

The Burger Court Opinion Writing Database

Ponte v. Real

471 U.S. 491 (1985)

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

May 14, 1985

Re: No. 83-1329 - Ponte, Supt. v. Real

Dear Bill:

I join.

Regards,



Justice Rehnquist

Copies to the Conference

84 MAY 12 5 10 00

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

February 14, 1985

Dear Thurgood, Harry and John,

Bill Rehnquist has circulated Ponte v. Real, No. 83-1329. I can't join his holding that the obligation to explain is satisfied when the prison authorities explain in court. My view expressed at Conference was that the explanation should be made part of the file in the administrative proceedings, although the filing could be under seal. My recollection also is that you three had a similar view. Am I correct and, if so, does any one of you want to write that out, or should I do it?

Sincerely,

Bill

Justice Marshall
Justice Blackmun
Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 25, 1985

No. 83-1329

Ponte v. Real

Dear Thurgood,

Please join me.

Sincerely,

Bill

Justice Marshall

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12

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

February 12, 1985

83-1329 - Ponte v. Real

Dear Bill,

Please join me.

Sincerely yours,

*Byron
CWR*

Justice Rehnquist

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 21, 1985

Re: No. 83-1329-Ponte v. Real

Dear Bill:

I will try my hand at a concurrence.

Sincerely,

T.M.

T.M.

Justice Rehnquist

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: APR 24 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHU-
SETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[April —, 1985]

JUSTICE MARSHALL, dissenting.

The court below held there must be "some support in the record" for the denial of an inmate's right to call witnesses at a prison disciplinary hearing. Rejecting this position, the Court today concludes that the Constitution requires only that prison officials explain in court, many months or years after a disciplinary hearing, why they refused to hear particular witnesses. I cannot accept that alleged denials of the vital constitutional right to present witnesses are to be reviewed, not on the basis of an administrative record, but rather on the basis of post-hoc courtroom rationalizations. I believe the Constitution requires that a contemporaneous record explanation for such a denial be prepared at the time of the hearing. The record need not be disclosed to the inmate but would be available to a court should judicial review later be sought. Upon a proper showing that security or other needs of prison officials so require, the court could review the contemporaneous-record explanation *in camera*. That this process is compatible with the prison setting is demonstrated by the fact that the recording of contemporaneous reasons for denying requests to call witnesses is the current practice in federal prisons and in many state prisons.

pp 1, 9-10

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

From: Justice Marshall

Circulated: _____
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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE, PETITIONER v. JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[May —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, dissenting.

The court below held there must be "some support in the record" for the denial of an inmate's right to call witnesses at a prison disciplinary hearing. Rejecting this position, the Court today concludes that the Constitution requires only that prison officials explain in court, many months or years after a disciplinary hearing, why they refused to hear particular witnesses. I cannot accept that alleged denials of the vital constitutional right to present witnesses are to be reviewed, not on the basis of an administrative record, but rather on the basis of *post hoc* courtroom rationalizations. I believe the Constitution requires that a contemporaneous record explanation for such a denial be prepared at the time of the hearing. The record need not be disclosed to the inmate but would be available to a court should judicial review later be sought. Upon a proper showing that security or other needs of prison officials so require, the court could review the contemporaneous-record explanation *in camera*. That this process is compatible with the prison setting is demonstrated by the fact that the recording of contemporaneous reasons for denying requests to call witnesses is the current practice in federal prisons and in many state prisons.

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pp 1, 16-17

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

From: Justice Marshall

Circulated: _____

Recirculated: MAY 15 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[May —, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins,
dissenting.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 5, 1985

Re: No. 83-1329, Ponte, Superintendent v. Real

Dear Bill:

I am awaiting Thurgood's separate concurrence in
this case.

Sincerely,



Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1985

85:19 ET YAM 48

Re: No. 83-1329, Ponte, Superintendent v. Real

Dear John:

If it is acceptable to you, I would like to join Part II of your separate concurring opinion. This means, of course, I also join Bill Rehnquist's opinion to the extent that you do.

Sincerely,



Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1985

03:19 81 YRH 48'

Re: No. 83-1329, Ponte, Superintendent v. Real

Dear Bill:

By separate letter, I am joining Part II of John's separate concurrence. By so doing, I join your opinion, except apparently for the second paragraph of your note 2.

Sincerely,

H.A.S.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 1, 1985

83-1329 Ponte v. Real

Dear Bill:

Please add at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Justice Rehnquist

lfp/ss

cc: The Conference

83-1329-1

115
2007

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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

Circulated: 2/5/85

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[February —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

The Supreme Judicial Court of Massachusetts held that a prison disciplinary hearing which forfeited "good time" credits of respondent John Real was conducted in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution because there did not appear in the administrative record of that hearing a statement of reasons as to why the disciplinary board refused to allow respondent to call witnesses which he had requested. *John Real v. Superintendent*, 390 Mass. 399, 456 N. E. 2d 1111 (1983). We granted certiorari, — U. S. —, to review this judgment because it seemed to us to go further than our pronouncement on this subject in *Wolff v. McDonnell*, 418 U. S. 539 (1974). While we agree with the Supreme Judicial Court of Massachusetts that the Due Process Clause of the Fourteenth Amendment requires that prison officials at some point state their reason for refusing to call witnesses requested by an inmate at a disciplinary hearing, we disagree with that court that such reasons or support for reasons must be placed in writing or otherwise exist as a part of the administrative record at the disciplinary hearing. We vacate the judgment of the Supreme Judicial Court, and remand the case to that court.

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stylistic changes only

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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WHR
I will try my hand at
at ~~the~~ argument

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHU-
SETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER v. JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[February —, 1985]

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

February 25, 1985

Re: No. 83-1329 Ponte v. Real

Dear John,

Thank you for your letter, in which you expressed the view that the Superior Court's judgment should be affirmed as a matter of federal constitutional law. After giving some thought to the matter, I still think the better choice is simply to vacate and remand to the Supreme Judicial Court. It could then, of course, affirm the judgment of the Superior Court if it wished.

First, the record in this case is most unclear. Respondent filed three state habeas petitions. Joint App. (J.A.) at 3a-12a; Petr brief at 6 n.2. The first petition arose out of a prior manslaughter and a resulting March 1980 disciplinary hearing where respondent lost 150 days of good time. The second two petitions arose out of the Dec. 24, 1981 fracas described in the circulating opinion; at the February 1982 disciplinary hearing after this fracas respondent lost an additional 150 days of good time and was given 25 days in isolation. Respondent alleged in the habeas petitions that his witness requests were denied in both the 1980 and 1982 disciplinary hearings; at the hearing before the Superior Court respondent discussed witnesses who were denied from the 1980 disciplinary proceeding. See J.A. at 34a. This case only involves the 1982 disciplinary proceeding.

The Superior Court heard all three petitions at once, construing the third petition as an amendment to the second one. The hearing transcript in the Superior Court shows that the court and the parties became quite confused, and at times mixed up the facts each petition. Compare J.A. at 22a, 24a, 27a-29a. The State complained bitterly that it would have brought witnesses into court had the court provided it with fair notice. Id. at 33a-34a. At the end

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of the hearing the court stated that it intended to grant respondent relief on the 1980 petition and dismiss the 1982 petition as moot. Id. at 29a-30a. In its later written order, however, the court granted relief on the claims from the 1982 disciplinary hearing. Id. at 36a. The relief was incomplete because the court did not restore respondent's good time. Ten months later, when this case was already on appeal, J.A. at 47a, another judge amended the judgment to restore respondent's 150 days of good time which was lost in the 1982 hearing. That judge then stayed his order. Id. at 46a.

The Supreme Judicial Court did not affirm because the State failed to bring witnesses. It affirmed because it viewed the Massachusetts regulations as unconstitutional. Most important, it did not simply grant respondent relief by restoring his good time. Rather, it restored the good time and remanded to give the State the option to reconvene a disciplinary hearing against respondent. 456 N.E.2d 1111, 1117. This new disciplinary hearing would take place under the standards articulated by the Supreme Judicial Court in respondent's case and in other opinions the Supreme Judicial Court issued on the same day. See id. at 1112 n.1 and 1117.

I suggest that this confused record, especially in the Superior Court, is reason enough simply to vacate and remand, rather than affirm on ground not taken by the Supreme Judicial Court. As we stated in Dandridge v. Williams, 397 U.S. 471, 476 n.6 (1970) (appeal from federal district court), "[w]hen attention has been focused on other issues, or when the court from which a case comes has expressed no views on a controlling question, it may be appropriate to remand the case rather than deal with the merits of that question in this Court."

Even if this record were clear enough to support our affirmance on grounds relied upon by the Superior Court, respondent is not entitled to a simple affirmance and restoration of good time because he did not cross petition from the Supreme Judicial Court's order which subjects him to a new disciplinary hearing. Respondent may, of course, assert any grounds in the record for affirmance of the Supreme Judicial Court's judgment, but he may not seek an affirmance "with a view either to enlarging his own rights thereunder or to lessening the rights of his adversary...." United States v. American Ry. Exp. Co., 265 U.S. 425, 435 (1924); Smith v. Phillips, 455 U.S. 209, 215 n. 6 (1982); United States v. N.Y. Telephone Co., 434 U.S. 159, 166 n.8

(1977). A simple affirmance on the grounds stated by the Superior Court would both enlarge respondent's rights and lessen the State's rights under the Supreme Judicial Court's judgment, because the State would have to return respondent to the status quo ante, and would not have the benefit of the Supreme Judicial Court's decree permitting it to reconvene the disciplinary hearing.

Finally, a simple affirmance on the grounds found by the Superior Court would be contrary to Massachusetts law. Respondent's claim in the Supreme Judicial Court was a declaratory judgment action challenging the constitutionality of the Massachusetts prison regulations, not the constitutionality of his individual disciplinary hearing. 456 N.E.2d at 1115. According to the Supreme Judicial Court, Massachusetts declaratory judgment actions may not be brought to contest the propriety of an individual prison disciplinary hearing. Nelson v. Commissioner of Corrections, 390 Mass. 379, 388 n.12, 456 N.E.2d 1100, 1106 n.12 (1983). Thus if we are to respect the procedural vehicle which brought the case here, we should not affirm this declaratory judgment on the somewhat unclear facts of respondent's individual disciplinary hearing. The Supreme Judicial Court should be allowed to resolve this difficulty on remand. Massachusetts law appears unsettled on this point. See id.

Sincerely,



Justice Stevens
Copies to the Conference

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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New Footnote - 2

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE, PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF MASSACHUSETTS

[April —, 1985]

JUSTICE REHNQUIST delivered the opinion of the Court.

The Supreme Judicial Court of Massachusetts held that a prison disciplinary hearing which forfeited "good time" credits of respondent John Real was conducted in violation of the Due Process Clause of the Fourteenth Amendment to the United States Constitution because there did not appear in the administrative record of that hearing a statement of reasons as to why the disciplinary board refused to allow respondent to call witnesses which he had requested. *Real v. Superintendent, Massachusetts Correctional Institution, Walpole* 390 Mass. 399, 456 N. E. 2d 1111 (1983). We granted certiorari, 469 U. S. — (1984), to review this judgment because it seemed to us to go further than our pronouncement on this subject in *Wolff v. McDonnell*, 418 U. S. 539 (1974). While we agree with the Supreme Judicial Court of Massachusetts that the Due Process Clause of the Fourteenth Amendment requires that prison officials at some point state their reason for refusing to call witnesses requested by an inmate at a disciplinary hearing, we disagree with that court that such reasons or support for reasons must be placed in writing or otherwise exist as a part of the administrative record at the disciplinary hearing. We vacate the judgment of the Supreme Judicial Court, and remand the case to that court.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 21, 1985

Re: 83-1329 - Ponte v. Real

Dear Bill:

Although I may end up joining you, I have been uncertain as to whether your ultimate disposition is consistent with the analysis in the opinion itself. In other words, since the warden had an opportunity to explain in the district court and never did so, I think perhaps the district court's judgment should be affirmed as a matter of federal constitutional law. In any event, since Thurgood has indicated that he will be writing, I would like to wait to see what he has to say before finally coming to rest.

Respectfully,



Justice Rehnquist

Copies to the Conference

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

3

From: Justice Stevens

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHUSETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[May —, 1985]

JUSTICE STEVENS, concurring.

On March 10, 1983, this case was submitted to the Supreme Judicial Court of Massachusetts along with four others.¹ In each case, prisoners in state correctional institutions challenged the procedural fairness of recurring practices in the prison disciplinary process. The five opinions were all assigned to the same Justice, who eight months later delivered five unanimous opinions for the court interpreting the minimum procedural requirements of state regulations and the Federal Constitution in the prison context. The evident deliberation of the Massachusetts court in these cases suggests a careful effort to establish workable rules for prison disciplinary proceedings in that State.

I

The Court candidly states that it granted certiorari to review the judgment of the Supreme Judicial Court of Massa-

¹*Nelson v. Commissioner*, 390 Mass. 379, 456 N. E. 2d 1100 (1983); *Real v. Superintendent*, 390 Mass. 399, 456 N. E. 2d 1111 (1983) (case below); *Lamoureux v. Superintendent*, 390 Mass. 409, 456 N. E. 2d 1117 (1983); *Cassesso v. Commissioner*, 390 Mass. 419, 456 N. E. 2d 1123 (1983); *Royce v. Commissioner*, 390 Mass. 425, 456 N. E. 2d 1127 (1983). The court did not reach the constitutional questions presented in *Royce* since it resolved the controversy in favor of the prisoner on the basis of state regulations.

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

From: Justice Stevens

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 83-1329

JOSEPH PONTE, SUPERINTENDENT, MASSACHU-
SETTS CORRECTIONAL INSTITUTION, WALPOLE,
PETITIONER *v.* JOHN REAL

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT
OF MASSACHUSETTS

[May —, 1985]

JUSTICE STEVENS, with whom JUSTICE BLACKMUN joins
as to Part II, concurring.

On March 10, 1983, this case was submitted to the
Supreme Judicial Court of Massachusetts along with four
others.¹ In each case, prisoners in state correctional institu-
tions challenged the procedural fairness of recurring prac-
tices in the prison disciplinary process. The five opinions
were all assigned to the same Justice, who eight months later
delivered five unanimous opinions for the court interpreting
the minimum procedural requirements of state regulations
and the Federal Constitution in the prison context. The evi-
dent deliberation of the Massachusetts court in these cases
suggests a careful effort to establish workable rules for
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¹*Nelson v. Commissioner*, 390 Mass. 379, 456 N. E. 2d 1100 (1983);
Real v. Superintendent, 390 Mass. 399, 456 N. E. 2d 1111 (1983) (case
below); *Lamoureux v. Superintendent*, 390 Mass. 409, 456 N. E. 2d 1117
(1983); *Cassesso v. Commissioner*, 390 Mass. 419, 456 N. E. 2d 1123
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The court did not reach the constitutional questions presented in *Royce*
since it resolved the controversy in favor of the prisoner on the basis of
state regulations.



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 11, 1985

No. 83-1329 Ponte v. Real

Dear Bill,

Please join me.

Sincerely,

Justice Rehnquist

Copies to the Conference