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United States v. Von Neumann

474 U.S. 242 (1986)

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

December 30, 1985

Re: 84-1144 - United States v. Von Neumann

Dear Bill:

I have reviewed your proposed opinion in this case. While I am prepared to join Parts I and II of your opinion, Part III of the opinion troubles me.

Part III declines to address the question whether a claimant may assert a due process "property" interest in the result of a discretionary petition for reduction of a statutory penalty. This question was presented by the government's petition for certiorari, and is one on which we expressly granted certiorari. The opinions of the CA9 are sufficiently ambiguous as to leave unclear whether or not that court was relying on Von Neumann's interest in the car itself, or on some interest in having his penalty reduced.

That issue is properly before the Court, and we should address it. Resolution is not difficult; since we held in Connecticut Board of Pardons v. Dumschat, 452 U.S. 458 (1981) that there can be no possible liberty interest in a discretionary grant of parole, it follows that there can be no possible property interest in a discretionary grant of a reduction in a statutory penalty.

I would much prefer that we confront and resolve this issue rather than relying entirely on the alternative holding that the 36 day period satisfies due process regardless of what due process "interests" were actually involved.

Regards,



Justice Brennan

cc: The Conference

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

From: **The Chief Justice**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1144

UNITED STATES, PETITIONER *v.*
JOHN VON NEUMANN

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

[January —, 1986]

CHIEF JUSTICE BURGER, concurring,

I join Parts I and II of the majority opinion, but do not agree with the Court's failure, in Part III of the opinion, to resolve an important question that is properly before the Court.

Part III declines to address the question whether a claimant may assert a due process "property" interest in the result of a discretionary petition for reduction of a statutory penalty. This question was expressly presented by our grant of the government's petition for certiorari. The two opinions of the Court of Appeals are sufficiently ambiguous as to leave unclear whether or not that court was relying on Von Neumann's interest in the car itself, or on some interest in having his penalty reduced. In its initial opinion the Court of Appeals held that "[t]he delay in processing [respondent's] petition for remission or mitigation . . . violated his *due process right to prompt consideration of his claim.*" *Von Neuman v. United States*, 660 F. 2d 1319, 1327 (CA9 1981) (emphasis added).

Whether respondent has any due process right in his claim for mitigation of the statutory penalty is a question properly before the Court, and we have an obligation to address it. Resolution of this issue is not difficult. We held in *Connecticut Board of Pardons v. Dumschat*, 452 U. S. 458 (1981) that a prisoner has no liberty interest cognizable under due proc-

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

From: Justice Brennan
DEC 17 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1144

UNITED STATES, PETITIONER *v.*
JOHN VON NEUMANN

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

[December —, 1985]

JUSTICE BRENNAN delivered the opinion of the Court.

We must decide in this case whether a 36-day delay by the United States Customs Service in responding to a remission petition filed by respondent in response to the seizure of his car by Customs agents deprived respondent of property without due process of law.

I

Title 19 U. S. C. § 1497¹ provides that any article not declared upon entry into the United States which by law must be declared is subject to forfeiture or to a penalty equaling the value of the article. After seizure of an article by the United States Customs Service, a claimant to it has essentially two options. He may pursue an administrative remedy under 19 U. S. C. A. § 1618 (Supp. 1985),² which vests in

¹Section 497, 46 Stat. 728, 19 U. S. C. § 1497 provides:

“Any article not included in the declaration and entry as made, and, before examination of the baggage was begun, not mentioned in writing by such person, if written declaration and entry was required, or orally if written declaration and entry was not required, shall be subject to forfeiture and such person shall be liable to a penalty equal to the value of such article.”

²Section 618, 46 Stat. 757, as amended and set forth in 19 U. S. C. A. § 1618 (Supp. 1985), provides in pertinent part:

“Whenever any person interested in any vessel, vehicle, aircraft, merchandise, or baggage seized under the provisions of this chapter, or who has incurred, or is alleged to have incurred, any fine or penalty thereunder,

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

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January 2, 1986

No. 84-1144

United States v. Von Neumann

Dear Chief,

Thank you for your comment in the above. I do not think that we should reach the issue of whether or not there is a property right in the remission procedure. Not only am I not convinced that Connecticut Board of Pardons v. Dumschat, 452 U.S. 458 (1981), controls this case, I don't think it appeared at Conference that a majority was inclined to decide whether there is a property interest in the remission procedure; seven having now agreed that the issue need not be reached, I am content to let the decision remain as it is.

Sincerely,

Bill

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

December 19, 1985

84-1144 - United States v. Von Neumann

Dear Bill,

Please join me.

Sincerely yours,



Justice Brennan

Copies to the Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 18, 1985

Re: No. 84-1144-U.S. v. John Von Neumann

Dear Bill:

Please join me.

Sincerely,

T.M.
T.M.

Justice Brennan

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 20, 1985

Re: No. 84-1144, United States v. Von Neumann

Dear Bill:

Please join me.

Sincerely,



Justice Brennan

cc: The Conference



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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

December 21, 1985

84-1144 United States v. Von Neumann

Dear Bill:

Please join me.

Sincerely,

Justice Brennan

lfp/ss

cc: The Conference



CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

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

December 20, 1985

Re: No. 84-1144 United States v. Von Neumann

Dear Bill,

Please join me.

Sincerely,

Justice Brennan

cc: The Conference

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

From: **Justice Stevens**

Circulated: DEC 30 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1144

UNITED STATES, PETITIONER *v.*
JOHN VON NEUMANN

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

[January —, 1986]

JUSTICE STEVENS, concurring in the judgment.

The fact that remission procedures are not constitutionally required, *ante*, at 7-8, does not shed any light on the question whether the Government has an obligation to process remission petitions with reasonable diligence. For even though it was not obligated to do so, Congress has enacted legislation authorizing the Secretary of the Treasury to create such a procedure. The importance of this statutory procedure is underlined by the fact that it is used to resolve almost 50,000 claims every year. Its practical significance is also suggested by the fact that the number of at least partially successful claimants in remission proceedings is triple the number that come away empty-handed. This record indicates that the remission petition is a principal mechanism for resolving the dispute between the government and the individual that frequently results from the seizure of property at our borders.

When Congress authorizes a member of the Cabinet to establish a procedure of this importance to thousands of individuals, it surely intends that the procedure will be administered in a regular and fundamentally fair way. One element of fair procedure is a requirement of reasonable diligence in processing claims. Absent clear evidence to the contrary, I would therefore construe the statute as implicitly commanding the Secretary to act diligently, and would not speculate

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

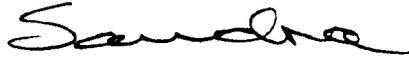
December 17, 1985

No. 84-1144 United States v. VonNeumann

Dear Bill,

Please join me.

Sincerely,



Justice Brennan

Copies to the Conference

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