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Zant v. Stephens

456 U.S. 410 (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

April 15, 1982

Re: No. 81-89 - Zant v. Stephens

Dear John:

I am in general agreement with Byron's memo
of April 15.

Regards,



Justice Stevens

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

CHAMBERS OF
THE CHIEF JUSTICE

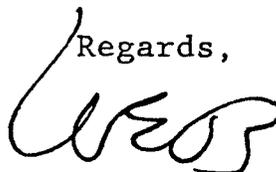
April 29, 1982

Re: No. 81-89 - Zant v. Stephens

Dear John:

I join your April 16 recirculation of the
Per Curiam.

Regards,



Justice Stevens

Copies to the Conference

85 WLS 53 6/5/11

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 6, 1982

RE: No. 81-89 Zant v. Stephens

Dear Thurgood:

Please join me.

Sincerely,

A handwritten signature in cursive script that reads "Bill".

Justice Marshall

cc: The Conference

HAB

81-85

81

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 26, 1982

MEMORANDUM TO THE CONFERENCE

In case you have not already found out for yourself, I enclose a copy of the Georgia Code sections with respect to deciding questions certified by federal appellate courts.



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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 15, 1982

Re: 81-89 - Zant v. Stephens

Dear John,

I would much prefer that in certifying this case to the Georgia Supreme Court, we expressly refer to the position of the Attorney General in this Court. Hence, I suggest that starting with the first sentence beginning on page 5 the rest of that paragraph be expanded into two paragraphs, somewhat along the following lines:

It may be that implicit in the rule is a determination that multiple findings of statutory aggravating circumstances are superfluous, or a determination that the reviewing court may assume the role of the jury when the sentencing jury recommended the death penalty under legally erroneous instructions. In this Court, the Georgia Attorney General submits still another construction of state law: The jury must first determine whether one or more statutory aggravating circumstances have been established beyond a reasonable doubt. Finding the existence of one or more aggravating circumstances is a threshold determination which authorizes the jury to consider imposing the death penalty; it serves as a bridge which takes the jury from the general class of all murders to the narrower class of offenses the state legislature has determined warrant the death penalty. After making the determination that the death penalty is a possible punishment, the jury then makes a separate determination whether the death penalty should be imposed. It bases this determination "not upon the statutory aggravating circumstances but upon all the evidence before the jury in aggravation and mitigation of punishment which ha[s] been introduced at both phases of the trial." Brief for Petitioner 13.

In these circumstances, it would be premature to decide whether such determinations, or any of the others we might conceive as a basis for the Georgia Supreme Court's position, might undermine the confidence we expressed in Gregg v. Georgia, supra, that the Georgia capital-sentencing system, as we understood it then, would avoid the arbitrary and capricious imposition of the death penalty and would otherwise pass constitutional muster. Suffice it to say that the state-law premises of the Georgia Supreme Court's conclusion of state law are relevant to the constitutional issue at hand.

Sincerely yours,

Byrum

Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 16, 1982

Re: 81-89 - Zant v. Stephens

Dear John,

Please join me.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

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

From: Justice Marshall

Circulated: APR 5 1982

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No. 81-89 Zant v. Stephens

JUSTICE MARSHALL, dissenting.

Six years ago in Gregg v. Georgia, 428 U.S. 153, 193 (1976) (joint opinion of STEWART, POWELL, and STEVENS, JJ.), this Court declared:

"Juries are invariably given careful instructions on the law and how to apply it before they are authorized to decide the merits of a lawsuit. It would be virtually unthinkable to follow any other course in a legal system that has traditionally operated by following prior precedents and fixed rules of law. ... When erroneous instructions are given, retrial is often required. It is quite simply a hallmark of our legal system that juries be carefully and adequately guided in their deliberations." (citations and footnote omitted).

In today's decision, a majority of this Court intimates that

STYLISTIC CHANGES THROUGHOUT.

12, 9, 10

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

From: Justice Marshall

Circulated: APR 8 1982

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1st PRINTED DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

WARREN ZANT, WARDEN, PETITIONER, v.
ALPHA OTIS O'DANIEL STEPHENS

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

[April —, 1982]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

Six years ago in *Gregg v. Georgia*, 428 U. S. 153, 193 (1976)
(joint opinion of Stewart, POWELL, and STEVENS, JJ.), this
Court declared:

“Juries are invariably given careful instructions on the
law and how to apply it before they are authorized to de-
cide the merits of a lawsuit. It would be virtually un-
thinkable to follow any other course in a legal system
that has traditionally operated by following prior prece-
dents and fixed rules of law. . . . When erroneous in-
structions are given, retrial is often required. It is
quite simply a hallmark of our legal system that juries be
carefully and adequately guided in their deliberations.”
(citations and footnote omitted).

In today's decision, a majority of this Court intimates that
a *post hoc* construction of a death penalty statute by the
State's highest court may remedy the fact that a jury was im-
properly instructed with respect to the very factors that save
the Georgia statute from unconstitutionality. See *Gregg v.*
Georgia, supra. Because I cannot see how the Georgia Su-
preme Court's response to this Court's certification could
constitutionally justify the imposition of the death penalty in

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 29, 1982

Re: No. 81-89 - Zant v. Stephens

Dear John:

Please join me in your per curiam. I am frank to say that I share your skepticism expressed in the memorandum of April 2. It certainly may prove of little value, and it may complicate the Georgia situation. But it will be well to find out.

Sincerely,



Justice Stevens

cc: The Conference

85 APR 30 10:24

201
201

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

From: Justice Powell

Circulated: APR 9 1982

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

WALTER ZANT, WARDEN, PETITIONER, *v.*
 ALPHA OTIS O'DANIEL STEPHENS

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

[April —, 1982]

JUSTICE POWELL, dissenting.

I am in essential agreement with the views expressed by JUSTICE MARSHALL in Part II of his dissenting opinion, and with his conclusion that the death sentence was imposed under instructions that could have misled the jury. I would not hold, however, that the case must be remanded for resentencing *by a jury*.

The Court of Appeals for the Fifth Circuit simply reversed and remanded thus leaving it to the Georgia Supreme Court to determine whether resentencing by a jury is required in this case. It may be that under Georgia law the State Supreme Court lacks authority to resentence itself, rather than leave this role to a jury. If that should be the case, I would leave open—also for the Supreme Court of Georgia to decide—whether it has authority to find that the instruction was harmless error beyond a reasonable doubt.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 16, 1982

Re: No. 81-89 Zant v. Stephens

Dear John:

Please join me.

Sincerely,



Justice Stevens

cc: The Conference

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 22, 1982

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Zant v. Stephens

John and I have divided the memo-writing on the cases held for Zant and Barclay v. Florida because the issues are so similar.

No. 81-5044 Monroe v. Louisiana

Petitioner stabbed his neighbor to death and stabbed the neighbor's daughter. At the sentencing proceeding the jury deliberated for 45 minutes, then reported to the judge that it was deadlocked. The judge instructed the jury that "my judgment at the moment is, in view of the fact that you've been out a relatively short time, that I don't think you have had at this juncture sufficient time [S]o suppose you all go back ... and discuss it further and then if you are of the same mind, you can inform me, or if it is the other way, you can inform me whatever the case--whatever the situation is."

The jury sentenced petitioner to death, finding three statutory aggravating circumstances: the murder occurred during an aggravated burglary, petitioner knowingly created the risk of death to more than one person; the murder was especially heinous, cruel, or atrocious. The Louisiana Supreme Court held that the evidence did not support the last aggravating circumstance.

The Louisiana Court rejected petitioner's argument that the judge created an inference that he favored a death sentence by sending the jury back for further deliberations. It held that the instruction did not create any such inference. It also held that the death penalty was

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 2, 1982

MEMORANDUM TO THE CONFERENCE

Re: 81-89 - Zant v. Stephens

Although my conference notes are somewhat fuzzy, it is my understanding that there was a substantial consensus in favor of adopting Byron's suggestion to certify an appropriate question to the Georgia Supreme Court. The attached draft per curiam is an attempt to carry out that understanding.

Although I will join a disposition along the lines set forth in the attached per curiam--and surely will consider any reformulation of the question that seems preferable--I am frankly somewhat skeptical about the value that will be derived from this disposition. At least this draft may provide a basis for further discussion.

Respectfully,



Attachment

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

From: **Justice Stevens**

Circulated: APR 82

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

**WARREN ZANT, WARDEN, PETITIONER v. ALPHA
 OTIS O'DANIEL STEPHENS**

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

[April —, 1982]

PER CURIAM.

The petitioner was convicted of murder in a Georgia Superior Court. His sentencing jury found the following statutory aggravating circumstances:

“(1) that the offense of murder was committed by a person with a prior record of conviction of a capital felony, Code Ann. § 27-2534.1(b)(1); (2) that the murder was committed by a person who has a substantial history of serious assaultive criminal convictions, Code Ann. § 27-2534.1(b)(1), *supra*; and, (3) that the offense of murder was committed by a person who had escaped from the lawful custody of a peace officer or a place of lawful confinement, Code Ann. § 27-2534.1(b)(9).” *Stephens v. Hopper*, 241 Ga. 596, —, 247 S. E. 2d 92, —, cert. denied, 439 U. S. 991 (1978).

The jury imposed the death penalty. On direct appeal, the Georgia Supreme Court affirmed. *Stephens v. State*, 237 Ga. 259, 227 S. E. 2d 261 (1976), cert. denied, 429 U. S. 986 (1977). On the authority of *Arnold v. State*, 236 Ga. 534, 224 S. E. 2d 386 (1976), it set aside the second statutory aggravating circumstance found by the jury. It upheld the death sentence, however, on the ground that in *Arnold* “that was the sole aggravating circumstance found by the jury,”

Page citation completed throughout
only relevant change

7.4

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

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

WARREN ZANT, WARDEN, PETITIONER, *v.*
ALPHA OTIS O'DANIEL STEPHENS

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

[April —, 1982]

PER CURIAM.

The petitioner was convicted of murder in a Georgia Superior Court. His sentencing jury found the following statutory aggravating circumstances:

“(1) that the offense of murder was committed by a person with a prior record of conviction of a capital felony, Code Ann. §27-2534.1(b)(1); (2) that the murder was committed by a person who has a substantial history of serious assaultive criminal convictions, Code Ann. §27-2534.1(b)(1), *supra*; and, (3) that the offense of murder was committed by a person who had escaped from the lawful custody of a peace officer or a place of lawful confinement, Code Ann. §27-2534.1(b)(9).” *Stephens v. Hopper*, 241 Ga. 596, 597-598, 247 S.E. 2d 92, 94, cert. denied, 439 U. S. 991 (1978).

The jury imposed the death penalty. On direct appeal, the Georgia Supreme Court affirmed. *Stephens v. State*, 237 Ga. 259, 227 S.E. 2d 261, cert. denied, 429 U. S. 986 (1976). On the authority of *Arnold v. State*, 236 Ga. 534, 224 S.E. 2d 386 (1976), it set aside the second statutory aggravating circumstance found by the jury. It upheld the death sentence, however, on the ground that in *Arnold* “that was the sole aggravating circumstance found by the jury,” whereas in the

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

From: **Justice Stevens**

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Footnote 1 added

Other footnotes renumbered

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

WARREN ZANT, WARDEN, PETITIONER, *v.*
 ALPHA OTIS O'DANIEL STEPHENS

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

[April —, 1982]

WOW

PER CURIAM.

The petitioner was convicted of murder in a Georgia Superior Court. His sentencing jury found the following statutory aggravating circumstances:¹

¹ The trial judge instructed the sentencing jury as follows:

"Gentlemen of the Jury, the defendant in this case has been found guilty at your hands of the offense of Murder, and it is your duty to make certain determinations with respect to the penalty to be imposed as punishment for that offense. Now in arriving at your determinations in this regard you are authorized to consider all of the evidence received in court throughout the trial before you. You are further authorized to consider all facts and circumstances presented in extenuation [*sic*], mitigation and aggravation of punishment as well as such arguments as have been presented for the State and for the Defense. Under the law of this State every person guilty of Murder shall be punished by death or by imprisonment for life, the sentence to be fixed by the jury trying the case. In all cases of Murder for which the death penalty may be authorized the jury shall consider any mitigating circumstances or aggravating circumstances authorized by law. You may consider any of the following statutory aggravating circumstances which you find are supported by the evidence. One, the offense of Murder was committed by a person with a prior record of conviction for a Capital felony, or the offense of Murder was committed by a person who has a substantial history of serious assaultive criminal convictions. Two, the offense of Murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim. Three, the offense of Murder was committed by a person

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

From: **Justice Stevens**

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pp. 5, 6

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-89

**WARREN ZANT, WARDEN, PETITIONER, v.
 ALPHA OTIS O'DANIEL STEPHENS**

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

[April —, 1982]

PER CURIAM.

The petitioner was convicted of murder in a Georgia Superior Court. His sentencing jury found the following statutory aggravating circumstances:¹

¹The trial judge instructed the sentencing jury as follows:

"Gentlemen of the Jury, the defendant in this case has been found guilty at your hands of the offense of Murder, and it is your duty to make certain determinations with respect to the penalty to be imposed as punishment for that offense. Now in arriving at your determinations in this regard you are authorized to consider all of the evidence received in court throughout the trial before you. You are further authorized to consider all facts and circumstances presented in extenuation [*sic*], mitigation and aggravation of punishment as well as such arguments as have been presented for the State and for the Defense. Under the law of this State every person guilty of Murder shall be punished by death or by imprisonment for life, the sentence to be fixed by the jury trying the case. In all cases of Murder for which the death penalty may be authorized the jury shall consider any mitigating circumstances or aggravating circumstances authorized by law. You may consider any of the following statutory aggravating circumstances which you find are supported by the evidence. One, the offense of Murder was committed by a person with a prior record of conviction for a Capital felony, or the offense of Murder was committed by a person who has a substantial history of serious assaultive criminal convictions. Two, the offense of Murder was outrageously or wantonly vile, horrible or inhuman in that it involved torture, depravity of mind or an aggravated battery to the victim. Three, the offense of Murder was committed by a person

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 5, 1982

MEMORANDUM TO THE CONFERENCE

Re: Holds for 81-89 - Zant v. Stephens

GEORGIA CASES

- 81-5947, Waters v. Georgia
- 81-5312, Stephens v. Georgia
- 81-5240, Gates v. Zant
- 81-5562, Gilreath v. Georgia

Handwritten notes:

Deny - my arg. will

In the first three cases, the Georgia Supreme Court set aside one of multiple statutory aggravating circumstances. I will vote to continue to hold these cases pending final resolution of Zant v. Stephens.

In 81-5562, a preliminary question is whether the Georgia Supreme Court correctly upheld a finding of the (b)(7) aggravating circumstance. I do not think that on the facts of this case the question warrants review. Accordingly, I will vote to deny in 81-5562.

LOUISIANA CASES

- 81-5044, Monroe v. Louisiana
- 81-5698, Sonnier v. Louisiana
- 81-6454, Mattheson v. Louisiana

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In the first two cases, the Louisiana Supreme Court set aside one of multiple statutory aggravating circumstances. In 81-6454, the court did not reach petitioner's contention that one of the aggravating circumstances was invalid because there were other valid aggravating circumstances upon which the death penalty could be based.

On the issue presented in Zant v. Stephens, the Louisiana Attorney General does not try to distinguish

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

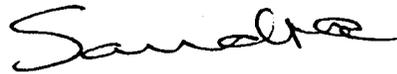
April 5, 1982

No. 81-89 Zant v. Stephens

Dear John,

I am in agreement with your per curiam in
this case.

Sincerely,



Justice Stevens

Copies to the Conference