by reversing the judgment of the Georgia Court of Appeals, for the reason that *Tate v. Short*, 401 U. S. 395 (1971) compels that conclusion. I would, however, reverse the conviction for distributing obscene materials in violation of Ga. Code § 26-2101 under the view I have frequently expressed, and to which I adhere, that such an obscenity statute is facially unconstitutional. See *Paris Adult Theatre I v. Slaton*, 413 U. S. 49, 73, 113 (1973) (BRENNAN, J., dissenting); *McKinney v. Alabama*, 424 U. S. 669, 678 (1976) (separate opinion of BRENNAN, J.).

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

From: Mr. Justice Stewart

Circulated: _____

Recirculated: _____

No. 79-6027, WOOD v. GEORGIA

Justice Stewart, concurring and dissenting.

In my view the Court is correct in remanding
 because of the "clear possibility of conflict of
 interest" shown on the record in this case. I would,
 however, go further and reverse the convictions
 themselves, which were for violations of an obscenity
 statute. I believe that that statute, Ga. Code § 26-
 2101, is facially unconstitutional.

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

From: Mr. Justice Stewart

Circulated: 14 JAN 1981

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, v. State of Georgia.	}	On Writ of Certiorari to the Court of Appeals of Georgia.
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[January —, 1981]

JUSTICE STEWART, concurring and dissenting.

In my view the Court is correct in remanding because of the "clear possibility of conflict of interest" shown on the record in this case. I would, however, go further and reverse the convictions themselves, which were for violations of an obscenity statute. I believe that that statute, Ga. Code § 26-2101, is facially unconstitutional.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 11, 1980

Re: 79-6027 - Wood v. Georgia

Dear Lewis,

I shall probably write separately
in this case; but even so, I may also
join you.

Sincerely yours,



Mr. Justice Powell

Copies to the Conference

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

From: Mr. Justice White

Circulated: 31 DEC 1980

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, } On Writ of Certiorari to
 v. } the Court of Appeals of
 State of Georgia. } Georgia.

[January —, 1981]

Memorandum of JUSTICE WHITE.

Having examined this case again, I am unwilling, *sua sponte*, to dispose of this case on due process grounds and not reach the merits of the question on which we granted certiorari. For me, the facts available on this record are insufficient to indicate the likelihood of a conflict of interest of constitutional dimension. Such an inference should not be suggested and publicly announced without permitting the parties and the attorney involved to address the issues of conflict of interest and adequacy of counsel. Furthermore, this is not a joint or dual representation case; and it goes considerably beyond *Cuyler v. Sullivan* to suggest that on our own motion we should vacate any state criminal conviction where we think the record suggests the possibility of a conflict of interest because defendant's counsel also represents, or may represent, someone else who has conceivably antagonistic or inconsistent interests. Accordingly, I shall file an opinion in this case along the following lines.

Although I think that there are circumstances in which a State may impose a suitable jail term in lieu of a fine when the defendant cannot or will not pay the fine, there are constitutional limits on those circumstances, and the State of Georgia has exceeded the limits in this case.

In *Williams v. Illinois*, 399 U. S. 235 (1970), Williams, convicted of petty theft, received the maximum sentence of one-

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 8, 1981

MEMORANDUM TO THE CONFERENCE

Re: 79-6027 - Wood v. Georgia

I shall shortly circulate a revised memorandum in this case expanding upon my reasons for disagreeing with the disposition suggested by Lewis. Of course, it may be that Lewis has a majority for all or most of his memorandum.

BW

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

From: Mr. Justice White

Circulated: 14 JAN 1981

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, v. State of Georgia.	}	On Writ of Certiorari to the Court of Appeals of Georgia.
--	---	---

[January —, 1981]

JUSTICE WHITE, dissenting.

The Court's disposition of this case is twice flawed: first, there is no jurisdiction to vacate the judgment on the federal constitutional ground upon which the Court rests; second, the record does not sustain the factual inferences required to support the Court's judgment.

I

The petition for certiorari presented a single federal question: does the Equal Protection Clause of the Fourteenth Amendment permit a State to revoke an indigent's probation because he has failed to make regular payments toward the satisfaction of a fine? This issue was properly presented to and ruled upon by the Georgia courts. No other federal constitutional issue was presented there or brought here. The Court, however, disposes of this case on another ground, but a ground that also involves a constitutional issue: the possibly divided loyalties of petitioners' counsel may have deprived petitioners of due process and their constitutional right to counsel. Thus, we are to avoid one constitutional issue in favor of another, which was not raised by petitioners either here or below. I do not believe that this Court has jurisdiction even to reach this question, nor do I see why we should prefer one constitutional issue to another, even if we had the jurisdiction.

The Court, *ante*, at n. 20, suggests that the conflict of interest issue was presented here by respondent, the State of

To: The Chief Justice
 Mr. Justice Brennan
 Mr. Justice Stewart
 ✓ Mr. Justice Marshall
 Mr. Justice Blackmun
 Mr. Justice Powell
 Mr. Justice S. Burger
 Mr. Justice Stevens

From: Mr. Justice White

Circulated: _____

Recirculated: _____

5, 8-9
 2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, | On Writ of Certiorari to
 v. | the Court of Appeals of
 State of Georgia. | Georgia.

[January —, 1981]

JUSTICE WHITE, dissenting.

The Court's disposition of this case is twice flawed: first, there is no jurisdiction to vacate the judgment on the federal constitutional ground upon which the Court rests; second, the record does not sustain the factual inferences required to support the Court's judgment.

I

The petition for certiorari presented a single federal question: does the Equal Protection Clause of the Fourteenth Amendment permit a State to revoke an indigent's probation because he has failed to make regular payments toward the satisfaction of a fine? This issue was properly presented to and ruled upon by the Georgia courts. No other federal constitutional issue was presented there or brought here. The Court, however, disposes of this case on another ground, but a ground that also involves a constitutional issue: the possibly divided loyalties of petitioners' counsel may have deprived petitioners of due process and their constitutional right to counsel. Thus, we are to avoid one constitutional issue in favor of another, which was not raised by petitioners either here or below. I do not believe that this Court has jurisdiction even to reach this question, nor do I see why we should prefer one constitutional issue to another, even if we had the jurisdiction.

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

p. 6

From: Mr. Justice White

Circulated: _____

Recirculated: 10 FEB 1981

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, } On Writ of Certiorari to
v. } the Court of Appeals of
State of Georgia. } Georgia.

[January —, 1981]

JUSTICE WHITE, dissenting.

The Court's disposition of this case is twice flawed: first, there is no jurisdiction to vacate the judgment on the federal constitutional ground upon which the Court rests; second, the record does not sustain the factual inferences required to support the Court's judgment.

I

The petition for certiorari presented a single federal question: does the Equal Protection Clause of the Fourteenth Amendment permit a State to revoke an indigent's probation because he has failed to make regular payments toward the satisfaction of a fine? This issue was properly presented to and ruled upon by the Georgia courts. No other federal constitutional issue was presented there or brought here. The Court, however, disposes of this case on another ground, but a ground that also involves a constitutional issue: the possibly divided loyalties of petitioners' counsel may have deprived petitioners of due process and their constitutional right to counsel. Thus, we are to avoid one constitutional issue in favor of another, which was not raised by petitioners either here or below. I do not believe that this Court has jurisdiction even to reach this question, nor do I see why we should prefer one constitutional issue to another, even if we had the jurisdiction.

The Court, *ante*, at n. 20, suggests that the conflict of interest issue was presented here by respondent, the State of

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 11, 1980

Re: No. 79-6027 - Wood v. Georgia

Dear Lewis:

I agree with your memorandum.

Sincerely,

JM.
T.M.

Justice Powell

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 17, 1980

Re: No. 79-6027 - Wood v. Georgia

Dear Lewis:

I have given careful consideration to your memorandum. It seems to me that it proposes a proper way of disposing of a troublesome case and, at the same time, preserves the basic issue for review in the future in a better case.

I therefore would join an opinion prepared on the basis of your memorandum.

Sincerely,



Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

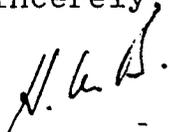
January 9, 1981

Re: No. 79-6027 - Wood v. Georgia

Dear Lewis:

This is a formal join in your opinion.

Sincerely,

A handwritten signature in dark ink, appearing to read "H. A. Blackmun", is written over the typed word "Sincerely,".

Mr. Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 11, 1980

79-6027 Wood v. Georgia

Dear Bill:

Thank you for your note stating that I will "undertake the opinion for the Court" in this case.

Following the Conference, Byron and I discussed my tentative view of the case, and he thinks it is possible that you, Thurgood and he may agree, although probably also going somewhat further in a separate opinion. My first vote was to reverse and remand for reconsideration of the sentence. It appears that counsel who professed to represent the defendants had a serious conflict of interest. The sentence on its face is outrageously high, and it seems reasonably clear that the judge never expected the defendants to have to pay fines that were so disproportionate to their role in the violation of Georgia's obscenity laws. Whether my reliance will be on the Fifth or Sixth Amendment, or possibly both, I cannot say at this time.

It is clear, however, from my Conference notes that there is no Court for my view. Nor does there appear to be a Court to reverse and remand for reconsideration of the sentence. But, there were only four votes to affirm, including those who would prefer to DIG.

Thus, I will not view my assignment as one to write an opinion for the Court. Rather, I will be happy to prepare a memorandum and welcome the joining of any Brothers who may be converted.

Sincerely,



Mr. Justice Brennan

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 10, 1980

79-6027 Wood v. Georgia

Dear Thurgood:

As you and I were together in this case, I suggested to my clerk, Paul Smith, that he give Martha Minow a copy of the Chambers Draft of my proposed memorandum.

Martha has been quite helpful, and I wanted the benefit of your comments before circulating.

Sincerely,



Mr. Justice Marshall

lfp/ss

12-8-80

CHAMBERS DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners,	}	On Writ of Certiorari to
v.		the Court of Appeals of
State of Georgia.		Georgia.

[January —, 1981]

Memorandum of JUSTICE POWELL.

Petitioners in this case are three persons who were convicted of distributing obscene materials and sentenced to periods of probation on the condition that they make regular installment payments toward the satisfaction of substantial fines. Because they failed to make these payments, their probations were revoked by the Georgia court, and they are now claiming that these revocations discriminated against them on the basis of wealth in violation of the Equal Protection Clause of the Fourteenth Amendment. Since the record in this case suggests that petitioners may be in their present predicament because of the divided loyalties of their counsel, I believe that it is inappropriate to reach the merits of this difficult equal protection issue.

I

Petitioners Tante and Allen were working, respectively, as the ticket taker and projectionist at the Plaza Theatre in Atlanta when they were arrested and charged with two counts of distributing obscene materials in violation of Ga. Code § 26-2101. About four months later, petitioner Wood was arrested and charged with two violations of the same provision after he sold two magazines to a policeman while working at the Plaza Adult Bookstore. There is no evidence that any of these employees owned an interest in the businesses they served or had any managerial responsibilities.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 31, 1980

79-6027 Wood v. Georgia

MEMORANDUM TO THE CONFERENCE:

In light of Byron's memorandum circulated today, I will make some changes in my memorandum that I hope will be responsive.


L.F.P., Jr.

SS

Changes on 1, 3, 4, 5, 6, 9, 10, 11

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

From Mr. Justice Powell

1-5-81

Circulated: _____

Recirculated: 5 JAN 1981

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, } On Writ of Certiorari to
v. } the Court of Appeals of
State of Georgia. } Georgia.

[January —, 1981]

Memorandum of JUSTICE POWELL.

Petitioners in this case are three persons who were convicted of distributing obscene materials and sentenced to periods of probation on the condition that they make regular installment payments toward the satisfaction of substantial fines. Because they failed to make these payments, their probations were revoked by the Georgia court, and they are now claiming that these revocations discriminated against them on the basis of wealth in violation of the Equal Protection Clause of the Fourteenth Amendment. Since the record in this case suggests that petitioners may be in their present predicament because of the divided loyalties of their counsel, I believe that it is inappropriate to reach the merits of this difficult equal protection issue. Instead, I would remand this case for further findings concerning a possible due process violation.

I

Petitioners Tante and Allen were working, respectively, as the projectionist and ticket taker at the Plaza Theatre in Atlanta when they were arrested and charged with two counts of distributing obscene materials in violation of Ga. Code § 26-2101. About four months later, petitioner Wood was arrested and charged with two violations of the same provision after he sold two magazines to a policeman while working at the Plaza Adult Bookstore. There is no evidence that any of

1, 3, 6
Stylistic Changes Throughout.

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

1-8-81

From: Mr. Justice Powell

Circulated: _____

3rd DRAFT

Recirculated: JAN 8 1981

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, } On Writ of Certiorari to
v. } the Court of Appeals of
State of Georgia. } Georgia.

[January —, 1981]

(JUSTICE POWELL delivered the opinion of the Court.

Petitioners in this case are three persons who were convicted of distributing obscene materials and sentenced to periods of probation on the condition that they make regular installment payments toward the satisfaction of substantial fines. Because they failed to make these payments, their probations were revoked by the Georgia court, and they are now claiming that these revocations discriminated against them on the basis of wealth in violation of the Equal Protection Clause of the Fourteenth Amendment. Since the record in this case suggests that petitioners may be in their present predicament because of the divided loyalties of their counsel, we have concluded that it is inappropriate to reach the merits of this difficult equal protection issue. Instead, we remand this case for further findings concerning a possible due process violation.

I

Petitioners Tante and Allen were working, respectively, as the projectionist and ticket taker at the Plaza Theatre in Atlanta when they were arrested and charged with two counts of distributing obscene materials in violation of Ga. Code § 26-2101. About four months later, petitioner Wood was arrested and charged with two violations of the same provision after he sold two magazines to a policeman while working at the Plaza Adult Bookstore. There is no evidence that any of

pp 3, 4, 7, 11, 12

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

From: Mr. Justice Powell

1-16-81

Circulated: _____

Recirculated: JAN 16 1981

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, v. State of Georgia.	}	On Writ of Certiorari to the Court of Appeals of Georgia.
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[January —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

Petitioners in this case are three persons who were convicted of distributing obscene materials and sentenced to periods of probation on the condition that they make regular installment payments toward the satisfaction of substantial fines. Because they failed to make these payments, their probations were revoked by the Georgia court, and they are now claiming that these revocations discriminated against them on the basis of wealth in violation of the Equal Protection Clause of the Fourteenth Amendment. Since the record in this case suggests that petitioners may be in their present predicament because of the divided loyalties of their counsel, we have concluded that it is inappropriate to reach the merits of this difficult equal protection issue. Instead, we remand this case for further findings concerning a possible due process violation.

I

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3, 7, 12

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

From Mr. Justice Powell

1-23-81

~~Circulated~~

~~Recirculated~~ JAN 23 1981

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, | On Writ of Certiorari to
 v. | the Court of Appeals of
 State of Georgia. | Georgia.

[January —, 1981]

JUSTICE POWELL delivered the opinion of the Court.

Petitioners in this case are three persons who were convicted of distributing obscene materials and sentenced to periods of probation on the condition that they make regular installment payments toward the satisfaction of substantial fines. Because they failed to make these payments, their probations were revoked by the Georgia court, and they are now claiming that these revocations discriminated against them on the basis of wealth in violation of the Equal Protection Clause of the Fourteenth Amendment. Since the record in this case suggests that petitioners may be in their present predicament because of the divided loyalties of their counsel, we have concluded that it is inappropriate to reach the merits of this difficult equal protection issue. Instead, we remand this case for further findings concerning a possible due process violation.

I

Petitioners Tante and Allen were working, respectively, as the projectionist and ticket taker at the Plaza Theatre in Atlanta when they were arrested and charged with two counts of distributing obscene materials in violation of Ga. Code § 26-2101. About four months later, petitioner Wood was arrested and charged with two violations of the same provision after he sold two magazines to a policeman while working at the Plaza Adult Bookstore. There is no evidence that any of

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 18, 1980

Re: No. 79-6027 Wood v. Georgia

Dear Lewis:

In the event your opinion becomes the opinion of the Court, I will be happy to join it.

Sincerely,



Mr. Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

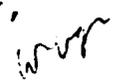
January 6, 1981

Re: No. 79-6027 Wood v. Georgia

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

December 11, 1980

Re: 79-6027 - Wood v. Georgia

Dear Lewis:

In my judgment your memorandum sets forth an appropriate disposition of this somewhat unusual case. My only suggestion of substance is that I am not sure we should indulge in the speculation that this lawyer was motivated by the employer's interest in having a test case on this issue. It seems to me you have enough basis for questioning his fidelity to his client without that speculation and I think it is perhaps too far beyond the record to be appropriate.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 9, 1981

Re: 79-6027 - Wood v. Georgia

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

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

79-6027 - Wood v. Georgia

From: Mr. Justice Stevens

Circulated: JAN 16 '81

JUSTICE STEVENS, concurring.

Recirculated: _____

Although I join the Court's opinion, my view that the potential conflict of interest disclosed by the record requires that the judgment be vacated does not rest on the hypothesis that the employer may have contrived a test case. It rests on the likelihood that the District Court would have imposed a significantly different sentence if he had not been led to believe that the employer would pay the fines.

Independent counsel for these individuals surely would not have let the trial judge impose fines that were manifestly beyond their ability to pay without obtaining an enforceable commitment from the employer. But a lawyer faithfully representing the interest of the employer surely would not make any such commitment gratuitously. The net result of the conflicting interests represented by one lawyer is a manifestly unfair prison sentence imposed on employees of the person who is probably the principal wrongdoer.

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: JAN 16 '81

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, v. State of Georgia.	}	On Writ of Certiorari to the Court of Appeals of Georgia.
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[January —, 1981]

JUSTICE STEVENS, concurring.

Although I join the Court's opinion, my view that the potential conflict of interest disclosed by the record requires that the judgment be vacated does not rest on the hypothesis that the petitioners' employer may have contrived a test case. See *ante*, at 5-6, 7. It rests instead on the likelihood that the state trial court would have imposed a significantly different sentence if it had not been led to believe that the employer would pay the fines.

Independent counsel for these individuals surely would not have let the trial judge impose fines that were manifestly beyond their ability to pay without obtaining an enforceable commitment from the employer. But a lawyer faithfully representing the interest of the employer surely would not make any such commitment gratuitously. The net result of the conflicting interests represented by one lawyer is a manifestly unfair prison sentence imposed on employees of the person who is probably the principal wrongdoer.

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: JAN 22 '81

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 79-6027

Raymond Wood et al., Petitioners, } On Writ of Certiorari to
v. } the Court of Appeals of
State of Georgia. } Georgia.

[January —, 1981]

JUSTICE STEVENS, concurring.

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Independent counsel for these individuals surely would not have permitted the trial judge to impose fines that were manifestly beyond their ability to pay without obtaining an enforceable commitment from the employer. But a lawyer faithfully representing the interest of the employer surely would not make any such commitment gratuitously. The net result of the conflicting interests represented by one lawyer is a manifestly unfair prison sentence imposed on employees of the person who is probably the principal wrongdoer.