

# The Burger Court Opinion Writing Database

## *Texas v. McCullough*

475 U.S. 134 (1986)

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



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

Still deny  
6/5

From: **The Chief Justice**

Circulated: **JUN 5 1985**

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1st DRAFT

## SUPREME COURT OF THE UNITED STATES

TEXAS *v.* SANFORD JAMES McCULLOUGH

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF  
CRIMINAL APPEALS OF TEXAS

No. 84-1198. Decided June —, 1985

CHIEF JUSTICE BURGER, dissenting from the denial of certiorari.

In 1980, respondent was tried before the Randall County, Texas, District Court and convicted of murder. The evidence showed that the victim had been stabbed, beaten, and slashed across the throat. Respondent elected to be sentenced by the jury, which imposed a 20 year sentence. The trial judge then granted a motion for a new trial on the basis of prosecutorial misconduct.

Respondent was retried before the same judge, and was again convicted. This time, he elected to be sentenced by the judge; the judge sentenced respondent to 50 years in prison. Upon respondent's motion, the trial judge made findings of fact as to why the sentence was longer. The judge stated that she relied on new evidence about the murder that was not presented at the first trial, which she felt strengthened the case against petitioner with regard to both guilt and sentencing. Among the new evidence relied on by the trial judge was testimony from two witnesses that although respondent had admitted to them cutting the throat of the victim, he never showed any remorse for his acts.

On appeal, the Texas Court of Appeals reversed. It held that under this Court's decision in *North Carolina v. Pearce*, 395 U. S. 711 (1969), a longer sentence upon retrial could be imposed only if the longer sentence was based upon conduct of the defendant occurring after the original trial.<sup>1</sup> The

<sup>1</sup>The Court of Appeals in applying *Pearce* observed:

"This case demonstrates the excessive scope of *Pearce*. The trial judge filed detailed and valid reasons for the heavier punishment and there is

Still deny. I am not persuaded the Pearce issue is properly here, and both the petn and response appear to be of very poor quality. ✓  
Linda

111  
Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE WILLIAM H. REHNQUIST

June 6, 1985

Re. No. 84-1198 Texas v. McCullough

Dear Chief,

Please join me in your dissent from denial of certiorari in this case.

Sincerely,

*wm*

The Chief Justice

cc: The Conference

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

CHAMBERS OF  
JUSTICE SANDRA DAY O'CONNOR

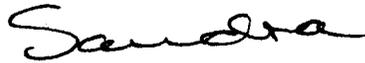
June 5, 1985

No. 84-1198 Texas v. McCullough

Dear Chief,

I will change my vote to a "grant" in this case.

Sincerely,



The Chief Justice

Copies to the Conference