

The Burger Court Opinion Writing Database

Murphy v. Hunt

455 U.S. 478 (1982)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



~~T. David~~

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

CHAMBERS OF
THE CHIEF JUSTICE

January 23, 1981

case taken on
10/5/1981

PERSONAL

RE: 80-2165 - Murphy v. Hunt

Dear Lewis:

Will you undertake a P.C. on a mootness dispositon?
I leave it you how much need be said. There will likely
be a dissent and perhaps a pro forma P.C. could issue first
and the see what it needs.

Regards,

WRB

David: This doesn't change our
program. I'd do this first
as the State ought to know
the status of its constitutional
provision. We can also identify
the core or controversial questions
in footnote.

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

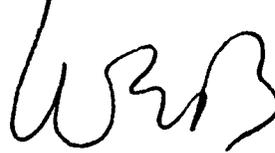
CHAMBERS OF
THE CHIEF JUSTICE

Re: No. 80-2165 - Murphy v. Hunt

Dear Lewis:

Please join me.

Regards,

A handwritten signature in black ink, appearing to be "W. E. B.", written in a cursive style.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

February 2, 1982

RE: No. 80-2165 Murphy v. Hunt

Dear Lewis:

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill", is written in dark ink.

Justice Powell

cc: The Conference

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

From: Justice White

Circulated: 2/20/82

Recirculated: _____

M

No. 80-2165, Murphy v. Hunt

Justice WHITE dissenting.

Article I, §9 of the Nebraska Constitution states that aside from individuals charged with treason, murder, or forcible rape where the proof is evident or the presumption great, "[a]ll persons shall be bailable." The Amendment is not limited to persons awaiting trial. Moreover, the Nebraska statute concerning appeals to the state supreme court provides that "[n]othing herein shall prevent any person from giving supersedeas bond in the district court ... nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Supreme Court." Neb. Rev. Stat. §25-1916.¹ Thus, the provision in the Nebraska Constitution

Footnote(s) 1 will appear on following pages.

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

From: Justice White

Circulated: _____

Recirculated: 22 FEB 1982

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2165

JAMES M. MURPHY, DISTRICT JUDGE,
 FOURTH JUDICIAL DISTRICT OF THE
 STATE OF NEBRASKA, DOUGLAS COUNTY,
 APPELLANT *v.* EUGENE L. HUNT

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[February —, 1982]

JUSTICE WHITE dissenting.

Article I, § 9 of the Nebraska Constitution states that aside from individuals charged with treason, murder, or forcible rape where the proof is evident or the presumption great, "[a]ll persons shall be bailable." The Amendment is not limited to persons awaiting trial. Moreover, the Nebraska statute concerning appeals to the state supreme court provides that "[n]othing herein shall prevent any person from giving supersedeas bond in the district court . . . nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Supreme Court." Neb. Rev. Stat. § 25-1916.¹ Thus, the provision in the Nebraska Constitution which allowed Judge Murphy to deny Appellee Hunt bail pending trial also serves to deny Hunt bail pending

¹The "same criteria remain applicable" to bail pending appeal as bail pending trial; there is no "separate section of law" for the former. Tr. of Oral Arg. 21. See Neb. Rev. Stat. § 29-901. Thus, "if bail is to be denied Mr. Hunt . . . it must be done pursuant to this constitutional provision." Tr. of Oral Arg. 22.

In addition, the Nebraska Supreme Court has held that Nebraska courts have the inherent power to consider the propriety of bail even without a specific authorizing statute. *State v. Jensen*, 203 Neb. 441 (1979).

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

Pages 2, 4 & stylistic

cc: Justice White

Revised: _____

Recirculated: 25 FEB 1982

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2165

JAMES M. MURPHY, DISTRICT JUDGE,
 FOURTH JUDICIAL DISTRICT OF THE
 STATE OF NEBRASKA, DOUGLAS COUNTY,
 APPELLANT *v.* EUGENE L. HUNT

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[February —, 1982]

JUSTICE WHITE dissenting.

Article I, § 9 of the Nebraska Constitution states that aside from individuals charged with treason, murder, or forcible rape where the proof is evident or the presumption great, “[a]ll persons shall be bailable.” The Amendment is not limited to persons awaiting trial. Moreover, the Nebraska statute concerning appeals to the state supreme court provides that “[n]othing herein shall prevent any person from giving supersedeas bond in the district court . . . nor affect the right of a defendant in a criminal case to be admitted to bail pending the review of such case in the Supreme Court.” Neb. Rev. Stat. § 25-1916.¹ Thus, the provision in the Nebraska Constitution which allowed Judge Murphy to deny Appellee Hunt bail pending trial also serves to deny Hunt bail pending

¹The “same criteria remain applicable” to bail pending appeal as bail pending trial; there is no “separate section of law” for the former. Tr. of Oral Arg. 21. See Neb. Rev. Stat. § 29-901. Thus, “if bail is to be denied Mr. Hunt . . . it must be done pursuant to this constitutional provision.” Tr. of Oral Arg. 22.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 8, 1982

Re: No. 80-2165 - Murphy v. Hunt

Dear Lewis:

I agree with your Per Curiam.

Sincerely,



T.M.

Justice Powell

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 2, 1982

Re: No. 80-2165 - Murphy v. Hunt

Dear Lewis:

Please join me.

Sincerely,



Justice Powell

cc: The Conference

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

Justice Powell

FEB 1 1982

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2165

JAMES M. MURPHY, DISTRICT JUDGE, FOURTH JUDICIAL DISTRICT OF THE STATE OF NEBRASKA,
 DOUGLAS COUNTY, APPELLANT *v.*
 EUGENE L. HUNT

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
 FOR THE EIGHTH CIRCUIT

[February —, 1982]

PER CURIAM.

Appellee Hunt was charged with first degree sexual assault on a child and three counts of first degree forcible sexual assault. He appeared on these charges in Omaha Municipal Court where his request for bail was denied.¹ On May 23, 1980, a bail review hearing was held in Douglas County District Court. Relying on Article I, §9 of the Nebraska Constitution, Judge Murphy, appellant here, denied Hunt's second application for bail.² That section of the Nebraska constitution provides in relevant part: "[a]ll persons shall be bailable . . . except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great." For purposes of his application for bail, Hunt's counsel stipulated that, in this case, "the proof [was] evident and the presumption [was] great."

¹ Appellee was also charged with several counts of nonsexual felonies and one count of nonforcible sexual assault. Bail was set as to each of these charges.

² The court relied as well upon a decision of the Supreme Court of Nebraska holding that Article I, §9 of the Nebraska Constitution violates neither the Sixth, Eighth, or Fourteenth Amendments to the United States Constitution. See *Parker v. Roth*, 202 Neb. 850, 278 N. W. 2d 106 (1979).

— page 2, 3

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

FEB 9 1982

2nd DRAFT

FEB 9 1982

SUPREME COURT OF THE UNITED STATES

No. 80-2165

JAMES M. MURPHY, DISTRICT JUDGE, FOURTH JUDICIAL DISTRICT OF THE STATE OF NEBRASKA,
DOUGLAS COUNTY, APPELLANT v.
EUGENE L. HUNT

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[February —, 1982]

PER CURIAM.

Appellee Hunt was charged with first degree sexual assault on a child and three counts of first degree forcible sexual assault. He appeared on these charges in Omaha Municipal Court where his request for bail was denied.¹ On May 23, 1980, a bail review hearing was held in Douglas County District Court. Relying on Article I, §9 of the Nebraska Constitution, Judge Murphy, appellant here, denied Hunt's second application for bail.² That section of the Nebraska constitution provides in relevant part: "[a]ll persons shall be bailable . . . except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great." For purposes of his application for bail, Hunt's coun-

¹Appellee was also charged with several counts of nonsexual felonies and one count of nonforcible sexual assault. Bail was set as to each of these charges.

²The court relied as well upon a decision of the Supreme Court of Nebraska holding that Article I, §9 of the Nebraska Constitution violates neither the Sixth, Eighth, or Fourteenth Amendments to the United States Constitution. See *Parker v. Roth*, 202 Neb. 850, 278 N. W. 2d 106 (1979).

— page 3, 4

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

From: Justice Powell

Circulated: _____
 Recirculated: _____
 MAR 1 1982

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 80-2165

**JAMES M. MURPHY, DISTRICT JUDGE, FOURTH JUDICIAL DISTRICT OF THE STATE OF NEBRASKA,
 DOUGLAS COUNTY, APPELLANT v.
 EUGENE L. HUNT**

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

[March 2, 1982]

PER CURIAM.

Appellee Hunt was charged with first degree sexual assault on a child and three counts of first degree forcible sexual assault. He appeared on these charges in Omaha Municipal Court where his request for bail was denied.¹ On May 23, 1980, a bail review hearing was held in Douglas County District Court. Relying on Article I, § 9 of the Nebraska Constitution, Judge Murphy, appellant here, denied Hunt's second application for bail.² That section of the Nebraska constitution provides in relevant part: "[a]ll persons shall be bailable . . . except for treason, sexual offenses involving penetration by force or against the will of the victim, and murder, where the proof is evident or the presumption great." For purposes of his application for bail, Hunt's coun-

¹ Appellee was also charged with several counts of nonsexual felonies and one count of nonforcible sexual assault. Bail was set as to each of these charges.

² The court relied as well upon a decision of the Supreme Court of Nebraska holding that Article I, § 9 of the Nebraska Constitution violates neither the Sixth, Eighth, or Fourteenth Amendments to the United States Constitution. See *Parker v. Roth*, 202 Neb. 850, 278 N. W. 2d 106 (1979).

Supreme Court of the United States

Washington, D. C. 20543

March 17, 1982

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.MEMORANDUM TO THE CONFERENCECase held for No. 80-2165, Murphy v. Hunt

No. 81-5017, Edwards v. United States is a petition for writ of certiorari to the District of Columbia Court of Appeals. The petitioner in this case challenges the constitutionality of the District of Columbia's preventive detention statute.

In Murphy v. Hunt, the Court held that a challenge to Nebraska's provision for pretrial detention in non-capital, first degree sexual offenses became moot once the appellee was convicted. There was no claim for damages; nor was the suit brought as a class action.

This challenge suffers from the same infirmity. Again there is no claim for damages. No class of pretrial detainees has been certified. The petitioner appealed from an order detaining him prior to trial. Subsequently he pleaded guilty to charges of rape and robbery and was sentenced to a term of 10 to 36 years in prison. He has not appealed his conviction or sentence. Notwithstanding these facts, the District of Columbia Court of Appeals found that petitioner's appeal of the pretrial detention order was not moot because "capable of repetition, yet evading review." Reaching the merits, the court upheld the constitutionality of the detention statute.

In Murphy v. Hunt we vacated the judgment of the Court of Appeals for the Eighth Circuit. Because this case comes from an Article I court, I recommend that the Court simply deny the petition for writ of certiorari. See Doremus v. Board of Education, 342 U.S. 429.

L.F.P.
L.F.P., JR.

LFP/vde

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

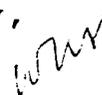
February 2, 1982

Re: No. 80-2165 Murphy v. Hunt

Dear Lewis:

Please join me in your Per Curiam.

Sincerely,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

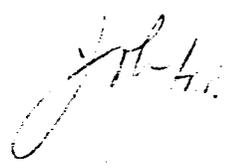
February 3, 1982

Re: 80-2165 - Murphy v. Hunt

Dear Lewis:

Please join me.

Respectfully,



Justice Powell

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR



February 8, 1982

No. 80-2165 Murphy v. Hunt

Dear Lewis,

I agree with the proposed Per Curiam.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sandra", is written below the word "Sincerely".

Justice Powell

Copies to the Conference