

The Burger Court Opinion Writing Database

Turner v. Murray

476 U.S. 28 (1986)

Paul J. Wahlbeck, George Washington University
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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

May 1, 1985

MEMORANDUM TO THE CONFERENCE:

RE: No. 84-6646 - Turner v. Bass

Petitioner in this case is scheduled for execution at 11 p.m. on Thursday, May 2. The Court of Appeals for the Fourth Circuit has issued a stay of execution pending disposition of petitioner's petition for certiorari. The respondent has filed an application with me as Circuit Justice to vacate the stay. I am referring both the petition for certiorari and the application for a stay to the Conference.

Petitioner entered a jewelry store in Franklin, Virginia, armed with a sawed-off shotgun. He demanded that the store owner give him money and jewelry. A store employee and a customer were present; another customer soon entered. Smith triggered the store's silent alarm. A policeman soon responded, but petitioner disarmed him. Petitioner then became concerned that other police might arrive. The policeman saw petitioner shoot and kill Smith; the policeman then disarmed petitioner, and took him into custody.

Petitioner was indicted by the Southampton Grand Jury on charges of capital murder, use of a firearm in the commission of murder, and possession of a sawed-off shotgun in the commission of a robbery. Prior to trial, a change of venue was granted and the trial was held in Northampton County. At trial, petitioner requested the court to ask the prospective jurors the following question:

"The defendant, Willie Lloyd Turner, is a member of the Negro race. The victim, W. Jack Smith, Jr., was a white Caucasian. Will those facts prejudice you against Willie Lloyd Turner or affect your ability to render a fair and impartial verdict based solely on the evidence?"

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refused
to allow

The trial court declined to ask this question. Some jurors were removed from the panel for cause because of their unwillingness to apply the death penalty, subject to the limitations on such removals set forth in Witherspoon v. Illinois, 391 U.S. 510 (1968). Petitioner was convicted on all charges, and sentenced to death by the jury on the murder charge. The trial judge later imposed the death sentence.

Petitioner's conviction and sentence were affirmed by the Virginia Supreme Court, Turner v. Commonwealth, 221 Va. 513, 273 S.E.2d 36 (1980), and certiorari was denied here. 451 U.S. 1011 (1981). Neither of the claims petitioner raises now were raised in that petition for certiorari, although they had been raised before the state courts. Petitioner's request for state post-conviction relief was denied by the trial court, and the Virginia Supreme Court refused the appeal.

We denied certiorari, Turner v. Morris, ___ U.S. ___, 77 L.Ed.2d 1341 (1983). The United States District Court for the Eastern District of Virginia denied habeas relief, and the Court of Appeals for the Fourth Circuit affirmed on January 25, 1985. Turner v. Bass, 753 F.2d 342 (1985).

On February 19, 1985, petitioner's counsel applied to the Court of Appeals for a stay of mandate, representing that the petition for certiorari would be filed within two weeks. The Court of Appeals issued an order staying the issuance of the mandate until March 17, 1985. When petitioner failed to file a petition for certiorari, the mandate issued on March 18, 1985. Petitioner filed his petition for certiorari on April 24, 1985, and then obtained a stay of mandate from the Court of Appeals.

Petitioner brings two claims to this Court. First, he maintains that the state trial court's refusal to ask the jury on voir dire about whether racial prejudice might influence their verdict violated due process. He cites various empirical studies of the impact of race on the imposition of the death penalty. Second, relying on the argument adopted by the Court of Appeals for the Eighth Circuit in Grigsby v. Mabry, ___ F.2d ___ (Jan. 30, 1985), he argues that removing jurors who were biased against the death penalty from the jury during the guilt phase of trial unconstitutionally denied him a jury composed of a fair cross-section of the community during the guilt phase.

The first claim is governed by our decisions in Rosales-Lopez v. United States, 451 U.S. 182 (1981), Ristaino v. Ross, 424 U.S. 589. 595 (1976), and Ham v. South Carolina, 409 U.S. 524 (1973). In Ham, we held that there it was reversible constitutional error to fail to ask a question on voir dire such as the one sought by petitioner in this case. However, in Ham there were "racial issues inextricably bound up with the conduct of the trial." Ristaino, at 597. In Rosales-Lopez, Byron's plurality opinion clarified the standard:

data "There is no presumption of juror bias for or against members of any particular racial or ethnic groups. As Ristaino demonstrates, there is no per se constitutional rule in such circumstances requiring inquiry as to racial prejudice. id., at 59, n.8. Only when

there are more substantial indications of the likelihood of racial or ethnic prejudice affecting the jurors in a particular case does the trial court's denial of a defendant's request to examine the jurors' ability to deal impartially with this subject amount to an unconstitutional abuse of discretion." Id., at 190.

In this "particular case," there are no indications of racial or ethnic bias. The statistical studies relied on by petitioner do not bear on this case, and there was no conflict over the racial aspect of the crime as in Ham. The decision of the trial court as to voir dire was a matter within its discretion, raising no constitutional issues.

The Grigsby claim also is not certworthy. Even under the theory adopted by the Eighth Circuit, a claim that a jury is "conviction-prone" is relevant only during the guilt phase. Here, there was no substantial issue as to petitioner's guilt. The murder at issue here was witnessed by others in the store, and petitioner was immediately taken into custody. Any error at the guilt phase was thus harmless.

Petitioner did not file a cert petition within two weeks, contrary to what he represented to the 4th Circuit. He did not file his petition here until the 89th day. He did not raise in his first cert petition the issues now advanced. This is a typical "11th hour" tactic.

I will vote to deny the petition for certiorari. If certiorari is denied, the lower court's stay will dissolve of its own terms.

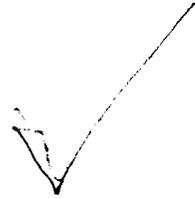
Regards,

A handwritten signature in black ink, appearing to be 'WRB', written over a large, light-colored scribble or mark.

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

CHAMBERS OF
THE CHIEF JUSTICE

May 2, 1985



Re: 84-6646 - Turner v. Bass

MEMORANDUM TO THE CONFERENCE:

As I see the "scoreboard", cert is likely to be granted if the stay is lifted.

I see no certworthy question, so the best course may be to let the stay remain in the hope that cert will be denied at the May 9 Conference and the State can then proceed.

Regards,

Absent dissent by 5:00
pm I will ask the Clerk
to issue an implementing
order - denying the State's
application. WJ

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

May 1, 1985

RE: No. 84-6646 - Turner v. Bass

MEMORANDUM TO THE CONFERENCE

In my view, certiorari should be granted in this case to consider whether and under what circumstances a Negro capital defendant accused of killing a white man must have the opportunity to find out whether prospective jurors are racially prejudiced. Two considerations support plenary consideration of this claim.

First, the jury in a capital case is entrusted with a kind of discretion that transcends the mere determination of factual issues entrusted to a jury in a noncapital case. For instance, under the Virginia scheme, the jury must decide whether the defendant is likely to commit future violent criminal acts and whether his offense was "outrageously or wantonly vile, horrible or inhuman." Va. Code Ann. §19.2-264.2. The jury may also consider mitigating facts such as whether the defendant was under the influence of extreme emotional disturbance and whether he had "the capacity to appreciate the criminality of his conduct or to conform his conduct to the requirements of law." Id. §19.2-264.14. Determinations of this kind, which differ from those made by a jury in an ordinary case, may easily be affected by such factors as racial prejudice. In addition -- and perhaps most important -- the jury must ultimately make a unique, individualized judgment regarding the punishment that the defendant deserves. Only if the jury recommends death can the death sentence be imposed. Id. § 19.2-264.2. Racial prejudice at this stage could stand as an insurmountable obstacle to the defendant's efforts to convince a jury that the death penalty is undeserved. To assure the fairness of the jury's verdict at this stage, a defendant should be allowed to root out prejudice through a simple inquiry to prospective jurors.

Second, we have long recognized the past history of racial prejudice in the administration of the death penalty and the unacceptable consequences of a return of such prejudice. We may differ today concerning whether such prejudice has abated sufficiently to permit the constitutional imposition of the death penalty. Petitioner Turner sought only to have the jurors questioned concerning whether the race factor in this case would "prejudice you against Willie Lloyd Turner or affect your ability to render a fair and impartial verdict based solely on the evidence." Although such a limited and carefully drawn inquiry may not be a panacea, it may at least serve to keep an avowed racist off the jury. Equally important, it gives the prospective jurors the occasion to inquire into their own (perhaps subtle)

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WJB -
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deny state's
motion to
vacate &
grant cert

prejudices, which otherwise may go undetected even by the jurors themselves. At any rate, it seems to me to be a virtually cost-free way to root out racial bias in the imposition of the death penalty.

Ristaino and Rosales-Lopez do not foreclose this issue. Neither case involved the special need for reliability in jury determinations that is characteristic of a capital case. Neither case involved a jury entrusted with the delicate, subjective judgments that a capital jury must make. Neither case involved the history of racial prejudice that has been sadly present in capital sentencing. In fact, Turner's argument fits quite comfortably within the Ristaino analysis; for the above reasons, the fact that this is a capital case is a "special circumstance" requiring special precautions.

In short, we have recognized the dangers of racial prejudice in capital sentencing. The least step that could be taken to protect against such prejudice is to permit the defendant to inquire whether his own jury is tainted. Regardless of our views on systemic claims of racial prejudice in capital sentencing schemes as a whole, we cannot afford to insulate from scrutiny the individual jurors deciding the fate of an individual defendant in a capital case. Accordingly, I vote to deny the motion to vacate the stay now in effect. If the stay is vacated, I will vote to grant certiorari on the first question presented. I would defer plenary consideration of the Mabry claim until the Mabry case itself reaches this Court.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 2, 1985

Re: 84-6646 (A-818) - Turner v. Bass

Dear Chief,

I vote to deny certiorari in this case.

Sincerely,



The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 2, 1985

Re: Turner v. Bass (No. 84-6646)

MEMORANDUM TO THE CONFERENCE

I vote to deny the application to vacate the stay. I also vote to grant the petition for certiorari on the first question presented.

Sincerely,

JM
T.M.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

May 2, 1985

Re: No. 84-6646, Turner v. Bass

Dear Chief:

My vote is to deny the application to vacate the stay. I would then consider the petition for certiorari when it comes before the Court in due course and not on an expedited basis. (Although the papers are here, the case has not yet appeared on a conference list.) If, however, the matter is taken on an expedited basis (as seems to be the case), my vote is to grant certiorari on the first question set forth in the petition.

If the stay is vacated, or if certiorari is denied at this time, I would like to be noted on the public record.

Sincerely,

H. A. B.

The Chief Justice

cc: The Conference

84-6646

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

May 2, 1985

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

84-6646 (A-818) Turner v. Bass

Dear Chief:

As I agree generally with your memo of May 1 on this case, my vote is to deny the petition for certiorari.

I am influenced by Byron's plurality opinion in Rosales-Lopez, though it probably is dicta. Basically, I think it is clear that Turner has had all of the process that he is due. His conviction and sentence were affirmed by the Virginia Supreme Court, and we denied cert in 1981. Recently, on federal habeas, the DC denied relief and CA4 affirmed on January 25, 1985, both courts rejecting petitioner's present claims.

I note, however, that apparently there will be four votes to grant cert in this case.

Sincerely,

Lewis

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

*Capital
Case -
execution
scheduled
sought
5/2*

May 1, 1985

Re: No. 84-6646 (A-818) Turner v. Bass

Dear Chief,

I vote to deny certiorari in this case and to vacate the stay granted by the Fourth Circuit.

Sincerely,

WHR/ABW

The Chief Justice

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

May 1, 1985

Re: 84-6646 (A-818) - Turner v. Bass

Dear Chief:

My vote is to deny the application to vacate the stay entered by the Fourth Circuit. If the Court decides to vacate the stay, I would like to be recorded as dissenting.

If the stay is vacated, my vote is to grant the petition for certiorari.

Respectfully,

*John
/n3ic*

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

May 2, 1985

No. 84-6646 Turner v. Bass

Dear Chief,

My vote is to deny certiorari.

Sincerely,



The Chief Justice

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Copies to the Conference