

The Burger Court Opinion Writing Database

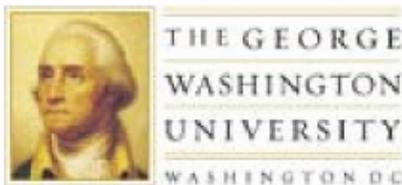
Dickerson v. New Banner Institute, Inc.

460 U.S. 103 (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

February 3, 1983

Re: No. 81-1180 - Dickerson v. New Banner, Inc.

Dear Harry:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'WB' or 'Blackmun', written in a cursive style.

Justice Blackmun

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 25, 1983

RE: No. 81-1180 Dickerson v. New Banner Institute

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 7, 1983

1180
Re: 81-1613 - Dickerson v.
New Banner Institute, Inc.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 9, 1983

Re: 81-1180 - Dickerson v.
New Banner Institute, Inc.

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 13, 1983

Re: No. 81-1180 - Dickerson v. New Banner Institute

Dear Harry:

Please join me.

Sincerely,

J.M.
T.M.

Justice Blackmun

cc: The Conference

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

From: **Justice Blackmun**

Circulated: JAN 5 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1180

G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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

[January —, 1983]

JUSTICE BLACKMUN delivered the opinion of the Court.

This case presents the issue whether firearms disabilities imposed by 18 U. S. C. §§ 922(g) and (h) apply with respect to a person who pleads guilty to a state offense punishable by imprisonment for more than one year, when the record of the proceeding subsequently is expunged under state procedure following a successfully-served term of probation.

I

Title IV of the Omnibus Crime Control and Safe Streets Act of 1968, 82 Stat. 226, was amended by the Gun Control Act of 1968, 82 Stat. 1214, and now appears as 18 U. S. C. § 921 *et seq.* (1976 ed. and Supp. V). Title IV makes it unlawful for any person “who is under indictment for, or who has been convicted in any court of, a crime punishable by imprisonment for a term exceeding one year”¹ to ship, transport, or receive any firearm or ammunition in interstate com

¹The Act provides exemptions from its proscriptions for certain business and commercial crimes, such as antitrust violations, punishable by imprisonment for more than one year, and for nonfirearms and nonexplosives state offenses classified by the State as misdemeanors and punishable by imprisonment for two years or less. 18 U. S. C. § 921(a)(20). These exemptions are of no relevance here.

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

From: **Justice Blackmun**

Circulated: _____

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STYLISTIC CHANGES

4 pp. 3, 11, 18

HAB
[Handwritten signature]

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1180

G. R. DICKERSO, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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Join

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p.10

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

From: **Justice Blackmun**

Circulated: _____

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1180

G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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

[January —, 1983]

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41AB

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

February 23, 1983

MEMORANDUM TO THE CONFERENCE

Re: No. 81-1180, Dickerson v. New Banner Institute, Inc.

A single case, No. 82-5597, Turner v. United States, is held for Dickerson.

Turner presents a denial of a §2255 petition for habeas corpus. Turner was convicted in federal court in 1973 of transporting forged and stolen securities. He took the stand and over defense counsel's objection was impeached pursuant to Rule 609, Fed. R. Evid., by evidence of his prior guilty pleas under an Oklahoma expunction statute similar to the Iowa statute at issue in Dickerson. At the time, Turner had finished serving his probationary period under the statute, but the formal expunction of the conviction had not been effected. On appeal of his conviction, Turner argued that Rule 609 permits impeachment solely on the basis of a prior "conviction." Because there never had been a formal adjudication of guilt, he had never been "convicted." Consequently, the impeachment was improper.

The CA10 rejected this claim. 497 F.2d 406, 407 (1974). Although Oklahoma would not treat his plea as a "conviction," the question of admissibility of evidence at a federal trial is a federal one, and federal law treats a guilty plea as a conviction. This Court denied certiorari. 423 U.S. 848 (1975).

In his habeas petition Turner argued that his guilty pleas were not voluntarily entered, and were therefore invalid. He also argued that a subsequent CA10 decision finding a plea under the Oklahoma statute not to be a conviction for purposes of the federal gun control laws, United States v. Stober, 604 F.2d 1274 (1979), had changed the law with respect to the claim that the CA10 had rejected in 1974, and justified review under §2255. Although Turner did not mention it, Stober explicitly distinguished the CA10's earlier decision on Turner's direct appeal, stating that the laws of evidence and the federal gun control laws presented different issues. The District Court denied the petition and the CA10 affirmed, finding that the plea had been voluntarily entered. The CA10 did not explicitly address the Rule 609 claim.

Turner presses his voluntariness and his "conviction" claims in this Court. The first is fact-bound. Moreover, the

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 6, 1983

81-1180 Dickerson v. New Banner Institute

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 6, 1982

Re: No. 81-1180 G. R. Dickerson v. New Banner
Institute, Inc.

Dear Harry:

In due course I will circulate a dissent on the
question of whether or not there was a "conviction."

Sincerely,



Justice Blackmun

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: JAN 25 1983

Recirculated:

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1180

G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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

[January —, 1983]

JUSTICE REHNQUIST, dissenting.

The Gun Control Act provides that any person “who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year” is ineligible for a federal license to ship, transport, or receive any firearm or ammunition in interstate commerce. 18 U. S. C. § 922(g)(h) (1976). Thus, as the Court points out, “[i]f Kennison was not ‘convicted’ in the first place . . . respondent should not be ineligible for licenses on the grounds asserted by the Bureau.” *Ante*, at 7. Contrary to the conclusion reached by the Court, I do not believe that Kennison was “convicted.” Accordingly, I dissent.

I agree with the Court that whether one has been convicted within the meaning of the Gun Control Act is a question of federal, rather than state, law. *Id.*, at 8. Congress did not, however, expressly define the term “conviction” in the Act. Where Congress has defined the term, the Court recognizes that it has given the term different meanings in different statutes. *Id.*, at 8-9, n. 6. In the Investment Company Act of 1940, Congress expressly provided that the term “convicted” includes “a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been re-

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

No. 81-1180

G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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

[January —, 1983]

JUSTICE REHNQUIST, with whom JUSTICE BRENNAN and JUSTICE O'CONNOR join, dissenting.

The Gun Control Act provides that any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" is ineligible for a federal license to ship, transport, or receive any firearm or ammunition in interstate commerce. 18 U. S. C. § 922(g)(h) (1976). Thus, as the Court points out, "[i]f Kennison was not 'convicted' in the first place . . . respondent should not be ineligible for licenses on the grounds asserted by the Bureau." *Ante*, at 7. Contrary to the conclusion reached by the Court, I do not believe that Kennison was "convicted." Accordingly, I dissent.

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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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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-1180

G. R. DICKERSON, DIRECTOR, BUREAU OF ALCOHOL, TOBACCO AND FIREARMS, PETITIONER, *v.*
NEW BANNER INSTITUTE, INC.

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

[January —, 1983]

JUSTICE REHNQUIST, with whom JUSTICE BRENNAN, JUSTICE STEVENS, and JUSTICE O'CONNOR join, dissenting.

The Gun Control Act provides that any person "who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year" is ineligible for a federal license to ship, transport, or receive any firearm or ammunition in interstate commerce. 18 U. S. C. § 922(g)(h) (1976). Thus, as the Court points out, "[i]f Kennison was not 'convicted' in the first place . . . respondent should not be ineligible for licenses on the grounds asserted by the Bureau." *Ante*, at 7. Contrary to the conclusion reached by the Court, I do not believe that Kennison was "convicted." Accordingly, I dissent.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 6, 1983

Re: 81-1180 - Dickerson v. New Banner
Institute

Dear Harry:

I shall wait for Bill's dissent.

Respectfully,



Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

January 27, 1983

Re: 81-1180 - Dickerson v. New Banner
Institute

Dear Bill:

Please join me.

Respectfully,

John

Justice Rehnquist

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 6, 1983

No. 81-1180 G. R. Dickerson v. New Banner
Institute, Inc.

Dear Harry,

I will await the dissent in this case.

Sincerely,



Justice Blackmun

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 25, 1983

No. 81-1180 Dickerson v. New Banner Institute, Inc.

Dear Bill,

Please join me in your dissenting opinion.

Sincerely,



Justice Rehnquist

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