The Burger Court Opinion Writing Database

Shea v. Louisiana

470 U.S. 51 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University

HAB

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

CHAMBERS OF
THE CHIEF JUSTICE

April 10, 1984

Re: 82-5920 - Shea v. Louisiana

Dear Byron:

I join you, provisionally. We are getting deeper and deeper into the morass Hugo Black warned against with respect to retroactive/prospective. I am almost ready to draw a bright, bright line - NOTHING RETROACTIVE.

Regards,

WEB

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 21, 1984

No. 82-5920

Shea v. Louisiana

Dear Harry,

I am very red faced. You are entirely right. Please join me in your dissent.

Sincerely,

Bill

Justice Blackmun

cc: Justice Marshall
Justice Powell
Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 30, 1984

No. 82-5920

Shea v. Louisiana

Dear Harry:

I agree.

Sincerely,

Bill

Justice Blackmun

Copies to the Conference

HAB

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

From: **Justice White**

Circulated: APR 4 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHAEL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82–5920. Decided April ——, 1984

JUSTICE WHITE, dissenting.

Until *United States* v. *Johnson*, 457 U. S. 537 (1982), the notion that new constitutional decisions apply to cases then pending on direct appeal but not to convictions being collaterally attacked had been unsuccessfully, though repeatedly, urged on the Court by a shifting minority of Justices. See *id.*, at 545, n. 9 (citing opinions). In *Johnson*, five Justices endorsed this principle in limited circumstances, purporting not to change the normal rule for "those cases that would be clearly controlled by our existing retroactivity precedents." *Id.*, at 562; see also *id.*, at 563–564 (BRENNAN, J., concurring). Today, without further briefing or argument or even a full opinion, this consistently rejected suggestion is adopted as the standard rule.

As I have stated before, see *id.*, at 566–568 (WHITE, J., dissenting); *Williams* v. *United States*, 401 U. S. 646, 656–659 (1970) (plurality opinion), it seems to me that the attempt to distinguish between direct and collateral challenges in this context is misguided. It is accepted that a new rule applies to the defendant in whose case it is announced. The justification for the apparent inequity of nonetheless refusing to give the same benefit to all criminal defendants whose cases are then pending on appeal was explained long ago by JUSTICE BRENNAN. *Stovall* v. *Denno*, 388 U. S. 293, 301 (1967). The minor and unavoidable inconsistency of the traditional approach is "an insignificant cost for adherence to sound principles of decision-making." *Ibid.* In any event, if that rule was unfair, the new one is no less so. See *Mackey* v. *United States*, 401 U. S. 667, 714 (1971) (Douglas, J., dis-

HAB

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

From: **Justice White**

p. 1

Circulated: _____

Recirculated: APR 10 19__

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHAEL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82–5920. Decided April ——, 1984

JUSTICE WHITE, with whom JUSTICE REHNQUIST joins, dissenting.

Until *United States* v. *Johnson*, 457 U. S. 537 (1982), the notion that new constitutional decisions apply to cases then pending on direct appeal but not to convictions being collaterally attacked had been unsuccessfully, though repeatedly, urged on the Court by a shifting minority of Justices. See *id.*, at 545, n. 9 (citing opinions). In *Johnson*, five Justices endorsed this principle in limited circumstances, purporting not to change the normal rule for "those cases that would be clearly controlled by our existing retroactivity precedents." *Id.*, at 562; see also *id.*, at 563–564 (BRENNAN, J., concurring). Today, without further briefing or argument or even a full opinion, this consistently rejected suggestion is adopted as the standard rule.

As I have stated before, see *id.*, at 566–568 (WHITE, J., dissenting); *Williams* v. *United States*, 401 U. S. 646, 656–659 (1970) (plurality opinion), it seems to me that the attempt to distinguish between direct and collateral challenges in this context is misguided. It is accepted that a new rule applies to the defendant in whose case it is announced. The justification for the apparent inequity of nonetheless refusing to give the same benefit to all criminal defendants whose cases are then pending on appeal was explained long ago by JUSTICE BRENNAN. *Stovall* v. *Denno*, 388 U. S. 293, 301 (1967). The minor and unavoidable inconsistency of the traditional approach is "an insignificant cost for adherence to sound principles of decision-making." *Ibid.* In any event, if that rule was unfair, the new one is no less so. See *Mackey*

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

From: **Justice White**

Circulated: _____

Recirculated: _____

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHAEL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82-5920. Decided April ——, 1984

JUSTICE WHITE, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, dissenting.

Until *United States* v. *Johnson*, 457 U. S. 537 (1982), the notion that new constitutional decisions apply to cases then pending on direct appeal but not to convictions being collaterally attacked had been unsuccessfully, though repeatedly, urged on the Court by a shifting minority of Justices. See *id.*, at 545, n. 9 (citing opinions). In *Johnson*, five Justices endorsed this principle in limited circumstances, purporting not to change the normal rule for "those cases that would be clearly controlled by our existing retroactivity precedents." *Id.*, at 562; see also *id.*, at 563–564 (BRENNAN, J., concurring). Today, without further briefing or argument or even a full opinion, this consistently rejected suggestion is adopted as the standard rule.

As I have stated before, see *id.*, at 566–568 (WHITE, J., dissenting); *Williams* v. *United States*, 401 U. S. 646, 656–659 (1970) (plurality opinion), it seems to me that the attempt to distinguish between direct and collateral challenges in this context is misguided. It is accepted that a new rule applies to the defendant in whose case it is announced. The justification for the apparent inequity of nonetheless refusing to give the same benefit to all criminal defendants whose cases are then pending on appeal was explained long ago by JUSTICE BRENNAN. *Stovall* v. *Denno*, 388 U. S. 293, 301 (1967). The minor and unavoidable inconsistency of the traditional approach is "an insignificant cost for adherence to sound principles of decision-making." *Ibid.* In any event, if that rule was unfair, the new one is no less so. See *Mackey*

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 21, 1984

Re: No. 82-5920-Shea v. Louisiana

Dear Harry:

Please join me in your dissent.

Sincerely,

T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

I'll Join
H.A.B.

March 20, 1984

Dear Bill, Thurgood, and Lewis:

No. 82-5920, Shea v. Louisiana, and No. 83-654, Texas v. Wilkerson, were holds for Solem v. Stumes and were on the conference list for March 16. At my request, they have been relisted.

Each of you joined the opinion in United States v. Johnson, 457 U.S. 537 (1982). Because you did, I was somewhat puzzled when you voted to deny in No. 82-5920 rather than to remand for reconsideration. My notes indicate that you also voted to deny (quite properly in my view) in No. 83-654. Perhaps I have missed something. In any event, I am circulating the enclosed dissent in No. 82-5920. Please let me know if I am completely off base.

Sincerely,

Harry

Join - As Justice Black argues, Edwards should be applied to cases on direct review when that decision was announced

David

Justice Brennan
Justice Marshall
Justice Powell

cc: Justice Stevens

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

From: **Justice Blackmun**

Circulated: MAR 20 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHEAL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82-5920. Decided March ——, 1984

JUSTICE BLACKMUN, dissenting.

In *Edwards* v. *Arizona*, 451 U. S. 477 (1981), this Court, on direct review of a state-court judgment, held that a defendant's rights under the Fifth and Fourteenth Amendments were violated by the use of his confession obtained by police-instigated interrogation the day following the defendant's request for an attorney.

The present case, *Shea* v. *Louisiana*, and No. 83-654, *Texas* v. *Wilkerson*, in which the Court (quite properly in my view) denies certiorari today, concern the retroactivity of *Edwards*. Each of these two cases was pending on direct, not collateral, appeal in the state system when *Edwards* was decided. In *Shea*, the Supreme Court of Louisiana declined to apply *Edwards* and affirmed the defendant's conviction. In *Wilkerson*, the Texas Court of Criminal Appeals applied *Edwards* and reversed that defendant's conviction. The ensuing petitions for certiorari in the two cases were held here pending our decision in *Solem* v. *Stumes*, *ante*. *Stumes* has now been decided, with the Court holding, in that case at least, that *Edwards* was not to be applied retroactively in Stumes' federal habeas case.

In *United States* v. *Johnson*, 457 U. S. 537 (1982), this Court held that a decision here concerning Fourth Amendment rights is to be applied retroactively to a conviction that was not yet final at the time the decision was rendered, except where the case would be clearly controlled by existing retroactivity precedents. Specifically, the Court held that *Payton* v. *New York*, 445 U. S. 573 (1980), was to be applied retroactively to Johnson's case.

FILE COPY

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

From: **Justice Blackmun**

Circulated: MAR 2 9 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHAEL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82–5920. Decided March ——, 1984

PER CURIAM.

In *Edwards* v. *Arizona*, 451 U. S. 477 (1981), this Court, on direct review of a state-court judgment, held that a defendant's rights under the Fifth and Fourteenth Amendments were violated by use of his confession obtained by police-instigated interrogation the day following the defendant's request for an attorney. In *Solem* v. *Stumes*, *ante*, p. ——, the Court has held that *Edwards* was not to be applied retroactively on Stumes' federal habeas application.

The present case concerns the retroactive application of *Edwards* in litigation that was pending on direct appeal in the state system when *Edwards* was decided. The Supreme Court of Louisiana declined to apply *Edwards* and affirmed Shea's conviction. We withheld ruling on the ensuing petition for certiorari pending our decision in *Stumes*. We now conclude that the Supreme Court of Louisiana should have considered Shea's appeal in the light of the guidelines announced in *Edwards* while that appeal was pending.

In *United States* v. *Johnson*, 457 U. S. 537 (1982), this Court held that a decision here concerning Fourth Amendment rights is to be applied retroactively to a conviction that was not yet final at the time the decision was rendered, except in a situation where the case would be clearly controlled by existing retroactivity precedents. Specifically, the Court held that *Payton* v. *New York*, 445 U. S. 573 (1980), was to be applied retroactively to Johnson's case.

The Court in *Johnson* found persuasive Justice Harlan's reasoning that application of a new rule of law to cases pending on direct appeal when the rule was decided was necessary

HAB

March 30, 1984

Re: No. 82-5920, Shea v. Louisiana

Dear John:

Thank you for your note of March 29. Your point is a good one, and I propose to change footnote 1 to read as follows:

> [1]The Court in Johnson also declined to address cases clearly controlled by existing retroactivity precedents, such as cases in which the new rule of law is such a clear break with the past that it has been considered almost automatically nonretroactive. Whatever the merit of a different retroactivity rule for cases involving a "clear break with the past", we have no need to decide the question now. As the Court in Solem v. Stumes recognizes, the Edwards rule was not the kind of "clear break with the past" that almost automatically is nonretroactive. Ante, at ___ (slip op. 8-9).

Will this meet your concerns?

Sincerely,

HAB

Justice Stevens

P. 2

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

FILE COPY

From: **Justice Blackmun**

Circulated: _____

Recirculated: APR 2 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

KEVIN MICHAEL SHEA *v.* LOUISIANA

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF LOUISIANA

No. 82–5920. Decided March ——, 1984

PER CURIAM.

In *Edwards* v. *Arizona*, 451 U. S. 477 (1981), this Court, on direct review of a state-court judgment, held that a defendant's rights under the Fifth and Fourteenth Amendments were violated by use of his confession obtained by police-instigated interrogation the day following the defendant's request for an attorney. In *Solem* v. *Stumes*, *ante*, p. ——, the Court has held that *Edwards* was not to be applied retroactively on Stumes' federal habeas application.

The present case concerns the retroactive application of *Edwards* in litigation that was pending on direct appeal in the state system when *Edwards* was decided. The Supreme Court of Louisiana declined to apply *Edwards* and affirmed Shea's conviction. We withheld ruling on the ensuing petition for certiorari pending our decision in *Stumes*. We now conclude that the Supreme Court of Louisiana should have considered Shea's appeal in the light of the guidelines announced in *Edwards* while that appeal was pending.

In *United States* v. *Johnson*, 457 U. S. 537 (1982), this Court held that a decision here concerning Fourth Amendment rights is to be applied retroactively to a conviction that was not yet final at the time the decision was rendered, except in a situation where the case would be clearly controlled by existing retroactivity precedents. Specifically, the Court held that *Payton* v. *New York*, 445 U. S. 573 (1980), was to be applied retroactively to Johnson's case.

The Court in *Johnson* found persuasive Justice Harlan's reasoning that application of a new rule of law to cases pending on direct appeal when the rule was decided was necessary

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 22, 1984

82-5920 Shea v. Louisiana

Dear Harry:

Please join me in your dissent circulated March 20.

Sincerely,

Lewis

Justrice Blackmun

Copies to the Conference

LFP/vde

HAB

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 9, 1984

Re: No. 82-5920 Shea v. Louisiana

Dear Byron:

Please join me in your dissent.

Sincerely,

WHR

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 22, 1984

Re: 83-5920 - Shea v. Louisiana

Dear Harry:

Now that Lewis has joined your dissent, I will make a fifth vote for a Court to dispose of this case and 83-654, Texas v. Wilkerson, in accordance with what you have written.

Respectfully,

Justice Blackmun

Copies to the Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 29, 1984

Re: 82-5920 - Shea v. Louisiana

Dear Harry:

Although I have no problem with the text of your proposed Per Curiam, I wonder if you would be willing to omit the second sentence in footnote 1 on p. 2. I am inclined to believe that even an unanticipated new rule should be applied to all cases pending on direct appeal at the time the rule is announced. I do not ask you to subscribe to that view, but merely to rephrase the footnote in a way that is not inconsistent with it.

Perhaps, instead of omitting the sentence, you might revise it to read as follows: "Thus, in Johnson, we noted that 'where the Court has expressly declared a rule of criminal procedure to be "a clear break with the past," Desist v. United States, 394 U.S., at 248, it almost invariably has gone on to find such a newly minted principle nonretroactive.' See 457 U.S., at 549."

Respectfully,

John

Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 30, 1984

Re: 82-5920 - Shea v. Louisiana

Dear Harry:

Please join me.

Respectfully,

Justice Blackmun

Copies to the Conference