

# The Burger Court Opinion Writing Database

## *Marshall v. Lonberger*

459 U.S. 422 (1983)

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

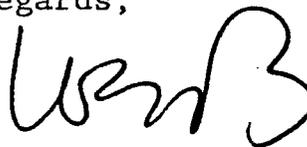
Re: No. 81-420 - Marshall v. Lonberger

MEMORANDUM TO THE CONFERENCE:

I relisted this case and closer study convinces me it is another "egregious" opinion. I would not want to hear it but it is a prime candidate to grant and reverse to "send a message" to the Court of Appeals.

Otherwise I will be shown as "grant and reverse" perhaps with a few temperate observations.

Regards,

A handwritten signature in dark ink, appearing to be "WB", written in a cursive style.

HAB

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

CHAMBERS OF  
THE CHIEF JUSTICE

December 22, 1981

Re: No. <sup>81</sup>~~80~~-420 - Marshall v. Lonberger

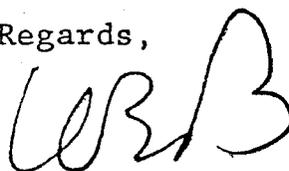
Dear Bill:

I join your dissent from denial of cert.

This is an utterly indefensible action and the Court of Appeals has simply ignored our remand.

This is one where no opinion is quite strong enough.

. Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE LEWIS F. POWELL, JR.

December 28, 1981

81-420 Marshall (warden) v. Lonberger

Dear Bill:

Please add my name to your dissent from denial of cert.

I agree with you that Burgett's distinguishing of Spencer v. Texas is not "entirely logical" (your opinion p. 2). Indeed, on the question whether the jury's verdict of guilty may have been prejudiced by the admission in evidence of a prior conviction for purposes other than showing guilt, it is illogical - as you say, "constitutionally irrelevant" - whether the prior conviction was later determined to be invalid.

In this case, for example, the earlier guilty plea (later found to have been improperly obtained) was admitted only to enhance punishment and not as proof of guilt, and the punishment imposed by the jury was overturned on appeal. If the limiting instruction was sufficient to overcome possible prejudice as to guilt, it should now be irrelevant whether the prior conviction was constitutionally defective.

Although I would prefer to grant and reverse the case summarily, it may be desirable to grant the case to clarify the Spencer/Burgett confusion.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

Re: 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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Re: No. 81-420 Marshall v. Longberger

JUSTICE REHNQUIST, dissenting from the denial of certiorari.

Since this Ohio judgment of conviction for murder has already been once considered by this Court when it remanded the judgment of the Court of Appeals for the Sixth Circuit granting federal habeas to the respondent for reconsideration in the light of Sumner v. Mata, 449 U.S. 539 (1981)<sup>1</sup>, there would be obviously little justification for the use of our limited discretionary review to consider it again were its implications not as far reaching as I believe they are. But in my view, the complicated

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<sup>1</sup>See Marshall v. Lonberger, 101 S.Ct. 1967 (1981).

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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

DEC 22 1981

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### SUPREME COURT OF THE UNITED STATES

R. C. MARSHALL, SUPERINTENDENT, SOUTHERN  
OHIO CORRECTIONAL FACILITY v.  
ROBERT LONBERGER

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

No. 81-420. Decided December —, 1981

JUSTICE REHNQUIST, with whom JUSTICE O'CONNOR  
joins, dissenting from the denial of certiorari.

Since this Ohio judgment of conviction for murder has already been once considered by this Court when it remanded the judgment of the Court of Appeals for the Sixth Circuit granting federal habeas to the respondent for reconsideration in the light of *Sumner v. Mata*, 449 U. S. 539 (1981)\*, there would be obviously little justification for the use of our limited discretionary review to consider it again were its implications not as far reaching as I believe they are. But in my view, the complicated procedural history of this case merely highlights the unnecessarily tortured road which a State must follow in order to apprehend, try, and punish an accused defendant who could not reasonably make any assertion that a claimed constitutional violation harmed or prejudiced him in any way.

The Court of Appeals for the Sixth Circuit originally concluded that respondent's Ohio murder conviction was invalid under this Court's decision in *Burgett v. Texas*, 389 U. S. 109 (1967), because respondent's 1972 Illinois guilty plea which the same Court of Appeals thought to be invalid under *Boykin v. Alabama*, 395 U. S. 238 (1969), was used in his Ohio trial as an aggravating circumstance in support of the State's request for the death penalty.

\* See *Marshall v. Lonberger*, — U. S. — (1981).

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pp. 1-3

For The Chief Justice  
Justice Brennan  
Justice White  
✓ Justice Marshall  
Justice Blackmun  
Justice Powell  
Justice Stevens  
Justice O'Connor

Justice Rehnquist

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3rd DRAFT

# SUPREME COURT OF THE UNITED STATES

R. C. MARSHALL, SUPERINTENDENT, SOUTHERN  
OHIO CORRECTIONAL FACILITY v.  
ROBERT LONBERGER

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Upon remand from this Court for reconsideration in the

\* See *Marshall v. Lonberger*, — U. S. — (1981).

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HAB

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

December 21, 1981

No. 81-420 Marshall v. Longberger

Dear Bill,

Please join me in your dissent from denial  
of certiorari.

Sincerely,



Justice Rehnquist

Copies to the Conference

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