The Burger Court Opinion Writing Database

Black v. Romano

471 U.S. 606 (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. 84-465 - Black v. Romano

Dear Sandra:

I join.

Regards,

WEB

Justice O'Connor

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

May 16, 1985

No. 84-465

Black v. Romano

Dear Thurgood,

Please join me in your concurrence.

Sincerely,

Bill

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 22, 1985

84-465 - Black v. Romano

Dear Sandra,

Please join me.

Sincerely yours,

Justice O'Connor

Copies to 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: MAY 8 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[May ——, 1985]

JUSTICE MARSHALL, concurring.

I agree that revocation of probation need not be accompanied by an express demonstration on the record that alternatives to revocation were considered and found wanting before the decision to revoke was made.[1] Because I have argued on several occasions that written explanations for particular decisions are constitutionally required,[2] I write separately to explain my view as to why such explanations are not required in this setting.

The Court has not attempted any systematic explanation of when due process requires contemporaneous reasons to be given for final decisions, or for steps in the decisionmaking

[1] Respondent did not propose at the revocation hearing any specific alternatives to revocation and there is therefore no need to address a situation in which the probationer specifically proposes such alteratives. See *ante*, at 3.

[2] *Ponte* v. *Real*, —— U. S. —— (1985) (MARSHALL, J., dissenting); *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1, 40 (1979) (MARSHALL, J., dissenting); see also *Hewitt* v. *Helms*, 459 U. S. 460, 479 (1983) (STEVENS, J., dissenting); *Connecticut Bd. of Pardons* v. *Dumschat*, 452 U. S. 459. 468 (1981) (STEVENS, J., dissenting); cf. *Dorszynski* v. *United States*, 418 U. S. 424 (1974) (MARSHALL, J., concurring in the judgment) (statutory interpretation).

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: MAY 11 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[May ——, 1985]

JUSTICE MARSHALL, concurring.

I

I agree that revocation of probation need not be accompanied by an express demonstration on the record that alternatives to revocation were considered and found wanting before the decision to revoke was made.[1] Because I have argued on several occasions that written explanations for particular decisions are constitutionally required,[2] I write separately to explain my view as to why such explanations are not required in this setting.

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[1] Respondent did not propose at the revocation hearing any specific alternatives to revocation and there is therefore no need to address a situation in which the probationer specifically proposes such alteratives. See *ante*, at 3.

[2] *Ponte* v. *Real*, —— U. S. —— (1985) (MARSHALL, J., dissenting); *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1, 40 (1979) (MARSHALL, J., dissenting); see also *Hewitt* v. *Helms*, 459 U. S. 460, 479 (1983) (STEVENS, J., dissenting); *Connecticut Bd. of Pardons* v. *Dumschat*, 452 U. S. 458, 468 (1981) (STEVENS, J., dissenting); cf. *Dorszynski* v. *United States*, 418 U. S. 424, 445 (1974) (MARSHALL, J., concurring in judgment) (statutory interpretation).

P.1

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 17 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[May 20, 1985]

JUSTICE MARSHALL, with whom JUSTICE BRENNAN joins, concurring.

I

I agree that revocation of probation need not be accompanied by an express demonstration on the record that alternatives to revocation were considered and found wanting before the decision to revoke was made.[1] Because I have argued on several occasions that written explanations for particular decisions are constitutionally required,[2] I write separately to explain my view as to why such explanations are not required in this setting.

[1] Respondent did not propose at the revocation hearing any specific alternatives to revocation and there is therefore no need to address a situation in which the probationer specifically proposes such alteratives. See *ante*, at 3.

[2] *Ponte* v. *Real*, —— U. S. —— (1985) (MARSHALL, J., dissenting); *Greenholtz* v. *Nebraska Penal Inmates*, 442 U. S. 1, 40 (1979) (MARSHALL, J., dissenting); see also *Hewitt* v. *Helms*, 459 U. S. 460, 479 (1983) (STEVENS, J., dissenting); *Connecticut Bd. of Pardons* v. *Dumschat*, 452 U. S. 458, 468 (1981) (STEVENS, J., dissenting); cf. *Dorszynski* v. *United States*, 418 U. S. 424, 445 (1974) (MARSHALL, J., concurring in judgment) (statutory interpretation).

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

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

May 13, 1985

Re: No. 84-465, Black v. Romano

Dear Sandra:

Please join me.

Sincerely,

Harry

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 18, 1985

84-465 Black v. Romano

Dear Sandra:

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

Sincerely,

L. Lewis

Justice O'Connor

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 25, 1985

Re: No. 84-465 Black v. Romano

Dear Sandra,

Please join me.

Sincerely,

Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 18, 1985

Re: 84-465 - Black & Moore v. Romano

Dear Sandra:

Please join me.

Respectfully,

Justice O'Connor

Copies to the Conference

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

From: **Justice O'Connor**

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Apr 18, 85

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84–465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[April ——, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider whether the Due Process Clause of the Fourteenth Amendment generally requires a sentencing court to indicate that it has considered alternatives to incarceration before revoking probation. After a hearing, a state judge found that respondent had violated his probation conditions by committing a felony shortly after his original prison sentence was suspended. The judge revoked probation and ordered respondent to begin serving the previously imposed sentence. Nearly six years later, the District Court for the Eastern District of Missouri held that respondent had been denied due process because the record of the revocation hearing did not expressly indicate that the state judge had considered alternatives to imprisonment. The District Court granted a writ of habeas corpus and ordered respondent unconditionally released from custody. *Romano* v. *Black*, 567 F. Supp. 882 (1983). The Court of Appeals for the Eighth Circuit affirmed. 735 F. 2d 319 (1984). We granted certiorari, —— U. S. —— (1984), and we now reverse.

p. 10

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

From: **Justice O'Connor**

Circulated: _____

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May 9, 85

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[May ——, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider whether the Due Process Clause of the Fourteenth Amendment generally requires a sentencing court to indicate that it has considered alternatives to incarceration before revoking probation. After a hearing, a state judge found that respondent had violated his probation conditions by committing a felony shortly after his original prison sentence was suspended. The judge revoked probation and ordered respondent to begin serving the previously imposed sentence. Nearly six years later, the District Court for the Eastern District of Missouri held that respondent had been denied due process because the record of the revocation hearing did not expressly indicate that the state judge had considered alternatives to imprisonment. The District Court granted a writ of habeas corpus and ordered respondent unconditionally released from custody. *Romano* v. *Black*, 567 F. Supp. 882 (1983). The Court of Appeals for the Eighth Circuit affirmed. 735 F. 2d 319 (1984). We granted certiorari, —— U. S. —— (1984), and we now reverse.

Stylistic Changes Throughout

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 14, '85

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-465

LEE ROY BLACK, DIRECTOR, MISSOURI DEPARTMENT OF CORRECTIONS AND HUMAN RESOURCES AND DICK D. MOORE, CHAIRMAN, MISSOURI BOARD OF PROBATION AND PAROLE, PETITIONERS *v.* NICHOLAS J. ROMANO

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

[May ——, 1985]

JUSTICE O'CONNOR delivered the opinion of the Court.

In this case we consider whether the Due Process Clause of the Fourteenth Amendment generally requires a sentencing court to indicate that it has considered alternatives to incarceration before revoking probation. After a hearing, a state judge found that respondent had violated his probation conditions by committing a felony shortly after his original prison sentences were suspended. The judge revoked probation and ordered respondent to begin serving the previously imposed sentences. Nearly six years later, the District Court for the Eastern District of Missouri held that respondent had been denied due process because the record of the revocation hearing did not expressly indicate that the state judge had considered alternatives to imprisonment. The District Court granted a writ of habeas corpus and ordered respondent unconditionally released from custody. 567 F. Supp. 882 (1983). The Court of Appeals for the Eighth Circuit affirmed. 735 F. 2d 319 (1984). We granted certiorari, 469 U. S. —— (1984), and we now reverse.