

The Burger Court Opinion Writing Database

Bearden v. Georgia

461 U.S. 660 (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

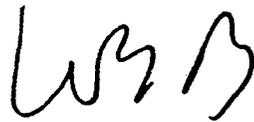
May 13, 1983

No. 81-6633 - Danny R. Bearden v. Georgia

Dear Byron:

Please show me as joining your concurrence
dated May 12, 1983.

Regards,

A handwritten signature in dark ink, appearing to be 'WJB', written in a cursive style.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 3, 1983

Re: No. 81-6633
Bearden v. Georgia

Dear Sandra,

I would be happy to join an opinion
along the lines of your memorandum.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 12, 1983

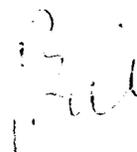
Re: No. 81-6633

Bearden v. Georgia

Dear Sandra,

Please join me.

Sincerely,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 9, 1983

Re: 81-6633 - Bearden v. Georgia

Dear Sandra,

Should your Memorandum become an opinion, I shall file a concurrence along the following lines:

JUSTICE WHITE, concurring in the judgment.

We deal here with the recurring situation where a person is convicted under a statute that authorizes fines or imprisonment or both, as well as probation. The defendant is then fined and placed on probation, one of the conditions of which is that he pay the fine and make restitution. In such a situation, the Court takes as a given that the state has decided that imprisonment is inappropriate because it is unnecessary to achieve its penal objectives. But that is true only if the defendant pays the fine and makes restitution and thereby suffers the financial penalty that such payment entails. Had the sentencing judge been quite sure that the defendant could not pay the fine, I cannot believe that the court would not have imposed some jail time or that either the Due Process or Equal Protection Clause of the Constitution would prevent such imposition.

Poverty does not insulate those who break the law from punishment. When probation is revoked for failure to pay a fine, I find nothing in the Constitution to prevent the trial court from revoking probation and imposing a term of imprisonment if revocation does not automatically result in the imposition of a long jail term and if but the sentencing court makes a good-faith effort to impose a jail sentence; that in terms of the state's sentencing objectives will be roughly equivalent to the fine and restitution that the defendant failed to pay. See Wood v. Georgia, 450 U.S. 261, 284-287 (WHITE, J., dissenting). Even if as a constitutional matter, the sentencing court should consider

alternatives short of imprisonment, I would not think the court would be required actually to try them if it believes that they would not be equivalent in terms of the state's penal objectives to the fine and restitution that had been conditions of probation.

In this case, however, the state court did not appear to find that the prison term imposed was "a rational and necessary trade-off to punish the individual who possessed no accumulated assets", Wilkins v. Illinois, 399 U.S. 235, 265 (Harlan, J., concurring). Accordingly, I concur in the judgment.

Sincerely,



Justice O'Connor

cc: The Conference

cpm

Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice White**

Circulated: 5/12/83

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER *v.* GEORGIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
 OF GEORGIA

[May —, 1983]

JUSTICE WHITE, concurring in the judgment.

We deal here with the recurring situation where a person is convicted under a statute that authorizes fines or imprisonment or both, as well as probation. The defendant is then fined and placed on probation, one of the conditions of which is that he pay the fine and make restitution. In such a situation, the Court takes as a given that the state has decided that imprisonment is inappropriate because it is unnecessary to achieve its penal objectives. But that is true only if the defendant pays the fine and makes restitution and thereby suffers the financial penalty that such payment entails. Had the sentencing judge been quite sure that the defendant could not pay the fine, I cannot believe that the court would not have imposed some jail time or that either the Due Process or Equal Protection Clause of the Constitution would prevent such imposition.

Poverty does not insulate those who break the law from punishment. When probation is revoked for failure to pay a fine, I find nothing in the Constitution to prevent the trial court from revoking probation and imposing a term of imprisonment if revocation does not automatically result in the imposition of a long jail term and if the sentencing court makes a good-faith effort to impose a jail sentence that in terms of the state's sentencing objectives will be roughly equivalent to the fine and restitution that the defendant failed to pay. See

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

From: **Justice White**

Circulated: _____

Recirculated: _____

pp. 1, 2

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER v. GEORGIA

**ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF GEORGIA**

[May —, 1983]

JUSTICE WHITE, with whom THE CHIEF JUSTICE, JUSTICE POWELL, and JUSTICE REHNQUIST join, concurring in the judgment.

We deal here with the recurring situation where a person is convicted under a statute that authorizes fines or imprisonment or both, as well as probation. The defendant is then fined and placed on probation, one of the conditions of which is that he pay the fine and make restitution. In such a situation, the Court takes as a given that the state has decided that imprisonment is inappropriate because it is unnecessary to achieve its penal objectives. But that is true only if the defendant pays the fine and makes restitution and thereby suffers the financial penalty that such payment entails. Had the sentencing judge been quite sure that the defendant could not pay the fine, I cannot believe that the court would not have imposed some jail time or that either the Due Process or Equal Protection Clause of the Constitution would prevent such imposition.

Poverty does not insulate those who break the law from punishment. When probation is revoked for failure to pay a fine, I find nothing in the Constitution to prevent the trial court from revoking probation and imposing a term of imprisonment if revocation does not automatically result in the imposition of a long jail term and if the sentencing court makes a good-faith effort to impose a jail sentence that in terms of

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 9, 1983

Re: No. 81-6633 - Bearden v. Georgia

Dear Sandra:

I am in general agreement with your memorandum.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 12, 1983

Re: No. 81-6633-Bearden v. Georgia

Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

May 2, 1983

Re: No. 81-6633 - Bearden v. Georgia

Dear Sandra:

I am somewhat bothered by certain portions of the first paragraph of page 12 of your memorandum. I would be happier if you could eliminate the implication that mere addiction can be dealt with by revocation of probation. Would you consider eliminating the third sentence of that paragraph and the word "Indeed" at the beginning of the following sentence of the text?

Sincerely,

HAB

Justice O'Connor

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1983

Re: No. 81-6633 - Bearden v. Georgia

Dear Sandra:

I could -- and would -- join an opinion structured along the lines of your memorandum circulated April 28. I may have one suggestion, but apart from that your memorandum appears to me to present an acceptable solution for this very difficult situation.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 11, 1983

Re: No 81-6633 - Bearden v. Georgia

Dear Sandra:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Harry", with a horizontal line underneath.

Justice O'Connor

cc: The Conference

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

May 2, 1983

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

81-6633 Bearden v. Georgia

Dear Sandra:

Although there is much in your thoughtful memorandum with which I agree, I do have reservations.

I would prefer to decide this case on its facts. As you recognize, the state interest in enforcing the criminal law is substantial, but here peittioner was jailed for two-and-a-half years for failure - apparently due to his indigency - to pay a \$550 fine. In my view, this was a denial of equal protection. There is not even a rough equivalence between the fine and jail sentence. The Georgia court seemed to think that revocation and jailing were automatic, requiring no weighing - as you suggest should have been done - of relevant facts and circumstances.

But surely broad sentencing discretion should be left in the trial courts. And requiring a trial judge to resort first to alternatives other than jail, as your opinion would, may deprive him of the discretion necessary to effective sentencing. Subject to further consideration, I have thought that the facts in this case do not require us to hold that in effect a trial judge's discretion may never include the right to jail a probation violator for some reasonable period. Assume, for example, that Bearden had committed one or more offenses of petty violence. It seems doubtful that the legitimate state interest would be served by the alternative you suggest of some public work or service. Yet, probation may have been thought a fair risk initially."

I also am concerned, if our opinion goes too far, that it will persuade judges and prosecutors to be far less willing to place one convicted of crime on probation.

In view of these thoughts, I will await further writing.

Sincerely,



Justice O'Connor

lfp/ss
cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 12, 1983

81-6633 Bearden v. Georgia

Dear Byron:

Please add my name to your concurring opinion.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 12, 1983

Re: No. 81-6633 Bearden v. Georgia

Dear Sandra:

Because I was the only person voting to affirm at Conference, I have stayed out of the exchanges among the colleagues on this case up to now.

As I understand your present circulation of May 11th, when an indigent probationer fails to pay a fine imposed as a condition of probation, the court may impose a prison term if it finds that the indigent could have paid the fine or made more effort than he has to obtain the means to pay it. But if the probationer has done everything he could along this line, the court may imprison him only if it has "determined that alternatives to imprisonment are not adequate in a particular situation to meet the State's interest in punishment and deterrence."

I find it hard to spell out such a requirement from the Constitution, and in this respect agree with what I take to be the sense of Lewis' letter of May 2nd, and Byron's letter of May 9th: When the probationer fails to pay the fine, the trial court should make "a good-faith effort to impose a jail sentence that in terms of the State's sentencing objectives will be roughly equivalent to the fine and restitution that the defendant failed to pay." BRW letter of May 9th. But beyond the consideration of alternatives necessarily involved in that decision, I would not require separate findings, review, and the like. As presently advised, I think I prefer Byron's view to the one expressed in your present draft.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

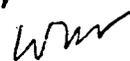
May 16, 1983

Re: No. 81-6633 Bearden v. Georgia

Dear Byron:

Please join me in your opinion concurring in the judgment.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 11, 1983

Re: 81-6633 - Bearden v. Georgia

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 28, 1983

No. 81-6633 Bearden v. Georgia

MEMORANDUM TO THE CONFERENCE

Because my present analysis of this case differs somewhat from our Conference discussion, I am circulating the attached memorandum to determine whether there is sufficient support for this approach to incorporate it in a draft.

Sincerely,



To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: Justice O'Connor

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER *v.* GEORGIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
 OF GEORGIA

[May —, 1983]

Memorandum to the Conference.

The question in this case is whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant's probation for failure fully to pay a fine and restitution. Its resolution involves a delicate balance between the acceptability, and indeed wisdom, of considering all relevant factors when determining an appropriate sentence for an individual and the impermissibility of imprisoning a defendant solely because of his lack of financial resources. We conclude, on the record presented here, that the trial court erred in automatically revoking probation because petitioner could not pay his fine. We therefore reverse the judgment of the Georgia Court of Appeals upholding the revocation of probation, and remand for a new sentencing determination.

I

In September 1980, petitioner was indicted for the felonies of burglary and theft by receiving stolen property. He pleaded guilty, and was sentenced on October 8, 1980. Pursuant to the Georgia First Offender's Act, Ga. Code. Ann. §§27-2727 *et. seq.* (current version at §§42-8-60 *et. seq.* (1982 Supp.)), the trial court did not enter a judgment of guilt, but deferred further proceedings and sentenced petitioner to three years on probation for the burglary charge and a concurrent one year on probation for the theft charge.

1,5,8-10,12-14

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER *v.* GEORGIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
 GEORGIA

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question in this case is whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant's probation for failure to pay a fine and restitution. Its resolution involves a delicate balance between the acceptability, and indeed wisdom, of considering all relevant factors when determining an appropriate sentence for an individual and the impermissibility of imprisoning a defendant solely because of his lack of financial resources. We conclude that the trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist. We therefore reverse the judgment of the Georgia Court of Appeals upholding the revocation of probation, and remand for a new sentencing determination.

I

In September 1980, petitioner was indicted for the felonies of burglary and theft by receiving stolen property. He pleaded guilty, and was sentenced on October 8, 1980. Pursuant to the Georgia First Offender's Act, Ga. Code. Ann. §§ 27-2727 *et seq.* (current version at §§ 42-8-60 *et seq.* (1982 Supp.)), the trial court did not enter a judgment of guilt, but deferred further proceedings and sentenced petitioner to

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: _____

pp 12-13

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER *v.* GEORGIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
 GEORGIA

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question in this case is whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant's probation for failure to pay a fine and restitution. Its resolution involves a delicate balance between the acceptability, and indeed wisdom, of considering all relevant factors when determining an appropriate sentence for an individual and the impermissibility of imprisoning a defendant solely because of his lack of financial resources. We conclude that the trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist. We therefore reverse the judgment of the Georgia Court of Appeals upholding the revocation of probation, and remand for a new sentencing determination.

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Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: MAY 18 _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-6633

DANNY R. BEARDEN, PETITIONER *v.* GEORGIA

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF
 GEORGIA

[May —, 1983]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question in this case is whether the Fourteenth Amendment prohibits a State from revoking an indigent defendant's probation for failure to pay a fine and restitution. Its resolution involves a delicate balance between the acceptability, and indeed wisdom, of considering all relevant factors when determining an appropriate sentence for an individual and the impermissibility of imprisoning a defendant solely because of his lack of financial resources. We conclude that the trial court erred in automatically revoking probation because petitioner could not pay his fine, without determining that petitioner had not made sufficient bona fide efforts to pay or that adequate alternative forms of punishment did not exist. We therefore reverse the judgment of the Georgia Court of Appeals upholding the revocation of probation, and remand for a new sentencing determination.

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PP. 3, 7, 8, 9

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HAB

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 1, 1983

MEMORANDUM TO THE CONFERENCE

Case held for No. 81-6633, Bearden v. Georgia

No. 82-5683, Williams v. Texas

Pursuant to a plea bargain, petitioner agreed to plead guilty to a felony theft charge, and the prosecutor apparently agreed to drop the enhancement counts and recommend a prison term of 10 years and a \$5,000 fine. The parties apparently agreed further that, if petitioner would pay \$5,100 in restitution before the date of sentencing, the prosecutor would recommend that the prison term be probated. The trial court agreed to be bound by the plea bargain. Petitioner was released on bond pending the sentencing hearing a month later. The trial court delayed the hearing another month because petitioner had been unable to pay the fine and restitution. At the sentencing hearing, petitioner admitted he had not paid the fine, explaining that he had difficulty selling some land he owned. He asked to withdraw his plea and plead "not guilty." The trial court refused this request and sentenced him to a term of 10 years and a \$5,000 fine to be collected as a term of parole.

Petitioner then filed a motion for new trial or to reform the judgment and a petition for habeas corpus. Among the trial court's findings of fact was that the "Defendant did not make reasonable efforts to obtain the money needed to pay the fine and restitution, between the time of his guilty plea and the time of sentencing."

Pursuant to state law, after making the findings of fact and conclusions of law the trial court transferred the case to the Texas Court of Criminal Appeals. The appellate court denied relief. It found no equal protection

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