

# The Burger Court Opinion Writing Database

## *Koehler v. Engle*

466 U.S. 1 (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

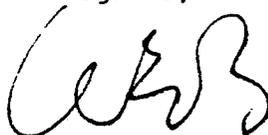
October 4, 1983

Re: 83-1 - Koehler v. Engle

Dear Lewis and Bill:

I can join each of your dissents.

Regards,

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

Justice Powell

Justice Rehnquist

76

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

May 8, 1984

CHAMBERS OF  
THE CHIEF JUSTICE

MEMORANDUM TO THE CONFERENCE:

RE: No. 82-859 Marshall v. Clark  
No. 83-5869 Crowder v. United States

These cases were held for Koehler v. Engle, No. 83-1. In Koehler, you recall, the trial judge instructed the jury that "the law gives us a rule of thumb that a person is presumed to intend the natural consequences of his acts. It is somewhat like the old saying that actions speak louder than words." The respondent was convicted of first degree murder and sentenced to life imprisonment. The Sixth Circuit held that, in violation of Sandstrom v. Montana, 442 U.S. 510 (1979), the instruction shifted the burden to the defendant of proving that he lacked the requisite intent to commit the offense; it then rejected the petitioner's argument that the error was harmless. We affirmed by an equally divided Court.

1. No. 82-859 Marshall v. Clark. Respondent and a companion held up a gas station attendant at gunpoint and ordered the attendant into the back room. As respondent and his companion exited the back room, the companion shot and killed the attendant. On the substantive offense, the trial court instructed the jury, in relevant part, as follows:

"Purpose to cause the death of another is an essential element of the crime of aggravated murder. A person acts purposely when it is his specific intention to cause a certain result. It must be established in this case that at the time in question there was present in the mind of the Defendant and/or his accomplice a specific intention to cause the death of [the attendant]." (Emphasis added).

Additionally, the court instructed the jury in the following manner on one of the criteria for imposing the death penalty:

"That separate question which you will be called upon to decide is, did the Defendant, Jimmy Lee Clark, purposely cause the death of [the attendant]."

Respondent was convicted of aggravated murder and aggravated robbery.

10/03

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

RECEIVED  
SUPREME COURT U.S.  
JUSTICE POWELL

'83 SEP 33 P4:30 From: Justice Powell

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

THEODORE KOEHLER, WARDEN *v.*  
TILDEN N.ENGLE

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

No. 83-1. Decided October —, 1983

JUSTICE POWELL, dissenting from denial of certiorari.

I would grant certiorari in this case to consider the question whether *Sandstrom v. Montana*, 442 U. S. 510 (1979), should be applied on federal collateral review of state criminal convictions that became final before *Sandstrom* was announced. The precedents of this Court now acknowledge no distinction between the criteria which determine whether a new rule of federal constitutional law should be applied to cases pending on direct review and to cases on habeas. See *Linkletter v. Walker*, 381 U. S. 618 (1965); *Stovall v. Denno*, 388 U. S. 293 (1967). Under those cases, the decision below well may be wrong because: (i) a violation of *Sandstrom* does not raise an acute danger of convicting an innocent defendant; (ii) *Sandstrom* effected an unexpected change in the law upon which many states had relied; and (iii) the costs to the administration of justice of encouraging the numerous persons convicted under the old law to bring habeas actions could be substantial. See *People v. Woods*, 416 Mich. 581, 619-621 (1982) (holding full retroactivity unwarranted for *Sandstrom*).

More importantly, the Court may now be ready to reconsider the *Linkletter-Stovall* doctrine that declines to distinguish between direct and collateral review for the purposes of retroactivity analysis. In *United States v. Johnson*, 457 U. S. 537 (1982), declaring that "retroactivity must be rethought," *id.*, at 548 (quoting Justice Harlan's dissent in *Desist v. United States*, 394 U. S. 244, 258 (1969)), the Court adopted, for direct review of fourth amendment cases, the

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

From: **Justice Powell**

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2nd  
~~1st~~ DRAFT

## SUPREME COURT OF THE UNITED STATES

THEODORE KOEHLER, WARDEN *v.*  
 TILDEN N. ENGLE

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

No. 83-1. Decided October —, 1983

JUSTICE POWELL, with whom JUSTICE O'CONNOR joins,  
 dissenting from denial of certiorari.

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10/05

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

From: **Justice Powell**

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3rd DRAFT

## SUPREME COURT OF THE UNITED STATES

THEODORE KOEHLER, WARDEN *v.*  
TILDEN N. ENGLE

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

No. 83-1. Decided October —, 1983

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting from denial of certiorari.

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

From: **Justice Rehnquist**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

THEODORE KOEHLER, WARDEN *v.*  
TILDEN N. ENGLE

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

No. 83-1. Decided October —, 1983

JUSTICE REHNQUIST, dissenting from denial of certiorari.

Respondent Engle was convicted in a Michigan trial court in July, 1973, of first degree murder without possibility of parole. Ten years later, the Court of Appeals for the Sixth Circuit held that he was entitled to release under the Federal Habeas Corpus Statute, 28 U. S. C. § 2254, because in its view an instruction given at his trial conflicted with our decision in *Sandstrom v. Montana*, 442 U. S. 510 (1979). In my view, the state's petition for certiorari presents at least three issues which should be resolved by this Court: (1) the Court of Appeals for the Sixth Circuit treated this case as if it had been on direct review from the state court judgment, as was *Sandstrom v. Montana*, *supra*, rather than under the standards enunciated by *Cupp v. Naughten*, 414 U. S. 141 (1973), for review of instructional error on collateral attack through federal habeas corpus, (2) whether there was in fact a violation of *Sandstrom v. Montana*, *supra*, as a result of the instructions in this case considered as a whole, (3) whether *Sandstrom v. Montana*, *supra*, should be applied retroactively to trial taking place before the case was decided.

(1) In *Sandstrom* we held that the instruction "the law presumes that a person intends the ordinary consequences of his voluntary acts" violated the requirement of the Due Process Clause of the Fourteenth Amendment that guilt in a criminal case be proved beyond a reasonable doubt. *Sandstrom v. Montana*, *supra*, 442 U. S., at 513. We declined to decide whether or not a violation of this principle might be treated as harmless error under *Chapman v. California*, 386 U. S.

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

September 30, 1983

Re: No. 83-1 Koehler v. Engle

Dear Bill,

Please join me in your dissent from denial of  
certiorari.

Sincerely,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

October 3, 1983

Re: No. 83-1 Koehler v. Engle

Dear Lewis,

Please join me in your dissent from denial of  
certiorari.

Sincerely,



Justice Powell

Copies to the Conference