

The Burger Court Opinion Writing Database

Baldwin v. Alabama

472 U.S. 372 (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

PERSONAL

May 8, 1985

RE: No. 84-5743 - Baldwin v. Alabama

Dear Harry:

I am having problems with the opinion in this case. It seems to me it leaves open (at footnote 8) the issue argued by the parties and resolves the case on the basis of a construction of state law that was not asserted by the State and that I do not find in the opinion of the Alabama Supreme Court.

The Alabama statute clearly requires the trial judge to consider "the fixing of the punishment at death by the jury," and none of the state-court opinions that you quote at pages 11-12 of your opinion affirmatively state that the judge is not to consider the jury's "sentence." Given the plain language of the statute, should we not address the issue pressed by the parties unless there is a clear, affirmative statement in a state-court opinion that supports your construction of state law?

Regards,



Justice Blackmun

RECORDS SECTION OF THE U.S. SUPREME COURT LIBRARY OF CONGRESS

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

May 15, 1985

CHAMBERS OF
THE CHIEF JUSTICE

RECEIVED
SUPREME COURT, U.S.
JUSTICE MARSHALL

Re: No. 84-5743 - Baldwin v. Alabama

'84 MAY 15 P1:26

Dear Harry:

Thank you for your memo of May 13, in response to my personal memo to you of May 8.

Unfortunately, I still have some nagging doubts. The potential ambiguity in the statute that you describe at the top of page 11 of your opinion would seem not to be relevant in every case, including this one, in which the defendant was sentenced to death under the statute. Because the statutory language, as relevant here, is absolutely clear, we should require an equally clear contrary statement in a state-court decision before we depart from the plain import of the statute. I do not think that we need to draw inferences from omissions in the state-court opinions.

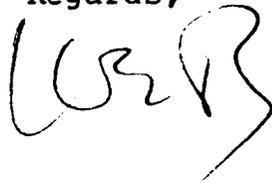
Further, if state law were as clear as you describe it, why did the Alabama Supreme Court not even mention in its opinion in this case the construction of state law that you develop, and why did the State not argue that construction as a ground for affirmance here?

The State Supreme Court's opinion quotes the Eleventh Circuit's statement that "the statute requires the judge to weigh the mandatory death sentence factor in the balance with his consideration of aggravating and mitigating circumstances in deciding to impose the death penalty." App. 53 (quoting Ritter v. Smith, 726 F.2d 1505, 1516 (CA11 1984)). The State court did not refute this construction of the statute; instead, it upheld the statute on the ground that it required the sentencing authority, the trial judge, to consider the circumstances of the particular offense and the character and propensities of the offender. That rationale, of course, is not inconsistent with the trial judge's having to consider the jury's "sentence" as a factor in the sentencing process.

It also seems to me that petitioner's argument is broader than your memo suggests. According to petitioner, the "very flaw which kills the statute" is that it requires the trial judge to consider the jury's "sentence" "as a factor in the sentencing process." Br. for Petitioner 13. In the face of this contention, it seems that if "[t]he Alabama appellate courts have interpreted the 1975 Act expressly to mean that the sentencing judge is to impose a sentence without regard to the jury's mandatory 'sentence,'" slip op. at 11 (emphasis added), the State would have mentioned that fact in its arguments here.

In the circumstance, I will wait on further writing.

Regards,



Justice Blackmun

Copies to the Conference
(with May 8 memo to HAB personally)

P.S. Since my points and yours will not be clear unless others see our exchange in full, perhaps you could send your memo of May 13 to the Conference.

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

From: The Chief Justice

Circulated: JUN 12 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[June —, 1985]

CHIEF JUSTICE BURGER, concurring in the judgment.

It seems to me that the Court evades the constitutional issue presented, see *ante*, at 13, n. 8, and resolves this case on the basis of a construction of state law (a) that is inconsistent with the relevant state statute, (b) that does not appear in the opinion of the Alabama Supreme Court in this or any other case, and (c) that was not asserted by the State in its arguments before this Court.

The statute at issue states:

"Notwithstanding the fixing of punishment at death by the jury, the court, after weighing the aggravating and mitigating circumstances, may refuse to accept the death penalty as fixed by the jury and sentence the defendant to life imprisonment without parole, which shall be served without parole; or the court, after weighing the aggravating and mitigating circumstances, and the fixing of the punishment at death by the jury, may accordingly sentence the defendant to death."

Ala. Code § 13-11-4 (1975) (emphasis added).

The statutory language, particularly the underscored portions, clearly contemplates that a trial judge sentencing a capital defendant is to consider the jury's "fixing of the punishment at death" along with the aggravating and mitigating circumstances. But according to the Court's opinion, the statute is ambiguous as to whether the judge must consider

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

April 1, 1985

No. 84-5743

Baldwin v. Alabama

Dear Thurgood and John,

We three are in dissent in the
above. Will you, John, be willing to
take on the dissent?

Sincerely,

Bill

Justice Marshall

Justice Stevens

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 6, 1985

No. 84-5743

Baldwin v. Alabama

Dear Harry,

I'll await the dissent in the
above.

Sincerely,



Justice Blackmun

Copies to the Conference

89 84-5743

REPRODUCED FROM THE COLLECTIONS OF THE HANCOCK DIVISION, LIBRARY OF CONGRESS

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

From: **Justice Brennan**

Circulated: JUN 7 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER v. ALABAMA

**ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA**

[June —, 1985]

JUSTICE BRENNAN, dissenting.

I adhere to my view that the death penalty is in all circumstances cruel and unusual punishment prohibited by the Eighth and Fourteenth Amendments, *Gregg v. Georgia*, 428 U. S. 153, 227 (1976) (BRENNAN, J., dissenting), and would therefore vacate the petitioner Brian Keith Baldwin's death sentence in any event. But even if I thought otherwise, I would vacate Baldwin's death sentence imposed pursuant to Ala. Code §§ 13-11-2(a), 13-11-4 (1975), for the reasons set forth in JUSTICE STEVENS' dissent, which I join.

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

H

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 6, 1985

84-5743 - Baldwin v. Alabama

Dear Harry,

I agree.

Sincerely,



Justice Blackmun

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 6, 1985

Re: 84-5743-Baldwin v. Alabama

Dear Harry:

I await the dissent.

Sincerely,

J.M.
T.M.

Justice Blackmun

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

June 10, 1985

Re: No. 84-5743-Baldwin v. Alabama

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

From: Justice Blackmun

Circulated: MAY 2 1985

Recirculated: _____

HAB
I am not the dissent
JH

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER v. ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[May —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

Between 1976 and 1981, an Alabama statute required a jury that convicted a defendant of any one of a number of specified crimes "with aggravation" to "fix the punishment at death." Ala. Code § 13-11-2(a) (1975).¹ The "sentence" imposed by the jury, however, was not dispositive. Instead, "[n]otwithstanding the fixing of the punishment at death by the jury," § 13-11-4, the trial judge then was to hear evidence of aggravating and mitigating circumstances and, after weighing those circumstances, to sentence the defendant to death or to life imprisonment without parole.

This case concerns the constitutionality of the peculiar and unusual requirement of the 1975 Alabama Act that the jury "shall fix the punishment at death," even though the trial

¹The originating statute was 1975 Ala. Acts, No. 213, effective March 7, 1976. Act No. 213 was enacted in response to this Court's decision in *Furman v. Georgia*, 408 U. S. 238 (1972), and revised the State's death-penalty statutes. Chapter 11 of Title 13 of the Alabama Code, as it thereafter stood, was repealed in its entirety and replaced by new death-penalty provisions set forth in 1981 Ala. Acts, No. 81-178, effective July 1, 1981. The repeal did not moot the present case because petitioner's offense was committed and his sentence was imposed in 1977 while the 1975 Act was in effect. See 1981 Ala. Acts, §§ 19 and 20, codified as Ala. Code, § 13A-5-57 (1982).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 13, 1985

Re: No. 84-5743, Baldwin v. Alabama

Dear Chief:

I have considered your comments regarding the opinion, but believe that the opinion reflects the views of the majority of the Conference, addresses the real issue in the case, and is soundly and appropriately reasoned. As indicated in the opinion, I do not find the statute as clear and plain as you do. In any event, even in the face of statutes that appeared fairly clear on their face, the Court has relied upon state court interpretations of the statute that seemed to run counter to that plain language. See, e.g., Jurek v. Texas, 428 U.S. 262, 272-273 (1976) (opinion of Stewart, POWELL, and STEVENS, JJ.). It is true that the Alabama courts never have held explicitly that the trial judge may not consider the jury's "sentence" in deciding whether to impose the death penalty. However, as I think the quotes included in the draft indicate, the state courts have discussed the judge's role at length, and in those discussions have never even hinted that the judge can or must consider the jury's verdict as a factor weighing in favor of the imposition of the death penalty. The obvious inference is that the appellate courts do not consider the jury's "sentence" as a factor the judge may take into account.

The State forcefully contended that the jury's "sentence" is not considered as a sentencing recommendation, see, e.g., Brief for Respondent 15, 29, 39-40, and the opinion adopts the State's construction of the statute on that issue. It is true that the State went on to argue that trial judges considered the jury's "sentence" as a statement that the jury found the petitioner guilty of the aggravating circumstance that is an element of the crime charged. I do not understand petitioner to argue that the jury's sentence could not be considered as a finding that the defendant was guilty of the aggravated offense, however; rather, petitioner's objection to the statute is based upon the premise that the judge will consider the jury's "sentence" as a "determination that death is the appropriate punishment." Brief for Petitioner 12. Accordingly, I saw no need to address the State's make-weight argument, and chose instead to focus on the real issue -- whether the judge considers the "sentence" as a recommendation.

The State then argued that the judge considered the jury's "sentence" as a message from the Legislature that the judge "not only may, but must, impose a death sentence on a defendant

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

guilty of ... [one of the specified aggravated offenses] unless there are mitigating circumstances to offset or counter-balance the aggravating circumstance(s)." Brief for Respondent 22-23. The State points to no appellate-court decision supporting its interpretation of the role of the jury's "sentence," and fails to explain the lack of any mention of the jury's role as the "Legislature's messenger" in the appellate courts' many explanations of the respective roles of the judge and jury. Further, the State's premise -- that the Legislature intended to send a message that the judge must impose a death sentence if aggravating circumstances outweigh mitigating circumstances -- appears unsupported. The statute says that the judge may impose the death sentence under those circumstances. Ala. Code §13-11-4 (1975). The one case that the State cites as interpreting the statute to mean that the judge must impose such a sentence, see Brief for Respondent 22, n. 10, does not hold that the statute means "must"; indeed, it uses the word "may" in describing the judge's options. Ex Parte Kyzer, 399 So.2d 330, 338 (Ala. 1981). I therefore consider the State's interpretation of the statute totally without merit, and unworthy of extended discussion.

I trust this explanation alleviates your concerns.

Sincerely,

The Chief Justice

NOV 29 1981

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 15, 1985

Memorandum to the Conference

Re: No. 84-5743, Baldwin v. Alabama

The Chief Justice indicates that he is having problems with the opinion in this case which I circulated sometime ago. I do have a Court. In line with the suggestion contained in the postscript to his letter of May 15, I enclose copies of my letter to him of May 13.

H.A.B.

REMOVED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

STYLISTIC CHANGES

4 p. 16

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

From: Justice Blackmun

Circulated: _____

Recirculated: JUN 12 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[June —, 1985]

JUSTICE BLACKMUN delivered the opinion of the Court.

Between 1976 and 1981, an Alabama statute required a jury that convicted a defendant of any one of a number of specified crimes "with aggravation" to "fix the punishment at death." Ala. Code § 13-11-2(a) (1975).¹ The "sentence" imposed by the jury, however, was not dispositive. Instead, "[n]otwithstanding the fixing of the punishment at death by the jury," § 13-11-4, the trial judge then was to hear evidence of aggravating and mitigating circumstances and, after weighing those circumstances, to sentence the defendant to death or to life imprisonment without parole.

This case concerns the constitutionality of the peculiar and unusual requirement of the 1975 Alabama Act that the jury "shall fix the punishment at death," even though the trial

¹ The originating statute was 1975 Ala. Acts, No. 213, effective March 7, 1976. Act No. 213 was enacted in response to this Court's decision in *Furman v. Georgia*, 408 U. S. 238 (1972), and revised the State's death-penalty statutes. Chapter 11 of Title 13 of the Alabama Code, as it thereafter stood, was repealed in its entirety and replaced by new death-penalty provisions set forth in 1981 Ala. Acts, No. 81-178, effective July 1, 1981. The repeal did not moot the present case because petitioner's offense was committed and his sentence was imposed in 1977 while the 1975 Act was in effect. See 1981 Ala. Acts, §§ 19 and 20, codified as Ala. Code, § 13A-5-57 (1982).

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 3, 1985

84-5743 Baldwin v. Alabama

Dear Harry:

Please join me.

Sincerely,

Lewis

Justice Blackmun

lfp/ss

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 3, 1985

Re: 84-5743 - Baldwin v. Alabama

Dear Harry:

Please join me.

Sincerely,



Justice Blackmun

cc: The Conference

84-5743-3

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 2, 1985

Re: 84-5743 - Baldwin v. Alabama

Dear Harry:

As soon as I can get to it, I will circulate a
brief dissent.

Respectfully,



Justice Blackmun

Copies to the Conference

94 5743-3

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

From: Justice Stevens

JUN 6 1985

Circulated: _____

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[June —, 1985]

JUSTICE STEVENS, dissenting.

Under a unique statutory provision, since repealed, the jury that convicted Brian Keith Baldwin of aggravated murder was required to "fix [his] punishment at death." Ala. Code § 13-11-2(a) (1975). The trial judge was permitted either to "refuse to accept" the jury's death penalty or to sentence Baldwin to death "after weighing the aggravating and mitigating circumstances, and the fixing of the punishment at death by the jury." § 13-11-4. In this case, the judge decided that "the death penalty as fixed by the jury should be and hereby is accepted." App. 18.

In my dissenting opinion in *Spaziano v. Florida*, — U. S. —, — (1984), I explained at some length why the jury, as the spokesman for the community, plays a critical role in the process of deciding whether to impose the death penalty on a defendant convicted of a capital offense.¹ It is

¹"Because it is the one punishment that cannot be prescribed by a rule of law as judges normally understand such rules, but rather is ultimately understood only as an expression of the community's outrage—its sense that an individual has lost his moral entitlement to live—I am convinced that the danger of an excessive response can only be avoided if the decision to impose the death penalty is made by a jury rather than by a single governmental official. This conviction is consistent with the judgment of history and the current consensus of opinion that juries are better equipped than judges to make capital sentencing decisions. The basic explanation for that consensus lies in the fact that the question whether a sentence of death is excessive in the particular circumstances of any case is one that

~~JPS~~
Please join me in your dissent
JS

Joan

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 2

From: Justice Stevens

Circulated: _____

Recirculated: _____ JUN 12 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER *v.* ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[June —, 1985]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Under a unique statutory provision, since repealed, the jury that convicted Brian Keith Baldwin of aggravated murder was required to "fix [his] punishment at death." Ala. Code § 13-11-2(a) (1977). The trial judge was permitted either to "refuse to accept" the jury's death penalty or to sentence Baldwin to death "after weighing the aggravating and mitigating circumstances, and the fixing of the punishment at death by the jury." § 13-11-4. In this case, the judge decided that "the death penalty as fixed by the jury should be and hereby is accepted." App. 18.

In my dissenting opinion in *Spaziano v. Florida*, 468 U. S. —, — (1984), I explained at some length why the jury, as the spokesman for the community, plays a critical role in the process of deciding whether to impose the death penalty on a defendant convicted of a capital offense.¹ It is my view that

¹"Because it is the one punishment that cannot be prescribed by a rule of law as judges normally understand such rules, but rather is ultimately understood only as an expression of the community's outrage—its sense that an individual has lost his moral entitlement to live—I am convinced that the danger of an excessive response can only be avoided if the decision to impose the death penalty is made by a jury rather than by a single governmental official. This conviction is consistent with the judgment of history and the current consensus of opinion that juries are better equipped than judges to make capital sentencing decisions. The basic explanation for that consensus lies in the fact that the question whether a sentence of

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

2,5,6

From: Justice Stevens

Circulated: _____

Recirculated: _____ JUN 13 1985

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5743

BRIAN KEITH BALDWIN, PETITIONER v. ALABAMA

ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF ALABAMA

[June —, 1985]

JUSTICE STEVENS, with whom JUSTICE BRENNAN and JUSTICE MARSHALL join, dissenting.

Under a unique statutory provision, since repealed, the jury that convicted Brian Keith Baldwin of aggravated murder was required to "fix [his] punishment at death." Ala. Code § 13-11-2(a) (1977). The trial judge was permitted either to "refuse to accept" the jury's death penalty or to sentence Baldwin to death "after weighing the aggravating and mitigating circumstances, and the fixing of the punishment at death by the jury." § 13-11-4. In this case, the judge decided that "the death penalty as fixed by the jury should be and hereby is accepted." App. 18.

In my dissenting opinion in *Spaziano v. Florida*, 468 U. S. —, — (1984), I explained at some length why the jury, as the spokesman for the community, plays a critical role in the process of deciding whether to impose the death penalty on a defendant convicted of a capital offense.¹ It is my view that

¹"Because it is the one punishment that cannot be prescribed by a rule of law as judges normally understand such rules, but rather is ultimately understood only as an expression of the community's outrage—its sense that an individual has lost his moral entitlement to live—I am convinced that the danger of an excessive response can only be avoided if the decision to impose the death penalty is made by a jury rather than by a single governmental official. This conviction is consistent with the judgment of history and the current consensus of opinion that juries are better equipped than judges to make capital sentencing decisions. The basic explanation for that consensus lies in the fact that the question whether a sentence of

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION, LIBRARY OF CONGRESS

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 2, 1985

No. 84-5743 Baldwin v. Alabama

Dear Harry,

Please join me.

Sincerely,



Justice Blackmun

Copies to the Conference