

The Burger Court Opinion Writing Database

James v. Kentucky

466 U.S. 341 (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

April 3, 1984

Re: 82-6840 - James v. Kentucky

Dear Byron:

Since it seems so clear to me that this challenged instruction was harmless, if indeed it was error at all, I join you.

I may add this thought in a concurrence.

Regards,

A handwritten signature in cursive script, appearing to read 'W.B.', which stands for Warren Burger.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 2, 1984

No. 82-6840

James v. Kentucky

Dear Byron,

I agree.

Sincerely,

Bill

Justice White

Copies to the Conference

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

Still Dewey

10/3

From: Justice White

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

MICHAEL P. JAMES v. KENTUCKY

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

No. 82-6840. Decided October —, 1983

I will not join.

JUSTICE WHITE, dissenting.

Petitioner was tried for burglary, receipt of stolen property, and rape. He did not take the stand. At the close of the evidence, petitioner's counsel objected to several of the instructions being given to the jury. He then noted for the record that "[t]he defendant requests that an admonition be given to the jury that no emphasis be given to the defendant's failure to testify which was overruled." The jury returned a verdict of guilty on all counts.

The Kentucky Supreme Court affirmed. *James v. Commonwealth*, 647 S. W. 2d 794 (Ky. 1983). The Court acknowledged that *Carter v. Kentucky*, 450 U. S. 288 (1981), requires the trial judge, "upon proper request," to instruct the jury not to draw an adverse inference from the defendant's failure to testify. The Court noted, however, that petitioner had requested an admonition rather than an instruction, and found a "vast difference" between the two. Petitioner "was entitled to the *instruction*, but did not ask for it. The trial court properly denied the request for an *admonition*." *James v. Commonwealth, supra*, at 795-796 (emphasis added).

Kentucky law distinguishes "instructions" from "admonitions." The former are statements of black-letter law designed to guide the jury in its deliberations, the latter cautionary statements regarding the conduct of the jury. See *Miller v. Noell*, 193 Ky. 659, 237 S. W. 373 (1922). Thus, the state Supreme Court has used the term "admonishment" in referring to statements to the jury requiring it to disregard certain testimony, *Perry v. Commonwealth*, 652 S. W.

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

From: **Justice White**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

MICHAEL P. JAMES *v.* KENTUCKY

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

No. 82-6840. Decided October —, 1983

JUSTICE WHITE, with whom JUSTICE BRENNAN and JUSTICE BLACKMUN join, dissenting.

Petitioner was tried for burglary, receipt of stolen property, and rape. He did not take the stand. At the close of the evidence, petitioner's counsel objected to several of the instructions being given to the jury. He then noted for the record that "[t]he defendant requests that an admonition be given to the jury that no emphasis be given to the defendant's failure to testify which was overruled." The jury returned a verdict of guilty on all counts.

The Kentucky Supreme Court affirmed. *James v. Commonwealth*, 647 S. W. 2d 794 (Ky. 1983). The Court acknowledged that *Carter v. Kentucky*, 450 U. S. 288, 305 (1981), requires the trial judge, "upon proper request," to instruct the jury not to draw an adverse inference from the defendant's failure to testify. The Court noted, however, that petitioner had requested an admonition rather than an instruction, and found a "vast difference" between the two. Petitioner "was entitled to the *instruction*, but did not ask for it. The trial court properly denied the request for an *admonition*." *James v. Commonwealth, supra*, at 795-796 (emphasis added).

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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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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-6840

MICHAEL P. JAMES, PETITIONER *v.* KENTUCKY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF KENTUCKY

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *Carter v. Kentucky*, 450 U. S. 288 (1981), we held that a trial judge must, if requested to do so, instruct the jury not to draw an adverse inference from the defendant's failure to take the stand. In this case, the Kentucky Supreme Court found that the trial judge was relieved of that obligation because defense counsel requested an "admonition" rather than an "instruction."

I

Petitioner Michael James was indicted for receipt of stolen property, burglary, and rape.¹ James had been convicted of two prior felonies—forgery and murder—and the prosecution warned that were James to take the stand it would use the forgery conviction to impeach his testimony. During voir dire, defense counsel asked the prospective jurors how they would feel were James not to testify. After a brief exchange

¹ The charges grew out of three separate incidents, all involving Donna Richardson. Richardson testified that on April 23, 1980, her house was broken into and a gun taken from under her pillows. A week later, she came home to find that a pane of glass had been removed from her back door, the locks undone, and her pillows messed up. On May 6, James, her next-door neighbor, asked to use her telephone to call a doctor. When Richardson let him in and began dialing, he put a gun to her side, tied her up, brought her to his house, and raped her.

James had the stolen pistol in his possession when arrested, hence the charge of receiving stolen property. His fingerprint was found on the missing pane of glass, hence the charge of burglary.

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: 6

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-6840

MICHAEL P. JAMES, PETITIONER *v.* KENTUCKY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF KENTUCKY

[April —, 1984]

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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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P. 10
3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-6840

MICHAEL P. JAMES, PETITIONER *v.* KENTUCKY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF KENTUCKY

[April —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In *Carter v. Kentucky*, 450 U. S. 288 (1981), we held that a trial judge must, if requested to do so, instruct the jury not to draw an adverse inference from the defendant's failure to take the stand. In this case, the Kentucky Supreme Court found that the trial judge was relieved of that obligation because defense counsel requested an "admonition" rather than an "instruction."

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James had the stolen pistol in his possession when arrested, hence the charge of receiving stolen property. His fingerprint was found on the missing pane of glass, hence the charge of burglary.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

October 7, 1983

Re: No. 82-6840-James v. Kentucky

Dear Byron:

Please join me in your dissent.

Sincerely,

Jm.

T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

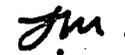
April 3, 1984

Re: No. 82-6840-James v. Kentucky

Dear Byron:

Please show me as "not participating" in this one.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 4, 1983

Re: No. 82-6840 - James v. Kentucky

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 5, 1983

Re: No. 82-6840 - James v. Kentucky

Dear Byron:

Please join me in your dissent.

Sincerely,



Justice White

cc: The Conference

[P.S. to Justice White only]

Dear Byron:

I think I would feel a little more comfortable if the final words of the dissent read "vacate the judgment below, and remand the case for further proceedings." This suggestion, however, does not affect my joinder.



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

*84 MAR 33 A9:43

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 2, 1984

Re: No. 82-6840 - James v. Kentucky

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 2, 1984

82-6840 James v. Kentucky

Dear Byron:

Please join me.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 2, 1984

Re: No. 82-6840 James v. Kentucky

Dear Byron:

Will you please add the following at the end of your opinion:

"Justice Rehnquist dissents for the reasons stated in his dissenting opinion in Carter v. Kentucky, 450 U.S. 288, 307-310 (1981)."

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

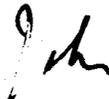
March 30, 1984

Re: 82-6840 - James v. Kentucky

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 2, 1984

Re: No. 82-6840 James v. Kentucky

Dear Byron,

Please join me.

Sincerely,



Justice White

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