

The Burger Court Opinion Writing Database

Arizona v. Rumsey

467 U.S. 203 (1984)

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



440
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

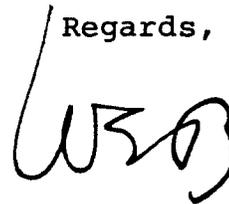
December 27, 1983

Re: 83-226 - Arizona v. Dennis Wayne Rumsey

Dear Bill:

I will now give a fourth vote to grant.

Regards,



Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

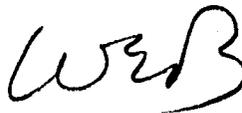
April 30, 1984

Re: 83-226 - Arizona v. Rumsey

MEMORANDUM TO THE CONFERENCE:

I conclude to affirm in this case, albeit reluctantly, on stare decisis.

Regards,

Handwritten signature in black ink, appearing to be "W. E. B. Dubois".

5

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

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

CHAMBERS OF
THE CHIEF JUSTICE

May 16, 1984

24 MAY 17 09:28

No. 83-226 - Arizona v. Rumsey

Dear Sandra:

I join.

Regards,

W. J. O'Connor

Justice O'Connor

Copies to the Conference

Justice O'Connor

12

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 7, 1984

No. 83-226

Arizona v. Rumsey

Dear Sandra,

I agree.

Sincerely,

Bill

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

RECEIVED
SUPREME COURT U.S.
JUSTICE MARSHALL

November 4, 1983

'83 NOV -4 P2:58

Re: 83-226 - Arizona v. Rumsey

Dear Bill,

Join me, please.

Sincerely,



Justice Rehnquist

Copies to the Conference

cpm

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 21, 1984

Re: 83-226 - Arizona v. Rumsey

Dear Bill,

Please join me in your dissent in this case.

Sincerely yours,



Justice Rehnquist

Copies to the Conference

cpm

84 MAY 24 1984

84

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 8, 1984

Re: No. 83-226-Arizona v. Rumsey

Dear Sandra:

Please join me.

Sincerely,



T.M.

Justice O'Connor

cc: The Conference

4

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 7, 1984

Re: No. 83-226, Arizona v. Rumsey

Dear Sandra:

Please join me.

Sincerely,



Justice O'Connor

cc: The Conference

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY -7 P3:53



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 5, 1984

82-226 Arizona v. Rumsey

Dear Sandra:

Please join me.

Sincerely,

[Handwritten signature]

Justice O'Connor

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: NOV 4

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

ARIZONA *v.* DENNIS WAYNE RUMSEY

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

No. 83-226. Decided November —, 1983

JUSTICE REHNQUIST, dissenting from denial of certiorari.

In this case the Arizona Supreme Court vacated respondent's life sentence and remanded for resentencing because the trial judge erred as a matter of law in interpreting one of the aggravating circumstances in Arizona's death penalty statute. After correcting the legal error on remand, the judge found that the Arizona statute required him to impose the death sentence. The Arizona Supreme Court, however, held that our decision in *Bullington v. Missouri*, 451 U. S. 430 (1981), prohibited that sentence. I dissent from the Court's decision to deny certiorari in this case.

I continue to believe that *Bullington* was wrongly decided for the reasons expressed in JUSTICE POWELL'S dissent in that case. But even apart from that view, I do not believe that the reasoning underlying *Bullington* applies to this remand for resentencing for the purpose of correcting a legal error.

Respondent Dennis Rumsey was convicted by a jury in state court of armed robbery and first degree murder. Pursuant to Ariz. Rev. Stat. Ann. §13-703 (1978 and Supp. 1983), if a defendant is found guilty of first degree murder, the trial judge must hold a separate sentencing hearing to determine the existence of any aggravating or mitigating circumstances. Section 13-703(E) requires a judge to impose the death sentence for first degree murder if he finds one statutory aggravating circumstance and if "there are no mitigating circumstances sufficiently substantial to call for leniency." The Arizona statute gives the judge no discretion

2/21/84 mitn for
appointment of counsel
granted - it is ordered
that Rummage is appointed
to serve as counsel for
the respondent

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: NOV 9 1983

UNITED STATES

ARIZONA v. DENNIS WAYNE RUMSEY

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

No. 83-226. Decided November —, 1983

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins,
dissenting from denial of certiorari.

In this case the Arizona Supreme Court vacated respondent's life sentence and remanded for resentencing because the trial judge erred as a matter of law in interpreting one of the aggravating circumstances in Arizona's death penalty statute. After correcting the legal error on remand, the judge found that the Arizona statute required him to impose the death sentence. The Arizona Supreme Court, however, held that our decision in *Bullington v. Missouri*, 451 U. S. 430 (1981), prohibited that sentence. I dissent from the Court's decision to deny certiorari in this case.

I continue to believe that *Bullington* was wrongly decided for the reasons expressed in JUSTICE POWELL'S dissent in that case. But even apart from that view, I do not believe that the reasoning underlying *Bullington* applies to this remand for resentencing for the purpose of correcting a legal error.

Respondent Dennis Rumsey was convicted by a jury in state court of armed robbery and first degree murder. Pursuant to Ariz. Rev. Stat. Ann. § 13-703 (1978 and Supp. 1983), if a defendant is found guilty of first degree murder, the trial judge must hold a separate sentencing hearing to determine the existence of any aggravating or mitigating circumstances. Section 13-703(E) requires a judge to impose the death sentence for first degree murder if he finds one statutory aggravating circumstance and if "there are no mitigating circumstances sufficiently substantial to call for leniency." The Arizona statute gives the judge no discretion

Page 2

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

From: **Justice Rehnquist**

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-226

ARIZONA, PETITIONER *v.* DENNIS WAYNE RUMSEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1984]

JUSTICE REHNQUIST, dissenting.

Today the Court affirms the decision of the Arizona Supreme Court vacating the death sentence imposed on respondent for a murder committed in the course of an armed robbery. Applying the interpretation given the Double Jeopardy Clause by a bare majority of this Court in *Bullington v. Missouri*, 451 U. S. 430 (1981), the Court concludes that in this case the first sentencing also amounted to an implied acquittal of respondent's eligibility for the death penalty. I continue to believe that *Bullington* was wrongly decided for the reasons expressed in Justice Powell's dissent in that case. But even apart from those views, I do not believe that the reasoning underlying *Bullington* applies to this remand for resentencing to correct a legal error. Accordingly, I dissent.

The central premise of the Court's holding today is that the trial court's first finding—that there were no aggravating and no mitigating circumstances and therefore only a life sentence could be imposed—amounted to an "implied acquittal" on the merits of respondent's eligibility for the death sentence, thereby barring the possibility of an enhanced sentence upon resentencing by virtue of the Double Jeopardy Clause. But the Court's continued reliance on the "implied acquittal" rationale of *Bullington* is simply inapt. Unlike the jury's decision in *Bullington*, where the jury had broad discretion to decide whether capital punishment was appropriate, the trial

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

From: Justice Rehnquist

Circulated: _____

Recirculated: _____ MAY 23 1984

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-226

ARIZONA, PETITIONER *v.* DENNIS WAYNE RUMSEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1984]

JUSTICE REHNQUIST, with whom JUSTICE WHITE joins,
dissenting.

Today the Court affirms the decision of the Arizona Supreme Court vacating the death sentence imposed on respondent for a murder committed in the course of an armed robbery. Applying the interpretation given the Double Jeopardy Clause by a bare majority of this Court in *Bullington v. Missouri*, 451 U. S. 430 (1981), the Court concludes that in this case the first sentencing also amounted to an implied acquittal of respondent's eligibility for the death penalty. I continue to believe that *Bullington* was wrongly decided for the reasons expressed in JUSTICE POWELL's dissent in that case. But even apart from those views, I do not believe that the reasoning underlying *Bullington* applies to this remand for resentencing to correct a legal error. Accordingly, I dissent.

The central premise of the Court's holding today is that the trial court's first finding—that there were no aggravating and no mitigating circumstances and therefore only a life sentence could be imposed—amounted to an "implied acquittal" on the merits of respondent's eligibility for the death sentence, thereby barring the possibility of an enhanced sentence upon resentencing by virtue of the Double Jeopardy Clause. But the Court's continued reliance on the "implied acquittal" rationale of *Bullington* is simply inapt. Unlike the jury's decision in *Bullington*, where the jury had broad discretion to

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 7, 1984

Re: 83-226 - Arizona v. Rumsey

Dear Sandra:

Please join me.

Respectfully,



Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

November 10, 1983

Re: No. 83-226 Arizona v. Rumsey

Dear Bill,

Inasmuch as I did not participate in the Bullington case, I will simply let the order list reflect that I would grant certiorari.

Sincerely,

Sandra

Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE PRESIDENTIAL ARCHIVES, DIVISION OF DOCUMENTS, LIBRARY OF CONGRESS

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

From: Justice O'Connor

Circulated: 5/5/84

Recirculated: _____

~~SDO~~
Plan for me
H

1st DRAFT

John

SUPREME COURT OF THE UNITED STATES

No. 83-226

ARIZONA, PETITIONER *v.* DENNIS WAYNE RUMSEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented is whether the Double Jeopardy Clause prohibits the State of Arizona from sentencing respondent to death after the life sentence he had initially received was set aside on appeal. We agree with the Supreme Court of Arizona that *Bullington v. Missouri*, 451 U. S. 430 (1981), squarely controls the disposition of this case. Under the interpretation of the Double Jeopardy Clause adopted in that decision, imposition of the death penalty on respondent would be unconstitutional.

I

An Arizona jury convicted respondent of armed robbery and first degree murder. The trial judge, with no jury, then conducted a separate sentencing hearing to determine, according to the statutory scheme for considering aggravating and mitigating circumstances, Ariz. Rev. Stat. Ann. § 13-703 (Supp. 1983), whether death was the appropriate sentence for the murder conviction. Petitioner, relying entirely on the evidence presented at trial, argued that three statutory aggravating circumstances were present. Respondent, presenting only one witness, countered that no aggravating circumstances were present but that several mitigating circumstances were. One of the principal points of contention concerned the scope of Ariz. Rev. Stat. Ann. § 13-703(F)(5) (Supp. 1983), which defines as an aggravating circumstance

Stylistic changes throughout

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

84 MAY 22 09:57

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

From: Justice O'Connor

Circulated: _____

Recirculated: MAY 21 '84

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-226

ARIZONA, PETITIONER *v.* DENNIS WAYNE RUMSEY

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ARIZONA

[May —, 1984]

JUSTICE O'CONNOR delivered the opinion of the Court.

The question presented is whether the Double Jeopardy Clause prohibits the State of Arizona from sentencing respondent to death after the life sentence he had initially received was set aside on appeal. We agree with the Supreme Court of Arizona that *Bullington v. Missouri*, 451 U. S. 430 (1981), squarely controls the disposition of this case. Under the interpretation of the Double Jeopardy Clause adopted in that decision, imposition of the death penalty on respondent would be unconstitutional.

I

An Arizona jury convicted respondent of armed robbery and first degree murder. The trial judge, with no jury, then conducted a separate sentencing hearing to determine, according to the statutory scheme for considering aggravating and mitigating circumstances, Ariz. Rev. Stat. Ann. § 13-703 (Supp. 1983-1984), whether death was the appropriate sentence for the murder conviction. Petitioner, relying entirely on the evidence presented at trial, argued that three statutory aggravating circumstances were present. Respondent, presenting only one witness, countered that no aggravating circumstances were present but that several mitigating circumstances were. One of the principal points of contention concerned the scope of Ariz. Rev. Stat. Ann. § 13-703(F)(5) (Supp. 1983-1984), which defines as an aggravating circum-