The Burger Court Opinion Writing Database

Williams v. United States

458 U.S. 279 (1982)

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

June 11, 1982

Re: No. 80-2116 - U.S. v. Williams

Dear Thurgood:

Will you take on a dissent in this case?

Regards,

WEB

Justice Marshall

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

CHAMBERS OF
THE CHIEF JUSTICE

June 22, 1982

Re: No. 80-2116 - Williams v. U.S.

Dear Thurgood:

I join.

Regards,

WEB

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 10, 1982

RE: No. 80-2116 Williams v. United States

Dear Harry:

You have written a very persuasive opinion for your conclusion. I am not inclined to dissent. But I'll wait and see whether anyone else undertakes one.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1982

RE: No. 80-2116 WILLIAMS v. UNITED STATES

Dear Thurgood:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

.85

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

June 22, 1982

RE: No. 80--2116 WILLIAMS v. UNITED STATES

Dear Byron:

Please join me in your dissenting opinion in the above.

Sincerely,

Bill

Justice White

Copies to the Conference

.85

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 22, 1982

Re: 80-2116 - Williams v. U.S.

Dear Thurgood,

Please join me in your dissenting opinion.

Sincerely yours,

Justice Marshall

Copies to the Conference

cpm

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

From: Justice White

Circulated: 22 JUN 1982

Recirculated: _____

No. 80-2116 -- William Archie Williams v. United States

JUSTICE WHITE, dissenting.

The majority reverses petitioner's conviction under 18 U.S.C. §1014 on the grounds that the Government has not shown that he made a "false statement or report" or "willfully overvalue[d] any land, property, or security." Ante, at 5. According to the majority, a check is not a statement; it is merely an order to the drawee bank to pay the face amount to the payee and a promise to pay the amount of the check upon notice of dishonor. Ante, at 5-6. Like Justice Marshall, I do not disagree with the majority that under the Uniform Commercial Code a check constitutes an order to the drawee bank and a promise to pay upon notice of dishonor. However, the fact that the Uniform Commercial Code describes a check in this manner does not mean that a check does not carry with it other representations, for the Code does not purport to contain an all-inclusive definition of a check.

It defies common sense and everyday practice to maintain, as the majority does, that a check carries with it no representation as to the drawer's account balance. No bank would give a customer immediate credit for a check drawn on another bank or reduce a check to cash if it did not believe that the check would be paid in the normal course of collection. It could be argued that petitioner did not make a false statement with respect to the May 10 check drawn on the Pelican Bank because he knew the bank would pay the check through its dummy account. However, petitioner does not contend that he had any such arrangement with the Winn Bank, and thus the May 9 check for $58,500 drawn on the Winn Bank, when his balance was $4,649.97, can fairly be said to constitute a false statement. In any event, a properly instructed jury surely found that Williams had made false

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

From: **Justice White**

Circulated: _____

Recirculated: 6/24/82

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2116

WILLIAM ARCHIE WILLIAMS, PETITIONER *v.* UNITED STATES

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

[June —, 1982]

JUSTICE WHITE, dissenting. White, whom Justice Brennan joins

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1st DRAFT

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

Williams v. United States, No. 80-2116.

From: Justice Marshall

Circulated: JUN 21 1982

Recirculated: _____

JUSTICE MARSHALL, dissenting.

The majority, after developing an overly technical "definition" of the meaning of a check--a definition which will come as quite a surprise to banks and businesses that accept checks in exchange for goods, services or cash on the representation that the drawer has sufficient funds to cover the check--concludes that the question whether petitioner Williams' check-kiting scheme is covered by 18 U.S.C. §1014 is ambiguous. The majority then applies its version of the rule of lenity, and decides that Williams cannot be convicted for violating this statute. Because I believe that the majority misapplies the rule of lenity, and because Williams' conduct is clearly prohibited by the statute, I respectfully dissent.

I

Before addressing the application of §1014 to Williams' conduct, I think that it is helpful to set forth clearly what is not involved here. This is not a case in which a defendant, through careless bookkeeping, wrote checks on accounts with insufficient funds. Nor is this a case in which a defendant wrote a check on an account containing insufficient funds with the good faith intention to deposit in that account an amount that would cover the check before it cleared in the normal course of business. Rather, this case clearly involves fraudulent conduct. Petitioner Williams engaged in an intentional check-kiting scheme. He misled the first bank into honoring his

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JUN 22 1982

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2116

WILLIAM ARCHIE WILLIAMS, PETITIONER *v.* UNITED STATES

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

[June ——, 1982]

JUSTICE MARSHALL, dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 6, 1982

Re: No. 80-2116 - Williams v. United States

Dear Chief:

You have assigned me No. 80-2116, Williams v. United States. I write this note merely to emphasize, as I did at conference, that my vote to affirm was precarious, and I feel a "readable" opinion could be written either way. I therefore hope that you and the other Members of the Court will regard my position as flexible. I shall write the opinion the way I am persuaded as we do our research and homework. The other votes seem to be firm and equally divided, so I assume that the assignment to me is safe enough, however the case comes out.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 9, 1982

MEMORANDUM TO THE CONFERENCE

Re: No. 80-2116 - Williams v. United States

Your notes will disclose that at the conference of April 23 the "four senior" Members of the Court voted to affirm in this case, and the "four junior" Members voted to reverse. I was in the center, voted tentatively to affirm, but, after the case was assigned to me, wrote to the Chief, with copies to all, that my vote to affirm was precarious.

After reflecting upon the briefs and argument, and doing some work of my own, I have reached the conclusion that 18 U.S.C. §1014 does not apply to a "bad check." I therefore have written the proposed opinion to reverse the judgment of the Court of Appeals. As Byron so often says, "Cheers."

Harry

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2116

WILLIAM ARCHIE WILLIAMS, PETITIONER *v.* UNITED STATES

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

[June ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we must decide whether the deposit of a "bad check" in a federally-insured bank is proscribed by 18 U. S. C. § 1014.

I

In 1975, petitioner William Archie Williams purchased a controlling interest in the Pelican State Bank in Pelican, La., and appointed himself president. The bank's deposits were insured by the Federal Deposit Insurance Corporation.

Among the services the bank provided its customers at the time of petitioner's purchase was access to a "dummy account," used to cover checks drawn by depositors who had insufficient funds in their individual accounts. Any such check was processed through the dummy account and paid from the bank's general assets. The check was then held until the customer covered it by a deposit to his own account, at which time the held check was posted to the customer's account and the dummy account was credited accordingly. As president of the bank, petitioner enjoyed virtually unlimited use of the dummy account, and by May 2, 1978, his personal overdrafts amounted to $55,055.44, approximately half the total then covered by the account.

On May 8, 1978, federal and state examiners arrived at the

HAB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 15, 1982

Re: No. 80-2116 - Williams v. United States

Dear Sandra:

I had thought the restrictions of the opinion were clear enough, for we are not interpreting state law. But to satisfy your concerns, I am willing to make two changes. At the end of the first paragraph on page six (following the citation to the Louisiana Code) I would add the following footnote: "Unlike many state statutes that do proscribe conduct such as that engaged in by petitioner, the federal scheme obviously does not in terms reach the deposit of checks that are supported by insufficient funds. See Comment, Insufficient Funds Checks in the Criminal Area: Elements, Issues, and Proposals, 38 Mo. L. Rev. 432 (1973)." This should make it clear that the decision does not reflect on statutes such as the California provision cited in your June 14 letter. I also would modify the first full sentence on page 7 to read: "While this broader reading of §1014 is plausible, we are not persuaded that it is the preferable or intended one." Again, this should emphasize that we are referring only to congressional intent as expressed in §1014.

Would these modifications meet your concerns?

Sincerely,

Justice O'Connor

Stylistic Changes
Pages: 6 and 7
Footnotes 6-10 renumbered

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

From: **Justice Blackmun**

Circulated: _____

Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80–2116

WILLIAM ARCHIE WILLIAMS, PETITIONER *v.* UNITED STATES

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

[June ——, 1982]

JUSTICE BLACKMUN delivered the opinion of the Court.

In this case we must decide whether the deposit of a "bad check" in a federally-insured bank is proscribed by 18 U. S. C. § 1014.

I

In 1975, petitioner William Archie Williams purchased a controlling interest in the Pelican State Bank in Pelican, La., and appointed himself president. The bank's deposits were insured by the Federal Deposit Insurance Corporation.

Among the services the bank provided its customers at the time of petitioner's purchase was access to a "dummy account," used to cover checks drawn by depositors who had insufficient funds in their individual accounts. Any such check was processed through the dummy account and paid from the bank's general assets. The check was then held until the customer covered it by a deposit to his own account, at which time the held check was posted to the customer's account and the dummy account was credited accordingly. As president of the bank, petitioner enjoyed virtually unlimited use of the dummy account, and by May 2, 1978, his personal overdrafts amounted to $55,055.44, approximately half the total then covered by the account.

On May 8, 1978, federal and state examiners arrived at the

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 24, 1982

MEMORANDUM TO THE CONFERENCE:

Re: No. 80-2116 - Williams v. United States

In response to Thurgood's dissent, now in print, I shall add the following three footnotes to my opinion:

1. On page 8, at the end of the carry-over paragraph, a new footnote 8 reading as follows:

"[8]JUSTICE MARSHALL's dissent does not fully respond to this point. That opinion, like the Government's Brief, emphasizes that petitioner's 'conduct was wrongful,' post, at 2, and deals only with §1014's application to check kiting. See also post, at 3, 4, 8, 9, and 10. Indeed, the dissent seems to suggest that that statute would not reach the conduct of a defendant who 'wrote a check on an account containing insufficient funds with the good faith intention to deposit in that account an amount that would cover the check before it cleared in the normal course of business.' Post, at 1. Accepting JUSTICE MARSHALL's theory, however, would bring such conduct within the literal language of the statute, for a 'false statement' would have been submitted with the hope of inducing a bank to 'advance' funds. While the dissent attempts to avoid this by suggesting that there would be no violation of §1014 absent an intent 'to defraud,' post, at 10, n. 4, the language of the statute imposes no such intent requirement. And as we emphasize above, we believe that the wording of §1014 would be a peculiar choice of terms if Congress wished to proscribe such conduct."

2. On the same page at the end of the first full paragraph, a new footnote 9 reading as follows:

"[9]The dissent rests entirely on the proposition that petitioner's conduct falls within the 'plain language' of §1014. Post, at 2. See also post, at 10, 11, and 14. In our view, that literally is not true. And even if one looks to the 'common understanding' so emphasized by JUSTICE MARSHALL, post, at 5-7, the statute is at best ambiguous, for we doubt that the public typically describes bad checks as 'false statements.'"

3. On page 11, following the citation of United States v. Universal C.I.T. Credit Corp., a new footnote 13 reading as follows:

"[13]We therefore find it somewhat surprising that JUSTICE MARSHALL's dissenting opinion takes us to task for noting the applicability of the rule of lenity to the interpretation of what we believe to be an ambiguous statute."

HAB.

HA

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 28, 1982

MEMORANDUM TO THE CONFERENCE

Re: Holds for No. 80-2116, Williams v. United States

One case is being held for Williams. It is No. 81-1047, United States v. Sher. The respondent in Sher engaged in a check kiting scheme involving two banks, one in Philadelphia and the other in Pittsburgh. After opening nominal accounts in both banks, respondent "floated" checks between the two institutions; respondent obtained cash for the checks during the time lag while the checks cleared.

Respondent eventually was caught, and was indicted in the Western District of Pennsylvania under 18 U.S.C. §1014. The District Court dismissed the indictment, however, concluding that §1014 does not proscribe check kiting. The Third Circuit affirmed.

I shall vote to deny cert. The Third Circuit anticipated our holding that check kiting is not barred by §1014, and that issue is the only one in the case.

Harry

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

June 9, 1982

80-2116 Williams v. United States

Dear Harry:

Please join me.

Sincerely,

L. Lewis

Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 17, 1982

Re: No. 80-2116 Williams v. United States

Dear Harry:

Please join me.

Sincerely,

WHR/gb

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 9, 1982

Re: 80-2116 - Williams v. United States

Dear Harry:

Please join me.

Respectfully,

JPS

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 14, 1982

No 80-2116, Williams v. United States

Dear Harry,

While I agree with the analysis and result reached in your opinion, I am a little concerned that state courts may read the language of the opinion as somehow limiting the scope of state bad check laws. For example, while the opinion applies only to §1014, language on pp. 5-6 broadly suggests that a check can never be a "false statement." Under many state laws, however, a check is, in effect, interpreted as a statement that there are sufficient funds to cover the check. In California, for example:

> "Any person who for himself ... willfully, with intent to defraud, makes or draws or utters or delivers any check ... upon any bank or depository, ... for the payment of money, knowing at the time of such making, drawing, uttering or delivering that the maker or drawer ... has not sufficient funds in, or credit with said bank or depository, ... for the payment of such check ... in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in the county jail for not more than one year, or in the state prison." Cal. Penal Code §476a(a).

If you could add both the following footnote, or some other language making the same point, at the end of the first paragraph on p. 6, and a slight addition to the text on p. 7, I would be happy to join your opinion.

> Nothing in our opinion today should be read as restricting the the scope of state bad check laws, or in limiting the authority of

the States to define checks uttered with insufficient funds as "false statements." The force of our decision is limited to 18 U.S.C. §1014.

On p. 7, line 5, add "under §1014" after the word "one."

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 15, 1982

No. 80-2116 Williams v. United States

Dear Harry,

The proposed changes will meet my concerns and I appreciate your willingness to include them. With these changes, I will be pleased to join your opinion.

Sincerely,

Sandra

Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 16, 1982

No. 80-2116 Williams v. United States

Dear Harry,

Please join me in the second draft of your opinion.

Sincerely,

Sandra

Justice Blackmun

Copies to the Conference