

The Burger Court Opinion Writing Database

Minnesota v. Murphy

465 U.S. 420 (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

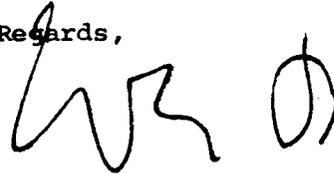
December 13, 1983

Re: 82-827 - Minnesota v. Murphy

Dear Byron:

I join.

Regards,

A handwritten signature in black ink, appearing to be 'W. White', with a circled '1' to the right.

Justice White

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

October 17, 1983

No. 82-827

Minnesota v. Murphy

Dear Thurgood and John,

We three are in dissent in the
above. Thurgood, would you try your
hand at the dissent?

Sincerely,



Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE W. J. BRENNAN, JR.

RECEIVED
SUPREME COURT U.S.
JUSTICE W. J. BRENNAN, JR.

January 31, 1984

'84 JAN 31 A11 :41

No. 82-827

Minnesota v. Murphy

Dear Thurgood,

Will you please note on your
dissent that I join all but Part II-A
thereof?

Sincerely,



Justice Marshall

Copies to the Conference

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

From: **Justice White**

Circulated: NOV 21 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL
DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MINNESOTA

[November —, 1983]

JUSTICE WHITE delivered the opinion of the Court.

In this case, respondent Murphy, who was on probation, made incriminating admissions during a meeting with his probation officer. The issue before us is whether the Fifth and Fourteenth Amendments prohibit the introduction into evidence of the admissions in Murphy's subsequent criminal prosecution.

I

In 1974, Marshall Murphy was twice questioned by Minneapolis Police concerning the rape and murder of a teenage girl. No charges were then brought. In 1980, in connection with a prosecution for criminal sexual conduct arising out of an unrelated incident, Murphy pleaded guilty to a reduced charge of false imprisonment. He was sentenced to a prison term of sixteen months, which was suspended, and three years' probation. The terms of Murphy's probation required, among other things, that he participate in a treatment program for sexual offenders at Alpha House, report to his probation officer as directed, and be truthful with the probation officer "in all matters." Failure to comply with these conditions, Murphy was informed, could result in his return to the sentencing court for a probation revocation hearing. App. to Pet. for Cert. C33-C35.

Murphy met with his probation officer at her office approximately once a month, and his probation continued with-

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

From: **Justice White**

Circulated: _____

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL
DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MINNESOTA

[November —, 1983]

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Murphy met with his probation officer at her office approximately once a month, and his probation continued with-

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

From: **Justice White**

Circulated: _____

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pp. 5, 8, 14, 15 & stylistic -

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL
DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MINNESOTA

[December —, 1983]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 1, 1983

Re: 82-827 - Minnesota v. Murphy

Dear John:

I have studied your letter with some care, but remain puzzled as to the thrust of several of your comments.

First, the question whether §4582 was violated in this case and the proper remedy for violations of the section are not before us in this case. I am uncertain whether the record supports your observation that the probation officer may have been somewhat deceptive in circumventing the protection of the section. As the draft opinion makes clear, I am of the view that "there is no evidence that she used treatment as a subterfuge or that her sole purpose was to obtain incriminating statements for the police." However, I would be willing to consider any specific suggestion you have in this regard.

Second, I am uncertain why you direct your comments concerning Murphy's knowledge or state of mind to part II(B)(1) of the draft. That section is designed to demonstrate only that the situation facing Murphy was sufficiently unlike custodial interrogation to render inapplicable the rule excusing a failure to assert the privilege in a timely manner. I do not believe that the arguments made in part II(B)(1) depend on, or amount to, a conclusion about Murphy's belief as to whether he could refuse to answer questions that might have incriminated him in a subsequent criminal prosecution.

Third, the circulating draft does not purport to announce any definitive construction of Murphy's parole conditions as they bear on the Fifth Amendment privilege. To the contrary, it is noted that the Minnesota court has not construed the parole conditions as requiring a waiver of the privilege and indicates that we will not assume that such is the import of those conditions, particularly where the Attorney General of the state is of a contrary view. Absent the revocation sanction for a refusal to incriminate, the draft rejects Murphy's argument that he was excused from claiming the privilege for fear of a penalty. We do go on to say that if Murphy feared revocation as a consequence of his exercise of the privilege, his belief was not reasonable as a matter of law.

Thus, if the votes are there, I should prefer to leave the draft as it is.

Sincerely yours,



Justice Stevens

Copies to the Conference

cpm

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 6, 13, 15 + 19

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

From: Justice White

Circulated: _____

Recirculated: FEB 16 1984

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL
DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MINNESOTA

[February —, 1984]

JUSTICE WHITE delivered the opinion of the Court.

In this case, respondent Murphy, who was on probation, made incriminating admissions during a meeting with his probation officer. The issue before us is whether the Fifth and Fourteenth Amendments prohibit the introduction into evidence of the admissions in Murphy's subsequent criminal prosecution.

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In 1974, Marshall Murphy was twice questioned by Minneapolis Police concerning the rape and murder of a teenage girl. No charges were then brought. In 1980, in connection with a prosecution for criminal sexual conduct arising out of an unrelated incident, Murphy pleaded guilty to a reduced charge of false imprisonment. He was sentenced to a prison term of 16 months, which was suspended, and three years' probation. The terms of Murphy's probation required, among other things, that he participate in a treatment program for sexual offenders at Alpha House, report to his probation officer as directed, and be truthful with the probation officer "in all matters." Failure to comply with these conditions, Murphy was informed, could result in his return to the sentencing court for a probation revocation hearing. App. to Pet. for Cert. C33-C35.

Murphy met with his probation officer at her office approximately once a month, and his probation continued with-

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HAB

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

February 28, 1984

CHAMBERS OF
JUSTICE BYRON R. WHITE

MEMORANDUM TO THE CONFERENCE

Re: Cases held for Minnesota v. Murphy, No. 82-827

Two cases were being held for Murphy:

(1) California v. Howard, No. 82-976: During a robbery planned by resp, Wilbanks, Chavez, and Beheler, Wilbanks shot and killed the victim with resp's gun. Beheler later told an officer what had happened. The officer eventually contacted Chavez's father and informed him that he wished to speak with Chavez as soon as possible since he had been present at a shooting. Beheler and Chavez's father then urged Chavez and resp to contact the sheriff's department. They did so and told an officer that they would be willing to come to the station but had no transportation. The department sent a car and transported the two to the station, where resp made incriminating statements without receiving Miranda warnings. After the interview, Chavez and resp were furnished transportation home. Resp was arrested a few days later and confessed again after receiving Miranda warnings. The Cal. Ct. App. reversed resp's conviction on the ground that he had not been advised of his Miranda rights at the time of his initial interview.

This case turns on whether resp was in custody at the time of the first interview. The Cal. Ct. App. concluded that he was since suspicion had focused on him and the interrogation was intended to elicit a confession. I think this was error but am not sure that Murphy itself sheds much light on the issue. In Murphy, the Minn. Sup. Ct. found that Murphy was not in custody, and that was not really an issue in the case. To the extent that Murphy reiterated the custody requirement of Mathiason, it perhaps provides some insight as to how this case should be resolved, but I doubt that a GVR would be instructive. I could perhaps join a summary reversal, but otherwise I would deny.

(2) Oregon v. Roberti, No. 82-315: An officer observed resp driving erratically, stopped his car, detected signs that resp had been drinking, and informed resp of his observations concerning resp's driving. The officer administered field sobriety tests, a number of which resp failed. The officer then determined that he was going to arrest resp, but he did not communicate this decision to resp or utter any words of arrest. Resp was asked to rate his intoxication on a scale from 1 to 10; resp rated himself a low 5 and stated that he should not have

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

November 21, 1983

Re: No. 82-827-Minnesota v. Marshall Donald Murphy

Dear Byron:

In due course I will circulate a dissent.

Sincerely,


T.M.

Justice White

cc: The Conference

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

From: Justice Marshall

Circulated: JAN 24 1984

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL DONALD
MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
MINNESOTA

[January —, 1984]

JUSTICE MARSHALL, dissenting.

The opinion of the Court helpfully clarifies the scope of the privilege against self-incrimination that may be asserted by a probationer when asked questions by an officer of the state. As the majority points out, two principles shape the probationer's constitutional rights. First, because probation revocation proceedings are not criminal in nature, *Gagnon v. Scarpelli*, 411 U. S. 778, 782 (1973), and because the Fifth-Amendment ban on compelled self-incrimination applies only to criminal proceedings, the possibility that a truthful answer to a question might result in the revocation of his probation does not accord the probationer a constitutional right to refuse to respond. *Ante*, at 14, n. 7. Second, a probationer retains the privilege enjoyed by all citizens to refuse "to answer official questions put to him in any . . . proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings," *Lefkowitz v. Turley*, 414 U. S. 70, 77 (1973). *Ante*, at 5.

From the foregoing propositions, it follows that the power of a state to compel a probationer to answer a given question varies depending upon the manner in which the probationer's answer might incriminate him. If a truthful response might reveal that he has violated a condition of his probation but would not subject him to criminal prosecution, the state may insist that he respond and may penalize him for refusing to do

Changes pp. 8, 12, 15-17

STYLISTIC CHANGES THROUGHOUT.
STYLISTIC CHANGES THROUGHOUT.

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

From: **Justice Marshall**

Circulated: _____

Recirculated: JAN 30 1984

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JAN 30 1984

'84 JAN 30 9:57

Justice Marshall

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

[January —, 1984]

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

STYLISTIC CHANGES THROUGHOUT.

From: **Justice Marshall**

Circulated: _____

Recirculated: FEB 9 - 1984

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 82-827

MINNESOTA, PETITIONER *v.* MARSHALL DONALD MURPHY

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF MINNESOTA

[February —, 1984]

JUSTICE MARSHALL, joined by JUSTICE STEVENS, and in all but Part II-A by JUSTICE BRENNAN, dissenting.

The opinion of the Court helpfully clarifies the scope of the privilege against self-incrimination that may be asserted by a probationer when asked questions by an officer of the state. As the majority points out, two principles shape the probationer's constitutional rights. First, because probation revocation proceedings are not criminal in nature, *Gagnon v. Scarpelli*, 411 U. S. 778, 782 (1973), and because the Fifth-Amendment ban on compelled self-incrimination applies only to criminal proceedings, the possibility that a truthful answer to a question might result in the revocation of his probation does not accord the probationer a constitutional right to refuse to respond. *Ante*, at 14, n. 7. Second, a probationer retains the privilege enjoyed by all citizens to refuse "to answer official questions put to him in any . . . proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings," *Lefkowitz v. Turley*, 414 U. S. 70, 77 (1973). *Ante*, at 5.

From the foregoing propositions, it follows that the power of a state to compel a probationer to answer a given question varies depending upon the manner in which the probationer's answer might incriminate him. If a truthful response might reveal that he has violated a condition of his probation but would not subject him to criminal prosecution, the state may

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 28, 1983

Dear Byron:

Re: No. 82-827 - Minnesota v. Murphy

Like Bill Rehnquist, I am with you in the result, but I am concerned with some of the content of the opinion.

I share the concerns expressed by Bill in his letter of November 21. I think I would be happy, too, if footnote 6, or most of it, were omitted. It seems to me to reach out to decide cases not before us.

Sincerely,

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

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 1, 1983

Re: No. 82-827 - Minnesota v. Murphy

Dear Byron:

Please join me in your recirculation of November 30.

Sincerely,

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

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 1, 1983

82-827 Minnesota v. Murphy

Dear Byron:

Please join me.

Sincerely,



Justice White

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

November 21, 1983

Re: No. 82-827 Minnesota v. Murphy

Dear Byron:

I of course agree with the result that you reach in this case, but have a couple of problems with the way you reach it.

(1) Footnote 5 discusses and discards the "act of grace" and "contract" theories of parole. Based on our opinions in Morrissey v. Brewer, 408 U.S. 471, and Gagnon v. Scarpelli, 411 U.S. 778, and a couple of scholarly articles, the footnote announces that both the "act of grace" and "contract" theories have been invalidated by these two decisions. I would much rather let the two decisions speak for themselves, and see you omit the footnote entirely, since it does not seem necessary to your analysis at this point. I agree with the implication in the footnote that the cited note in Gagnon substantially undermines the "act of grace" theory, as did the opinion in Morrissey; but neither dealt with the "contract" theory in express terms, and I am unhappy to see it disposed of on the basis of a Law Review article such as is the case in footnote 5.

(2) The text on page 15, and the second paragraph in footnote 8 on that page, seem to me to decide a case that is not here: What would be the consequences if the state were to provide that invocation of the privilege against self-incrimination at an interview with the probation officer would result in the revocation of probation? I should think you could engage in the same analysis by assuming without deciding that such procedures would violate the Fifth Amendment privilege, and that it is unwise to decide that issue when it is unnecessary to do so.

I also think that if you are going to "cover the waterfront" as you apparently wish to do in footnote 8, that

still another possibility should be discussed in order that it not appear to have been precluded by omission. If, for example, one of the conditions of my probation is that I comport myself as a law abiding citizen, and my probation officer asks me during an interview if I have committed any crimes since on probation, I may invoke the privilege against self-incrimination; but I would think that my doing so would permit the probation officer or a judge at a later probation revocation hearing to draw an adverse inference from my invocation of the privilege. I think the situation is analogous to your treatment of that question in the opinion for the Court in Baxter v. Palmigiano, 425 U.S. 308, 317-318.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

December 1, 1983

Re: No. 82-827 Minnesota v. Murphy

Dear Byron:

Please join me.

Sincerely,



Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

November 30, 1983

Re: 82-827 - Minnesota v. Murphy

Dear Byron:

Although I agree with a large part of what you have written, three points in your opinion disturb me.

First, although I am not sure that the remedy for a violation of 42 U.S.C. §4582 should be the exclusion of otherwise admissible testimony, it does seem to me that the probation officer was somewhat deceptive in the way she was able to circumvent the protection a federal statute was intended to provide. Your opinion seems implicitly to approve of her conduct.

Second, in part II(B)(1) (pp. 9-13) you seem to be making a finding of fact that Murphy had no reason for believing that he could refuse to answer questions although his answers might incriminate him. I think many probationers would interpret the terms of their probation differently. Even if you are right, it seems to me that we should not attempt to make a finding of fact as to what it was that Murphy had reason to believe. No such finding was made on this point in the state courts. To the extent there is any finding on this point, it tends to argue against your conclusion. The trial court wrote: "[T]he fact [is] that a condition of his [Murphy's] probation was that he be honest with his probation officer, and that he was there ostensibly to discuss further treatment in regard to his current condition. Failure to follow through with either of these could have resulted in revocation of the probation and potential imprisonment." Pet. for Cert. B-14. If the case turns on what it was that Murphy had reason to believe, as it seems to, then I think we should follow our usual practice and not make

new findings of fact. The case should be sent back to the state courts for further factfinding.

Third, and perhaps of greatest importance, your ultimate disposition depends on the resolution of a question of Minnesota law that I believe should be decided by the Minnesota Supreme Court, not by this Court. The conditions of Murphy's probation required him to be truthful with his probation officer in all matters. That obligation might be interpreted in at least four different ways: (1) if you answer a question, you must tell the truth but you are not obligated to answer if you choose not to do so; (2) if you answer, you must be truthful but you need not answer any incriminating questions; (3) if you answer you must be truthful but you need not answer any incriminating questions concerning pre-probation matters; or (4) you must be truthful and you must answer any question that is asked by the probation officer.

Your opinion decides, as a matter of Minnesota law, that the probation condition does not have the fourth meaning. It seems to me that this is precisely the sort of question that the Minnesota Supreme Court should answer for us rather than vice versa.

I also wonder if it is wise to saddle Minnesota with the construction of its probation statute adopted in your opinion. As you recognize at page 15 n. 7, a State may wish to insist on answers to questions relating to the probationer's compliance with his conditions of probation in order to "sensibly administer its probation system." Minnesota might well want to adopt this approach, and might construe its statute to make Murphy's silence in the face of questions about the conditions of his probation a basis for revocation of probation. If so, then, as you recognize, this would create a penalty on Murphy's right to remain silent and require that Murphy's answers to Widseth's questions not be used against him in a subsequent criminal prosecution. At a minimum, I think we should leave the policy choice whether to permit a probationer to remain silent or to prohibit silence but immunize the compelled answers to the

Minnesota Supreme Court. In the absence of any authoritative decisions on this point, I would not assume, as you do, that Minnesota would be content to let its probationers remain silent when asked questions about their compliance with their conditions of probation. And in the absence of an authoritative decision, I would be hard pressed to say, as you do, that Murphy could not have reasonably believed that Minnesota might decide to treat silence as a basis for revocation of his probation.

In sum, I am still not entirely at rest in this case and will wait to see what the dissent has to say.

Respectfully,

A handwritten signature in dark ink, appearing to be the initials 'JW' with a stylized flourish extending to the right.

Justice White

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

RECEIVED
SUPREME COURT U.S.
February 3, 1984

'84 FEB -3 P3:27

Re: 82-827 - Minnesota v. Murphy

Dear Thurgood:

Please join me in your dissent.

Respectfully,

John / Jay

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

December 1, 1983

No. 82-827 Minnesota v. Murphy

Dear Byron,

Please join me.

Sincerely,



Justice White

Copies to the Conference