

The Burger Court Opinion Writing Database

Hutto v. Davis

454 U.S. 370 (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

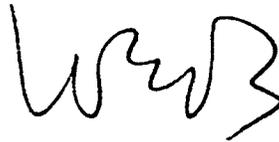
November 20, 1981

Re: No. 81-23 - Hutto, Dir., Virginia St. Dept. of Corr.
v. Davis

Dear Bill:

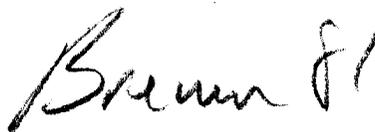
I join your Per Curiam of November 5, 1981.

Regards,



Justice Rehnquist

Copies to the Conference



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

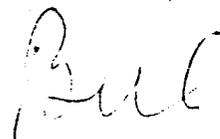
November 9, 1981

RE: No. 81-23 Hutto v. Davis

Dear Bill:

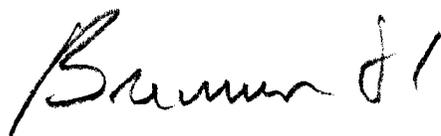
This case is surely not one for summary disposition but is deserving of oral argument. I would make a vote to grant to that end because I believe there must be some judicial review of disproportionality in sentencing.

Sincerely,



Justice Rehnquist

cc: The Conference



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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

December 2, 1981

RE: No. 81-23 Hutto v. Davis

Dear Bill:

It appears that your proposed Per Curiam has a Court.
If, as I think, the case is not to be set down for
oral argument, I'll in due course prepare a dissent.

Sincerely,

Bill

Justice Rehnquist

cc: The Conference

Brennan 81

HUTTO v. DAVIS

No. 81-23

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

From: Justice Brennan

Circulated: DEC 17 1981

Recirculated: _____

JUSTICE BRENNAN, dissenting.

The increasingly alarming penchant of the Court inappropriately to invoke its power of summary disposition could not be more evident than in this case. With the benefit of neither full briefing nor oral argument, the Court holds that Rummel v. Estelle, 445 U.S. 263 (1980), precluded the courts below from holding that respondent has been subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

Rummel considered whether the application of the Texas habitual offender statute to petitioner William Rummel constituted cruel and unusual punishment in violation of the Eighth Amendment. The Texas statute prescribed a mandatory life sentence following a third conviction on a felony charge. Rummel became subject to this provision in 1973, when he was convicted of obtaining \$120.75 by false pretenses, then a felony under Texas law. On two earlier occasions, Rummel had been convicted of felonies under Texas law: in 1964 for fraudulently using a credit card to obtain \$80 worth of goods or services, and in 1969 for passing a forged check in the amount of \$28.36. Rummel argued that the imposition of a mandatory life sentence in his case amounted to cruel and unusual punishment in violation of the

Brennan

STYLISTIC CHANGES

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

From: Justice Brennan

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS,
ET AL. *v.* ROGER TRENTON DAVIS

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

No. 81-23. Decided December —, 1981

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE STEVENS join, dissenting.

The increasingly alarming penchant of the Court inappropriately to invoke its power of summary disposition could not be more evident than in this case. With the benefit of neither full briefing nor oral argument, the Court holds that *Rummel v. Estelle*, 445 U. S. 263 (1980), precluded the courts below from holding that respondent has been subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

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Brennan

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STYLISTIC CHANGES

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

From: Justice Brennan

Circulated: _____

Recirculated: DEC 21 1981

1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS,
ET AL. v. ROGER TRENTON DAVIS

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

No. 81-23. Decided December 1981

January 1982

JUSTICE BRENNAN, with whom JUSTICE MARSHALL and
JUSTICE STEVENS join, dissenting.

The increasingly alarming penchant of the Court inappropriately to invoke its power of summary disposition could not be more evident than in this case. With the benefit of neither full briefing nor oral argument, the Court holds that *Rummel v. Estelle*, 445 U. S. 263 (1980), precluded the courts below from holding that respondent has been subjected to cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments.

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Brenn 81

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 6, 1981

Re: 81-23 - Hutto v. Davis

Dear Bill,

Please join me.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm



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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 17, 1981

Re: No. 81-23 - Hutto v. Davis

Dear Bill:

Please join me in your dissent.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

Brennan

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 27, 1981

Re: No. 81-23 - Hutto v. Davis

Dear Bill:

I could join your Per Curiam if the bulk of its penultimate paragraph were eliminated, that is, if that portion of the paragraph beginning with the second sentence ("By affirming") were omitted. I take this position because I think that a valid argument can be made that Rummel is distinguishable, and that those on the Fourth Circuit's affirming side made a good faith effort to distinguish it. I therefore am reluctant to scold them.

I also wish that some emphasis could be given to Rummel's footnote 11 that left room for the possible application of a proportionality principle when the facts are sufficiently extreme.

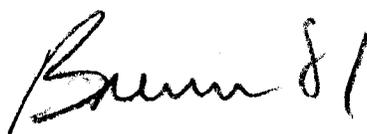
You may, of course, not wish to adopt these suggestions. If not, I would join you in the judgment with a brief concurrence.

Sincerely,



Justice Rehnquist

cc: The Conference



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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 1, 1981

Re: No. 81-23 - Hutto v. Davis

Dear Bill:

Please join me in your second printed draft of the
Per Curiam.

Sincerely,

Harry

Justice Rehnquist

cc: The Conference

Brewer

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

November 18, 1981

81-23 Hutto v. Davis

Dear Al:

Please call for the record in the above case.

Sincerely,

Lewis Powell

Mr. Alexander Stevas

lfp/ss

cc: The Conference

Brunnand

Pg. 2, 6

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

1\$0023GS, 11-23-81, Wilma

Justice Powell
NOV 24 1981

1st DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS,
ET AL., v. ROGER TRENTON DAVIS

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

No. 81-23. Decided November —, 1981

JUSTICE POWELL, concurring in the judgment.

The Court holds that the Eighth Amendment countenances a prison term of 40 years and a fine of \$20,000 for respondent's possession and distribution of approximately nine ounces of marijuana said to have a street value of about \$200. I view the sentence as unjust and disproportionate to the offense. Nevertheless, for the reasons stated below I reluctantly conclude that the Court's decision in *Rummel v. Estelle*, 445 U. S. 263 (1980) is controlling on the facts before us. Accordingly, I join the judgment only.

I

The respondent Davis met Eads in prison. During Eads' confinement, his wife had become a drug user. Concerned about this development and its effect on their two-year old child, Eads offered to cooperate with the police "to assist in the exposure and arrest of those supplying drugs to his wife and any illicit drug distributor in the area, including Davis who Eads identified as an active drug dealer in Wythe County." *Davis v. Davis*, 585 F. 2d 1226, 1228 (CA4 1978).

On furlough from prison, Eads told Davis he wished to buy drugs for himself and some mutual friends currently in prison. Shortly thereafter, the two went to Davis's home where Davis sold Eads three ounces of marijuana for \$74. Davis also gave Eads "drug pills which included LSD and another illicit controlled drug." *Ibid.* A police raid on Davis's

Brennan

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26

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

1\$0023GS, 11-24-81, DRB

From: Justice Marshall

Circular

2nd DRAFT

NOV 24 1981

Nov 24

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS,
ET AL., v. ROGER TRENTON DAVIS

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

No. 81-23. Decided November —, 1981

JUSTICE POWELL, concurring in the judgment.

The Court holds that the Eighth Amendment countenances a prison term of 40 years and a fine of \$20,000 for respondent's possession and distribution of approximately nine ounces of marijuana said to have a street value of about \$200. I view the sentence as unjust and disproportionate to the offense. Nevertheless, for the reasons stated below I reluctantly conclude that the Court's decision in *Rummel v. Estelle*, 445 U. S. 263 (1980) is controlling on the facts before us. Accordingly, I join the judgment only.

I

The respondent Davis met Eads in prison. During Eads' confinement, his wife had become a drug user. Concerned about this development and its effect on their two-year old child, Eads offered to cooperate with the police "to assist in the exposure and arrest of those supplying drugs to his wife and any illicit drug distributor in the area, including Davis who Eads identified as an active drug dealer in Wythe County." *Davis v. Davis*, 585 F. 2d 1226, 1228 (CA4 1978).

On furlough from prison, Eads told Davis he wished to buy drugs for himself and some mutual friends currently in prison. Shortly thereafter, the two went to Davis's home where Davis sold Eads three ounces of marijuana for \$74. Davis also gave Eads "drug pills which included LSD and another illicit controlled drug." *Ibid.* A police raid on Davis's

Brenn 81

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1
C

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

From: Justice Powell

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS,
ET AL., v. ROGER TRENTON DAVIS

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

No. 81-23. Decided December —, 1981

JUSTICE POWELL, concurring in the judgment.

C

The Court holds that the Eighth Amendment countenances a prison term of 40 years and a fine of \$20,000 for respondent's possession and distribution of approximately nine ounces of marijuana said to have a street value of about \$200. I view the sentence as unjust and disproportionate to the offense. Nevertheless, for the reasons stated below I reluctantly conclude that the Court's decision in *Rummel v. Estelle*, 445 U. S. 263 (1980) is controlling on the facts before us. Accordingly, I join the judgment only.

I

The respondent Davis met Eads in prison. During Eads' confinement, his wife had become a drug user. Concerned about this development and its effect on their two-year old child, Eads offered to cooperate with the police "to assist in the exposure and arrest of those supplying drugs to his wife and any illicit drug distributor in the area, including Davis who Eads identified as an active drug dealer in Wythe County." *Davis v. Davis*, 585 F. 2d 1226, 1228 (CA4 1978).

C

On furlough from prison, Eads told Davis he wished to buy drugs for himself and some mutual friends currently in prison. Shortly thereafter, the two went to Davis's home where Davis sold Eads three ounces of marijuana for \$74. Davis also gave Eads "drug pills which included LSD and another illicit controlled drug." *Ibid.* A police raid on Davis's

Let's at once...

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

180023H 11/5/81 rev. DICK

From: Justice Rehnquist

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS, ET AL. v.
ROGER TRENTON DAVIS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT ✓

No. 81-23. Decided November —, 1981

PER CURIAM.

On October 26, 1973, law enforcement officers raided respondent's home and seized approximately nine ounces of marijuana and assorted drug paraphernalia. Several days before the raid, officers had tape recorded a transaction in which respondent had sold marijuana and other controlled substances to a police informant. With the aid of the seized evidence and the tape recording, respondent was convicted in Virginia state court of possession with intent to distribute and distribution of marijuana. The jury imposed a fine of \$10,000 and a prison term of 20 years on each of the two counts, the prison terms to run consecutively. At the time of respondent's conviction, Virginia law authorized fines of up to \$25,000 and prison terms of not less than five nor more than 40 years for each of respondent's offenses. *Davis v. Davis*, 585 F. 2d 1226, 1229 (CA 4 1978).

After exhausting direct appeal, respondent brought a habeas action in the United States District Court for the Western District of Virginia, asserting that a 40 year sentence was so grossly disproportionate to the crime of possessing less than nine ounces of marijuana that it constituted cruel and unusual punishment as proscribed by the Eighth and Fourteenth Amendments. The District Court, relying primarily upon the four factors set forth in *Hart v. Coiner*, 483 F. 2d 136 (CA4), cert. denied, 415 U. S. 938 (1974), agreed:

"After examining the nature of the offense, the legisla-

Brenn 81

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

From: Justice Rehnquist

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

TERRELL DON HUTTO, DIRECTOR, VIRGINIA
STATE DEPARTMENT OF CORRECTIONS, ET AL. v.
ROGER TRENTON DAVIS

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

No. 81-23. Decided December —, 1981

PER CURIAM.

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"After examining the nature of the offense, the legisla-

*No
change
required
in my
concurring
opinion*

WHR adds the key footnote from Rummel and wins HAB's
votes See note 3

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 17, 1981

Re: 81-23 Hutto v. Davis

Dear Bill:

Please join me in your dissenting opinion.

Respectfully,



Justice Brennan

cc: The Conference



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 7, 1981

No. 81-23 Hutto v. Davis

Dear Bill,

I agree with the Per Curiam in the referenced case.

Sincerely,



Justice Rehnquist

Copies to the Conference

