

The Burger Court Opinion Writing Database

McKaskle v. Wiggins

465 U.S. 168 (1984)

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

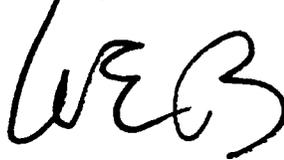
January 19, 1984

Re: 82-1135 - McKaskle, Dir. TDC v. Wiggins

Dear Sandra:

Having written some thoughts on the problems engendered
by Faretta, I now "file" them and I join you.

Regards,

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

Justice O'Connor

Copies to the Conference

P.S. I want to be sure you have a Court.

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

November 15, 1983

No. 82-1135

McKaskle v. Wiggins

Dear Byron,

You and I are the only dissenters
in the above. Would you try your hand
at the dissent?

Sincerely,

Justice White

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

January 9, 1984

No. 82-1135

McKaskle v. Wiggins

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

November 15, 1983

Re: 82-1135 - McKaskle v. Wiggins

Dear Bill,

Unless the majority convinces me to the contrary, I shall undertake a dissent in this case.

Sincerely,



Justice Brennan

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 22, 1983

Re: 82-1135 - McKaskle v. Wiggins

Dear Sandra,

I shall be circulating a dissent in due course.

Sincerely,



Justice O'Connor

Copies to the Conference

cpm

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

From: Justice White

Circulated: JAN 5 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1135

DAN V. MCKASKLE, ACTING DIRECTOR, TEXAS
DEPARTMENT OF CORRECTIONS, PETITIONER *v.*
CARL EDWIN WIGGINS

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

[January —, 1984]

JUSTICE WHITE, dissenting.

Just as the Sixth Amendment accords an accused a fundamental right to the assistance of counsel, so also, this Court has recognized, it embodies "the correlative right to dispense with a lawyer's help," *Adams v. United States ex rel. McCann*, 317 U. S. 269, 279 (1942), and to manage one's own defense. *Faretta v. California*, 422 U. S. 806 (1975). It is, I believe, "undeniable that in most criminal prosecutions defendants could better defend with counsel's guidance than by their own unskilled efforts." *Id.*, at 834. Nevertheless, "*Faretta* establishes that the right to counsel is more than a right to have one's case presented competently and effectively." *Jones v. Barnes*, — U. S. —, — (1983) (BRENNAN, J., dissenting). See *Anders v. California*, 386 U. S. 738, 744 (1967). "The right to defend is personal," *Faretta, supra*, at 834, and the text and structure of the Sixth Amendment, as well as the common-law jurisprudence from which the Amendment emerged, comport with "a nearly universal conviction, on the part of our people as well as our courts, that forcing a lawyer upon an unwilling defendant is contrary to his basic right to defend himself if he truly wants to do so." *Id.*, at 817. Thus, an accused who knowingly, intelligently, and voluntarily elects to do so is constitutionally entitled to refuse the services of a government-appointed at-

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

From: Justice White

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STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1 + 11

BRW

*Please see memo
in [unclear]*

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1135

DAN V. MCKASKLE, ACTING DIRECTOR, TEXAS
DEPARTMENT OF CORRECTIONS, PETITIONER *v.*
CARL EDWIN WIGGINS

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

[January —, 1984]

JUSTICE WHITE, with whom JUSTICE BRENNAN joins,
dissenting.

Just as the Sixth Amendment accords an accused a funda-
mental right to the assistance of counsel, so also, this Court
has recognized, it embodies "the correlative right to dispense
with a lawyer's help," *Adams v. United States ex rel.
McCann*, 317 U. S. 269, 279 (1942), and to manage one's own
defense. *Faretta v. California*, 422 U. S. 806 (1975). It is,
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as our courts, that forcing a lawyer upon an unwilling defend-
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wants to do so." *Id.*, at 817. Thus, an accused who know-
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*citation
omitted*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 29, 1983

Re: No. 82-1135 - McKaskle v. Wiggins

Dear Sandra:

I await the dissent.

Sincerely,

JM
T.M.

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 12, 1984

Re: No. 82-1135-McKaskle v. Wiggins

Dear Byron:

Please join me in your dissent.

Sincerely,


T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 30, 1983

Re: No. 82-1135, McKaskle v. Wiggins

Dear Sandra:

I, of course, am no fan of Faretta. My joinder in the dissents there so indicates. The present litigation and other cases that will follow are its progeny and will give us difficulty.

Will you therefore, at the end of your opinion, add "JUSTICE BLACKMUN concurs in the result."

I am nevertheless pleased to see the Court cutting back a good bit on Faretta.

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 27, 1983

82-1135 McKaskle v. Wiggins

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 5, 1984

Re: No. 82-1135 McKaskle v. Wiggins

Dear Sandra:

Please join me.

Sincerely,

WHR

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

December 23, 1983

Re: 82-1135 - McKaskle v. Wiggins

Dear Sandra:

Please join me.

Respectfully,

A handwritten signature in cursive script, appearing to read "John O'Connor".

Justice O'Connor

Copies to the Conference

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

From: Justice O'Connor

Circulated: DEC 21

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SUPREME COURT, U.S.
JUSTICE

'83 DEC 21 A11:24

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1135

DAN V. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, PETITIONER *v.*
CARL EDWIN WIGGINS

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

[January —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

In *Faretta v. California*, 422 U. S. 806 (1975), we recognized a defendant's Sixth Amendment right to conduct his own defense. We also held that a trial court may appoint "standby counsel" to assist the *pro se* defendant in his defense. Today we must decide what role standby counsel who is present at trial over the defendant's objection may play consistent with the protection of the defendant's *Faretta* rights.

I

Carl Edwin Wiggins was convicted of robbery and sentenced to life imprisonment as a recidivist. His conviction was set aside because of a defective indictment. When Wiggins was retried he was again convicted and sentenced to life imprisonment. Standby counsel were appointed to assist Wiggins at both trials. Wiggins now challenges counsel's participation in his second trial.

Prior to the first trial, a hearing was held on Wiggins' motion to proceed *pro se*. The court granted the motion, R. 4a, but simultaneously appointed two attorneys to act as standby counsel. Wiggins initially objected to their presence. R. 11a. Shortly thereafter, however, counsel asked Wiggins how they should conduct themselves at trial, and Wiggins expressly requested that they bring appropriate objections di-

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

January 4, 1984

No. 82-1135 McKaskle v. Wiggins

Dear Lewis,

Bill Rehnquist has requested me to make a change along the lines of the material added in footnote 8 on pages 8 and 9 of the enclosed second draft.

If you have no objection, I will circulate it with the addition.

Sincerely,



Justice Powell

Enclosure

*Advised
Sandra
has it
OK*

Stylistic Changes Throughout

pp. 8, 9, 12, 19
1, 3, 4

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

From: **Justice O'Connor**

Circulated: _____

Recirculated: JAN 4 1984

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-1135

DAN V. MCKASKLE, ACTING DIRECTOR, TEXAS DEPARTMENT OF CORRECTIONS, PETITIONER *v.*
CARL EDWIN WIGGINS

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

[January —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

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