

# The Burger Court Opinion Writing Database

## *Ralston v. Robinson*

454 U.S. 201 (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



October 8, 1981

RE: 80-2049 - Ralston v. Robinson

MEMORANDUM TO THE CONFERENCE

At Conference I voted tentatively to  
reverse. My post Conference review satisfies  
me this is my firm vote.

Regards,

A handwritten signature, likely of a Justice, is written below the word "Regards,". The signature is stylized and appears to be "WRB".

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 9, 1981

Re: Ralston v. Robinson, No. 80-2049

Dear Thurgood:

While I agree with most of your recirculated draft, I have the following reservations:

1) Despite the changes from the initial draft, there remain a few comments concerning the Bureau of Prisons' lack of "control" over the "basic conditions of confinement" of YCA offenders. While I agree that the Bureau may not share the sentencing authority given trial judges under the YCA, the scope of the Bureau's discretion in determining appropriate "treatment" and "segregation among classes of youth offenders" is not an issue before this Court. Indeed, as Bill pointed out, it is the subject of much lower court litigation.

In this regard, I find little in Dorszynski to support your statement on page 4 that, under the YCA, "the judge is given significant control over the basic conditions of treatment for YCA offenders." While Dorszynski recognized that the YCA enhanced the sentencing options of trial judges, the discussion at pages 434-35 of that opinion indicates that it is the Bureau which is given most of the "flexibility" in determining and administering YCA treatment. Cf. page 5 of the draft, quoting from Durst. I am also troubled by similar language in the first paragraph on page 6; the last sentence of the first paragraph on page 9; and the phrase "As the Courts of Appeals have consistently held" in the last sentence of the carry-over paragraph on page 10, which may make it appear that we are endorsing all or part of the Court of Appeals decisions cited in footnote 5. I doubt I could agree with those holdings fully.

2) I agree with Byron and Harry that the second paragraph on page 16 should be eliminated.

3) Isn't the language on the top of page 17 speculative, insofar as it suggests what the sentencing judge "would have" done were he "conscious of his authority." The record seems clear enough to permit the conclusion that the sentencing judge envisioned respondent would not receive "any further" YCA treatment, and that he would be removed to a high security prison.

Regards,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
THE CHIEF JUSTICE

PERSONAL

November 11, 1981

Re: Ralston v. Robinson, No. 80-2049.

Dear Thurgood:

I appreciate the changes you have made in response to my concerns. I am still troubled, however, by some of the language in Part II, for example the part on the Bureau's "inability" to "dictate basic treatment conditions." To the extent this means only that the Bureau may not unilaterally abdicate its responsibilities under the Act, I agree. But the question of exactly what sort of "treatment" and "segregation" the YCA requires is properly left for another day. Surely no district judge can "dictate" conditions of confinement and treatment except as a specific provision of the YCA is the source.

I have the following suggestions. On page 4, I would prefer to delete the last sentence of the first paragraph of Part II, or at least change it to say simply that when a judge sentences a youth offender to YCA treatment, the Act mandates "certain" basic conditions of treatment. In the first sentence on page 6, I wish you would change "control" to "set" or "prescribe," which is also more consistent with the sentence that follows. In addition, I would prefer to delete the last line of that paragraph, which should be unnecessary given that you have already referred specifically to the requirements of treatment and segregation.

I realize these are relatively minor points, but the changes would alleviate my concern that our decision not be interpreted more broadly than is appropriate.

Regards,



Justice Marshall

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

CHAMBERS OF  
THE CHIEF JUSTICE

November 16, 1981

Re: No. 80-2049 - Ralston v. Robinson

Dear Thurgood:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'W. Marshall', written in a cursive style.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WM. J. BRENNAN, JR.

November 5, 1981

RE: No. 80-2049 Ralston v. Robinson

Dear John:

Please join me in your dissenting opinion in the  
above.

Sincerely,

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

Justice Stevens

cc: The Conference

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

CHAMBERS OF  
JUSTICE BYRON R. WHITE

November 5, 1981

Re: 80-2049 - Ralston v. Robinson

Dear Thurgood,

Except for the second paragraph on  
page 16, I join your latest circulation.

Sincerely yours,



Justice Marshall

Copies to the Conference

cpm

0\$2049E 29-OCT-81 DRB

29 OCT 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER v. JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[October —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (June 22, 1981), to decide whether a youth offender who is sentenced to a consecutive adult term of imprisonment while serving a sentence imposed under the Federal Youth Corrections Act (YCA), 18 U. S. C. §5005 *et seq.*, must receive YCA treatment for the remainder of his youth sentence. The Courts of Appeals are in conflict on this issue.<sup>1</sup> We conclude that the YCA does not require such treatment if the judge imposing the subsequent adult sentence determines that the youth will not benefit from further YCA treatment during the remainder of his youth sentence. Accordingly, we reverse the judgment of the Court of Appeals.

<sup>1</sup> In this case, the United States Court of Appeals for the Seventh Circuit gave an affirmative answer to the question presented. See 642 F. 2d 1077 (1980). The United States Court of Appeals for the Third Circuit, *Thompson v. Carlson*, 624 F. 2d 415 (1980), gave a negative answer, holding that a judge's determination that the offender would not benefit from YCA treatment warrants treating him immediately as an adult. The United States Court of Appeals for the Fourth Circuit, *Outing v. Bell*, 632 F. 2d 1144 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also gave a negative answer, holding that the policy of prison officials warrants treating him as an adult.

Changes: Pp. 6, 7, 9, 10, 14, 16

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4 NOV 1981

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[October —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

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<sup>1</sup> In this case, the United States Court of Appeals for the Seventh Circuit gave an affirmative answer to the question presented. See 642 F. 2d 1077 (1980). The United States Court of Appeals for the Third Circuit, *Thompson v. Carlson*, 624 F. 2d 415 (1980), gave a negative answer, holding that a judge's determination that the offender would not benefit from YCA treatment warrants treating him immediately as an adult. The United States Court of Appeals for the Fourth Circuit, *Outing v. Bell*, 632 F. 2d 1144 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also gave a negative answer, holding that the policy of prison officials warrants treating him as an adult.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Blackmun  
Justice Powell  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

From: Justice Marshall

Circulated: \_\_\_\_\_

Recirculated: ~~TT NOV~~

Pp 4, 6, 9, 10, 16, 17, 18, 19

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

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<sup>1</sup> In this case, the United States Court of Appeals for the Seventh Circuit gave an affirmative answer to the question presented. See 642 F. 2d 1077 (1980). The United States Court of Appeals for the Third Circuit, *Thompson v. Carlson*, 624 F. 2d 415 (1980), gave a negative answer, holding that a judge's determination that the offender would not benefit from YCA treatment warrants treating him immediately as an adult. The United States Court of Appeals for the Fourth Circuit, *Outing v. Bell*, 632 F. 2d 1144 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also gave a negative answer, holding that the policy of prison officials warrants treating him as an adult.

Pp. 4, 6

0\$2049E, 11-12-811, rev. Wilma

13 NOV 1981

4th DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (June 22, 1981), to decide whether a youth offender who is sentenced to a consecutive adult term of imprisonment while serving a sentence imposed under the Federal Youth Corrections Act (YCA), 18 U. S. C. § 5005 *et seq.*, must receive YCA treatment for the remainder of his youth sentence. The Courts of Appeals are in conflict on this issue.<sup>1</sup> We conclude that the YCA does not require such treatment if the judge imposing the subsequent adult sentence determines that the youth will not benefit from further YCA treatment during the remainder of his youth sentence. Accordingly, we reverse the judgment of the Court of Appeals.

<sup>1</sup> In this case, the United States Court of Appeals for the Seventh Circuit gave an affirmative answer to the question presented. See 642 F. 2d 1077 (1980). The United States Court of Appeals for the Third Circuit, *Thompson v. Carlson*, 624 F. 2d 415 (1980), gave a negative answer, holding that a judge's determination that the offender would not benefit from YCA treatment warrants treating him immediately as an adult. The United States Court of Appeals for the Fourth Circuit, *Outing v. Bell*, 632 F. 2d 1144 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also gave a negative answer, holding that the policy of prison officials warrants treating him as an adult.

Stylistic changes on pp 5,7,10,12

0\$2049E,rev. 11/18/81 spw

19 NOV 1981

5th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE MARSHALL delivered the opinion of the Court.

We granted certiorari in this case, — U. S. — (June 22, 1981), to decide whether a youth offender who is sentenced to a consecutive adult term of imprisonment while serving a sentence imposed under the Federal Youth Corrections Act (YCA), 18 U. S. C. §5005 *et seq.*, must receive YCA treatment for the remainder of his youth sentence. The Courts of Appeals are in conflict on this issue.<sup>1</sup> We conclude that the YCA does not require such treatment if the judge imposing the subsequent adult sentence determines that the youth will not benefit from further YCA treatment during the remainder of his youth sentence. Accordingly, we reverse the judgment of the Court of Appeals.

<sup>1</sup> In this case, the United States Court of Appeals for the Seventh Circuit gave an affirmative answer to the question presented. See 642 F. 2d 1077 (1980). The United States Court of Appeals for the Third Circuit, *Thompson v. Carlson*, 624 F. 2d 415 (1980), gave a negative answer, holding that a judge's determination that the offender would not benefit from YCA treatment warrants treating him immediately as an adult. The United States Court of Appeals for the Fourth Circuit, *Outing v. Bell*, 632 F. 2d 1144 (1980), cert. denied, No. 80-6005 (Mar. 23, 1981), also gave a negative answer, holding that the policy of prison officials warrants treating him as an adult.

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

CHAMBERS OF  
JUSTICE HARRY A. BLACKMUN

November 6, 1981

Re: No. 80-2049 - Ralston v. Robinson

Dear Thurgood:

I join your recirculation of November 4 subject (a) to the elimination of the paragraph on page 16 with which Byron also is uncomfortable and (b) to any suggestions that might be forthcoming from the Chief Justice, as the author of Dorszynski, with respect to the treatment of that case on page 7 of your opinion. If the Chief has no concern about that treatment, I go along.

Sincerely,



Justice Marshall

cc: The Conference

✓

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

October 30, 1981

80-2049 Ralston v. Robinson

Dear Thurgood:

On the basis of a first reading of your draft opinion, I have many of the same concerns expressed by Bill Rehnquist in his letter to you of this date.

I will take a closer look at your opinion, but probably will await developments.

Sincerely,



Mr. Justice Marshall

lfp/ss

cc: The Conference

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To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Stevens  
Justice O'Connor  
Justice Scalia  
Justice Souter  
Justice Ginsburg  
Justice Breyer

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NOV 13 1981

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2049

**GEORGE A. RALSTON, WARDEN, PETITIONER v.  
JOHN CARROLL ROBINSON**

**ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT**

[November —, 1981]

JUSTICE POWELL, concurring in the judgment.

The only question presented in this case is whether an offender, the respondent, serving a sentence under the Youth Corrections Act (YCA), 18 U. S. C. 5005, *et seq.*, and thereafter sentenced to a consecutive term of imprisonment as an adult, must nevertheless be separated from other adult offenders ~~treated as a YCA offender~~ for the remainder of his sentence under that Act. I agree with the Court that the answer to this question must be in the negative. I write separately because it seems to me that the Court's opinion, in addressing the authority of the Director of the Bureau of Prisons (the Director), may be read as unnecessarily curtailing his authority and discretion to act in other cases.

It was a District Court that imposed the consecutive adult term on respondent, but it was the Director who made the *decision* to treat respondent as an adult prisoner no longer entitled to be segregated from adult offenders. I agree with the Court as to the authority of the District Court to impose the consecutive adult term of imprisonment. I confine this concurrence to the issue of authority of the Director.

Respondent pleaded guilty to second degree murder in 1974. The court sentenced him to 10 years of custody under the YCA. In 1975 respondent was convicted of assault with a dangerous weapon. He was sentenced to a consecutive 10

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 (ootwoks  
 omitted)

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall ✓  
 Justice Blackmun  
 Justice Rehnquist  
 Justice Stevens  
 Justice O'Connor

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From: Justice Powell

Circulated: \_\_\_\_\_

Recirculated: NOV 20 1981

2nd DRAFT

## SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
 JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
 APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE POWELL, concurring in the judgment.

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It was a District Court that imposed the consecutive adult term on respondent, but it was the Director who made the *decision* to treat respondent as an adult prisoner no longer entitled to be segregated from adult offenders. I agree with the Court as to the authority of the District Court to impose the consecutive adult term of imprisonment. I confine this concurrence to the issue of authority of the Director.

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

October 30, 1981

Re: 80-2049 - Ralston v. Robinson

Dear Thurgood:

Although I agree with the result reached in your draft opinion, I am troubled by some of the dicta. You emphasize throughout the opinion that the YCA accords less discretion to the Bureau of Prisons than do traditional sentencing statutes, and yet I had thought that the opposite is true. The statute does not specify the treatment to be given youth offenders, except to say that it should be "corrective and preventive guidance and training designed to protect the public by correcting the antisocial tendencies of youth offenders." 18 U.S.C. § 5006(f). The section governing treatment, 18 U.S.C. § 5011, says nothing of the specific program of guidance and training to be administered, leaving the formulation of such "treatment" entirely to "the Director." Indeed, the Act provides that "the Director may -- order the committed youth offender confined and afforded treatment under such conditions as he believes best designed for the protection of the public." 18 U.S.C. § 5015(a)(3) (emphasis added). The statute mandates only that youth offenders receive YCA "treatment," and, "[i]nsofar as practical," that they be segregated from adult inmates. The most troublesome language to me is contained in the paragraph spanning pages 6-7 and the full paragraph on page 7, the inflexible language of the last sentence of the first full paragraph on page 9, the absence of the "insofar as practical" language in the first full sentence on page 10, the first full sentence on page 12, and the first sentence of the full paragraph on page 13.

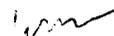
I am equally troubled by the "signal" sent by the full paragraph on page 16. As you know, the Bureau's responsibilities under the Act are currently the subject of much lower court litigation. Although I am sympathetic to your concern that the YCA program has thus far been less

- 2 -

than satisfactory, my limited understanding of the problem has been that the Bureau lacks sufficient funds to implement the YCA system as originally envisioned by Congress. This opinion is simply not the place in which to send "signals" to the Bureau or the lower courts about problems that are not before us and that may well be originating in the appropriations process.

If you would be willing to delete this dicta, or modify it to reflect my concerns as described above, I would be pleased to join. Otherwise, I will write separately or join the views of other members writing separately.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

November 5, 1981

Re: No. 80-2049 Ralston v. Robinson

Dear Thurgood:

Please join me in the second draft of your proposed opinion in this case.

Sincerely,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF  
JUSTICE JOHN PAUL STEVENS

October 30, 1981

Re: 80-2049 - Ralston v. Robinson

Dear Thurgood:

In a few days I will circulate a dissent.

Respectfully,



Justice Marshall

Copies to the Conference

To: The Chief Justice  
 Justice Brennan  
 Justice White  
 Justice Marshall  
 Justice Blackmun  
 Justice Powell  
 Justice Rehnquist  
 Justice O'Connor

80-2049 - Ralston v. Robinson

From: Justice Stevens

Circulated: MMV 4 81

Recirculated: \_\_\_\_\_

JUSTICE STEVENS, dissenting.

At common law a sentence could be amended during the term in which it was imposed subject to the limitation that "a punishment already partly suffered be not increased."<sup>1</sup> "The distinction that the court during the same term may amend the sentence so as to mitigate the punishment, but not so as to increase it," United States v. Benz, 282 U.S. 304, 307, has been recognized by this Court over and over again.<sup>2</sup> Whether the well-settled rule prohibiting judges from increasing the severity of a sentence after it has become final is constitutionally mandated--as I

1

"As a general practice, the sentence, when imposed by a court of record, is within the power of the court during the session in which it is entered, and may be amended at any time during such session, provided a punishment already partly suffered be not increased." F. Wharton, A Treatise on Criminal Pleading and Practice §913, at 641 (9th ed. 1889) (emphasis added) (quoted in United States v. Benz, 282 U.S. 304, 307).

<sup>2</sup>See, e.g., Whalen v. United States, 445 U.S. 684, 703 (REHNQUIST, J., dissenting); North Carolina v. Pearce, 395 U.S. 711, 730-31 (Douglas, J., concurring); id., at 747 (Harlan, J., concurring in part and dissenting in part); Reid v. Covert, 354 U.S. 1, 37 n.68; Roberts v. United States, 320 U.S. 264, 265-66.

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Rehnquist  
Justice Stevens  
Justice O'Connor

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From: Justice Stevens

Circulated: \_\_\_\_\_

Recirculated: NEW \_\_\_\_\_

1st PRINTED DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
JUSTICE O'CONNOR join, dissenting.

At common law a sentence could be amended during the term in which it was imposed subject to the limitation that "a punishment already partly suffered be not increased."<sup>1</sup> "The distinction that the court during the same term may amend the sentence so as to mitigate the punishment, but not so as to increase it," *United States v. Benz*, 282 U. S. 304, 307, has been recognized by this Court over and over again.<sup>2</sup> Whether the well-settled rule prohibiting judges from increasing the severity of a sentence after it has become final is constitutionally mandated,<sup>3</sup> it is unquestionably the sort of

<sup>1</sup>"As a general practice, the sentence, when imposed by a court of record, is within the power of the court during the session in which it is entered, and may be amended at any time during such session, *provided a punishment already partly suffered be not increased.*" F. Wharton, *A Treatise on Criminal Pleading and Practice* § 913, at 641 (9th ed. 1889) (emphasis added) (quoted in *United States v. Benz*, 282 U. S. 304, 307).

<sup>2</sup>See, e. g., *Whalen v. United States*, 445 U. S. 684, 703 (REHNQUIST, J., dissenting); *North Carolina v. Pearce*, 395 U. S. 711, 730-731 (Douglas, J., concurring); *id.*, at 747 (Harlan, J., concurring in part and dissenting in part); *Reid v. Covert*, 354 U. S. 1, 37, n. 68; *Roberts v. United States*, 320 U. S. 264, 265-266.

<sup>3</sup>"If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence." *Ex parte Lange*, 18 Wall. 163, 168.

Although *United States v. DiFrancesco*, 449 U. S. 117, purports to confine *Ex parte Lange* and *United States v. Benz*, 282 U. S. 304, to their spe-

To: The Chief Justice  
Justice Brennan  
Justice White  
Justice Marshall  
Justice Blackmun  
Justice Stevens  
Justice O'Connor  
Justice Souter  
Justice Ginsburg  
Justice Breyer

7p 6, 7

0\$2049I 18-NOV-81 rev. Drb

2nd DRAFT

dated: NOV 19 81

### SUPREME COURT OF THE UNITED STATES

No. 80-2049

GEORGE A. RALSTON, WARDEN, PETITIONER *v.*  
JOHN CARROLL ROBINSON

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF  
APPEALS FOR THE SEVENTH CIRCUIT

[November —, 1981]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and  
JUSTICE O'CONNOR join, dissenting.

At common law a sentence could be amended during the term in which it was imposed subject to the limitation that "a punishment already partly suffered be not increased."<sup>1</sup> "The distinction that the court during the same term may amend the sentence so as to mitigate the punishment, but not so as to increase it," *United States v. Benz*, 282 U. S. 304, 307, has been recognized by this Court over and over again.<sup>2</sup> Whether the well-settled rule prohibiting judges from increasing the severity of a sentence after it has become final is constitutionally mandated,<sup>3</sup> it is unquestionably the sort of

<sup>1</sup>"As a general practice, the sentence, when imposed by a court of record, is within the power of the court during the session in which it is entered, and may be amended at any time during such session, *provided a punishment already partly suffered be not increased.*" F. Wharton, *A Treatise on Criminal Pleading and Practice* § 913, at 641 (9th ed. 1889) (emphasis added) (quoted in *United States v. Benz*, 282 U. S. 304, 307).

<sup>2</sup>See, e. g., *Whalen v. United States*, 445 U. S. 684, 703 (REHNQUIST, J., dissenting); *North Carolina v. Pearce*, 395 U. S. 711, 730-731 (Douglas, J., concurring); *id.*, at 747 (Harlan, J., concurring in part and dissenting in part); *Reid v. Covert*, 354 U. S. 1, 37, n. 68; *Roberts v. United States*, 320 U. S. 264, 265-266.

<sup>3</sup>"If there is anything settled in the jurisprudence of England and America, it is that no man can be twice lawfully punished for the same offence." *Ex parte Lange*, 18 Wall. 163, 168.

Although *United States v. DiFrancesco*, 449 U. S. 117, purports to confine *Ex parte Lange* and *United States v. Benz*, 282 U. S. 304, to their specific contexts, see 449 U. S., at 139, the Court's holding in *DiFrancesco* is



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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

November 5, 1981

No. 80-2049 Ralston v. Robinson

Dear John,

Please join me in your dissent in the  
referenced case.

Sincerely,

Justice Stevens

Copies to the Conference