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Lockhart v. McCree

476 U.S. 162 (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

March 3, 1986

84-1865 - Lockhart v. McCree

Dear Bill:

I join.

Regards,

A handwritten signature in black ink, appearing to be "WB", written in a cursive style.

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

CHAMBERS OF
THE CHIEF JUSTICE

March 27, 1986

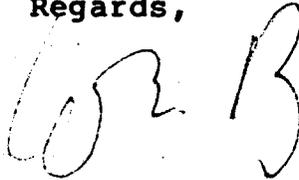
RE: Cases Held For Lockhart v. McCree, No. 84-1865

Dear Byron:

Tentatively I am inclined to agree with you that cases 1, 3, 6, 9, 11, 13 and 14 listed in your memorandum of March 24 should be denied.

Regards,

Justice White

A handwritten signature in cursive script, appearing to read "W. B.", is written over the typed name "Justice White".

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74

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 27, 1986

No. 84-1865

Lockhart v. McCree

Dear Thurgood and John,

The three of us are in dissent in
the above. Would you, Thurgood, be
willing to take it on?

Sincerely,

W. J. Brennan, Jr.

Justice Marshall

Justice Stevens

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

April 29, 1986

No. 84-1865

Lockhart v. McCree

Dear Thurgood,

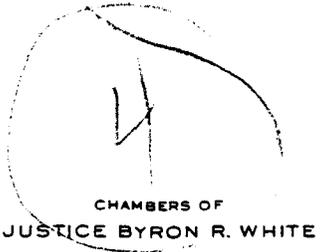
Please join me in your dissent in
the above.

Sincerely,

Bill

Justice Marshall

Copies to the Conference



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

March 7, 1986

84-1865 - Lockhart v. McCree

Dear Bill,

Please join me.

Sincerely yours,

A handwritten signature in dark ink, appearing to be 'B. Rehnquist', written in a cursive style.

Justice Rehnquist

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 24, 1986

MEMORANDUM TO THE CONFERENCE

The 38 cases held for Lockhart can be identified as those that are clear holds and those that may be "problem" cases.

The clear holds fall primarily into two categories: direct appeal cases in which jurors were actually excluded and the defendant raised the claim below; habeas cases in which there is no apparent procedural bar and in which the CA addressed the merits. Some of the state direct appeal cases pose the problem of what to do when the state supreme court holds that there is an inadequate factual record to allow resolution of the claim, but they are included in the clear holds because the benefits of a pro-defendant ruling in Lockhart would likely extend to a defendant on direct appeal even if he did not have the opportunity to present all the factual evidence concerning the claim in the trial court. Of the 38 cases, 24 seem to be clear holds. They are not marked "P" on the attached list.

The remaining 14, marked "P", perhaps merit another look. As will be evident from the following thumbnail summaries, they fall into various categories:

(1) 84-6778, Davis v. Oklahoma. This is a state habeas case decided by the state court on the state ground of res judicata.

(2) 84-6903, Mattheson v. Phelps. A federal habeas case; there is some reason to believe that the claim may not have been raised in the DC. The CA5 briefly stated that under its precedents, Grigsby claims lack merit.

(3) 85-5053, Dougan v. Florida. It appears that all the excluded jurors were nullifiers, so petr's claim is only that the process of death qualification is itself prejudicial. Stays were denied on this claim last week.

(4) 85-5446, Berry v. King. Another CA5 habeas case in which it is unclear whether the claim was raised in the DC, and the CA5 stated briefly that the claim lacked merit.

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(5) 85-5466, Celestine v. Blackburn. Grigsby raised for first time on 2d habeas; again, however, CA5 issued its statement that the Grigsby claim lacked merit, and did not specifically hold that there was an abuse of the writ.

(6) 85-5553, Kenley v. Missouri. Jurors excluded were nullifiers, leaving petr only with a challenge to the death qualification process.

(7) 85-5555, Moore v. Blackburn. 2nd habeas; Grigsby claim was, however, raised on first habeas. CA5 declined to address merits, ruling that this was a successive petition.

(8) 85-5607, Bowden v. Kemp. Petr abandoned Grigsby claim on first habeas, then tried to raise it on 2nd. DC found abuse of the writ; CALL affirmed.

(9) 85-5651, Lowery v. Indiana. Direct appeal; Grigsby issue does not seem to have been raised below.

(10) 85-5768 & 85-801, Griffin v. Wainwright (and vice versa). Here, CALL held the Grigsby claim barred under the cause-prejudice standard. Petr asserts attorney error as cause. It appears case should be held for Murray v. Carrier, not Lockhart itself (assuming Murray comes down first). Petr also has a valid claim for a GVR on Cabana.

(11) 85-5833, Nave v. Missouri. No jurors excluded.

(12) 85-5886, Rault v. Louisiana. Claim not raised until appeal on first habeas. CA5 again issued its brief statement addressing merits.

(13) 85-6168, Billiot v. Mississippi. State habeas, independent and adequate ground.

(14) 85-6342, Wilcher v. Mississippi. Same as (13).

In view of the relatively small number of second-look holds, I doubt that there is any need to divide them up. As presently advised, I would now deny certiorari in 1, 3, 6, 9, 11, 13 and 14. I could leave the others alone.

Chrens
B.R.V.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

January 27, 1986

Re: No. 84-1865-Lockhart v. McCree

Dear Bill:

I will be happy to do the dissent in this one.

Sincerely,



T.M.

Justice Brennan

Justice Stevens

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

February 21, 1986

Re: No. 84-1865 - Lockhart v. McCree

Dear Bill:

In due course I will circulate a dissent in
this one.

Sincerely,

J.M.
T.M.

Justice Rehnquist

cc: 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: **APR 25 1986**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. MCCREE

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

[April —, 1986]

JUSTICE MARSHALL, dissenting.

Eighteen years ago, this Court vacated the sentence of a defendant from whose jury the State had excluded all venirepersons expressing any scruples against capital punishment. Such a practice, the Court held, violated the Constitution by creating a "tribunal organized to return a verdict of death." *Witherspoon v. Illinois*, 391 U. S. 510, 521 (1968). The only venirepersons who could be constitutionally excluded from service in capital cases were those who "made unmistakably clear . . . that they would *automatically* vote against the imposition of capital punishment" or that they could not assess the defendant's guilt impartially. *Id.*, at 522-523, n. 21.

Respondent contends here that the "death-qualified" jury that convicted him, from which the State, as authorized by *Witherspoon*, had excluded all venirepersons unwilling to consider imposing the death penalty, was in effect "organized to return a verdict" of guilty. In support of this claim, he has presented overwhelming evidence that death-qualified juries are substantially more likely to convict or to convict on more serious charges than juries on which unalterable opponents of capital punishment are permitted to serve. Respondent does not challenge the application of *Witherspoon* to the jury in the sentencing stage of bifurcated capital cases.

Stylistic changes
p. 1 + p. 21

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

From: **Justice Marshall**

Circulated: _____

Recirculated: **APR 30 1986**

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. McCREE

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

[May —, 1986]

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

Eighteen years ago, this Court vacated the sentence of a defendant from whose jury the State had excluded all venirepersons expressing any scruples against capital punishment. Such a practice, the Court held, violated the Constitution by creating a "tribunal organized to return a verdict of death." *Witherspoon v. Illinois*, 391 U. S. 510, 521 (1968). The only venirepersons who could be constitutionally excluded from service in capital cases were those who "made unmistakably clear . . . that they would *automatically* vote against the imposition of capital punishment" or that they could not assess the defendant's guilt impartially. *Id.*, at 522-523, n. 21.

Respondent contends here that the "death-qualified" jury that convicted him, from which the State, as authorized by *Witherspoon*, had excluded all venirepersons unwilling to consider imposing the death penalty, was in effect "organized to return a verdict" of guilty. In support of this claim, he has presented overwhelming evidence that death-qualified juries are substantially more likely to convict or to convict on more serious charges than juries on which unalterable opponents of capital punishment are permitted to serve. Respondent does not challenge the application of *Witherspoon* to

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

STYLISTIC CHANGES THROUGHOUT

HP 23

From: **Justice Marshall**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. McCREE

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

[May —, 1986]

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

Eighteen years ago, this Court vacated the sentence of a defendant from whose jury the State had excluded all venirepersons expressing any scruples against capital punishment. Such a practice, the Court held, violated the Constitution by creating a "tribunal organized to return a verdict of death." *Witherspoon v. Illinois*, 391 U. S. 510, 521 (1968). The only venirepersons who could be constitutionally excluded from service in capital cases were those who "made unmistakably clear . . . that they would *automatically* vote against the imposition of capital punishment" or that they could not assess the defendant's guilt impartially. *Id.*, at 522-523, n. 21.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 30, 1986

Re: No. 84-1865, Lockhart v. McCree

Dear Bill:

Please note at the end of your opinion: "JUSTICE
BLACKMUN concurs in the result."

Sincerely,

H. G. A.

Justice Rehnquist

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

February 27, 1986

84-1865 Lockhart v. McCree

Dear Bill:

Please join me.

Sincerely,



Justice Rehnquist

lfp/ss

cc: The Conference

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

From: **Justice Rehnquist**

Circulated: **FEB 21 1986**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. MCCREE

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

[February —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we address the question left open by our decision nearly eighteen years ago in *Witherspoon v. Illinois*, 391 U. S. 510 (1968): Does the Constitution prohibit the removal for cause, prior to the guilt phase of a bifurcated capital trial, of prospective jurors whose opposition to the death penalty is so strong that it would prevent or substantially impair the performance of their duties as jurors at the sentencing phase of the trial? See *id.*, at 520 n. 18; *Bumper v. North Carolina*, 391 U. S. 543, 545 (1968). We hold that it does not.

Respondent Ardia McCree filed a habeas corpus petition in the United States District Court for the Eastern District of Arkansas claiming that such removal for cause violated the Sixth and Fourteenth Amendments and, after McCree's case was consolidated with another habeas case involving the same claim on remand from the Court of Appeals for the Eighth Circuit, the District Court ruled in McCree's favor and granted habeas relief. *Grigsby v. Mabry*, 569 F. Supp. 1273 (1983). A sharply divided Eighth Circuit affirmed, *Grigsby v. Mabry*, 758 F. 2d 226 (1985) (en banc), creating a conflict with recent decisions of the Fourth, Fifth, Seventh, and Eleventh Circuits. See *Keeten v. Garrison*, 742 F. 2d 129, 133-135 (CA4 1984), *cert. pending*, No. 84-6187; *Smith v. Balkcom*, 660 F. 2d 573, 576-578 (CA5 1981), *modified on*

STYLISTIC CHANGES THROUGHOUT

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

From: **Justice Rehnquist**

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. MCCREE

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

[March —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we address the question left open by our decision nearly 18 years ago in *Witherspoon v. Illinois*, 391 U. S. 510 (1968): Does the Constitution prohibit the removal for cause, prior to the guilt phase of a bifurcated capital trial, of prospective jurors whose opposition to the death penalty is so strong that it would prevent or substantially impair the performance of their duties as jurors at the sentencing phase of the trial? See *id.*, at 520, n. 18; *Bumper v. North Carolina*, 391 U. S. 543, 545 (1968). We hold that it does not.

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pp. 8, 17-15, 20

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

From: **Justice Rehnquist**

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4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-1865

A. L. LOCKHART, DIRECTOR, ARKANSAS DEPARTMENT OF CORRECTION, PETITIONER *v.*
ARDIA V. MCCREE

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

[May —, 1986]

JUSTICE REHNQUIST delivered the opinion of the Court.

In this case we address the question left open by our decision nearly 18 years ago in *Witherspoon v. Illinois*, 391 U. S. 510 (1968): Does the Constitution prohibit the removal for cause, prior to the guilt phase of a bifurcated capital trial, of prospective jurors whose opposition to the death penalty is so strong that it would prevent or substantially impair the performance of their duties as jurors at the sentencing phase of the trial? See *id.*, at 520, n. 18; *Bumper v. North Carolina*, 391 U. S. 543, 545 (1968). We hold that it does not.

Respondent Ardia McCree filed a habeas corpus petition in the United States District Court for the Eastern District of Arkansas claiming that such removal for cause violated the Sixth and Fourteenth Amendments and, after McCree's case was consolidated with another habeas case involving the same claim on remand from the Court of Appeals for the Eighth Circuit, the District Court ruled in McCree's favor and granted habeas relief. *Grigsby v. Mabry*, 569 F. Supp. 1273 (1983). A sharply divided Eighth Circuit affirmed, *Grigsby v. Mabry*, 758 F. 2d 226 (1985) (en banc), creating a conflict with recent decisions of the Fourth, Fifth, Seventh, and Eleventh Circuits. See *Keeten v. Garrison*, 742 F. 2d 129, 133-135 (CA4 1984), cert. pending, No. 84-6187; *Smith v. Balkcom*, 660 F. 2d 573, 576-578 (CA5 1981), modified on

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 13, 1986

MEMORANDUM TO THE CONFERENCE

Holds for No. 84-1865, Lockhart v. McCree:

- Vacate*
- (1) No. 85-5793: Skaggs v. Kentucky (also held for No. 84-1531, Michigan v. Jackson, and No. 84-1539, Michigan v. Bladel).

Petr was convicted of capital murder and, after his original jury failed to agree on a sentence, was retried before a second penalty-phase jury and sentenced to death. Petr's conviction and sentence were affirmed by the state supreme court.

Petr raises five claims in his cert petn: (1) A Grigsby claim; (2) Petr was denied his right to a competent psychiatrist under Ake v. Oklahoma, 105 S. Ct. 1087 (1985), because the psychiatrist he selected turned out to be a fraud with no professional training whatsoever; (3) Petr should have been granted a change of venue at the retrial of the penalty phase because of intervening adverse publicity; (4) The jury's sense of responsibility was diminished in violation of Caldwell v. Mississippi, 105 S. Ct. 2633 (1985), because the court told the jurors that their death penalty determination was only a recommendation; and (5) Petr's confession should have been suppressed because it was obtained after arraignment and in the absence of counsel.

I will vote to deny cert in this case. In Lockhart, this Court rejected the Grigsby claim. By providing petr with funds and allowing him to choose a psychiatrist of his own liking, the trial court more than satisfied its obligation under Ake. The venue claim is factbound, and there is nothing in the record to suggest that the jurors who sat during the second penalty phase were biased against petitioner. This case is distinguishable from Caldwell because, here, the trial court truthfully told the jurors that their sentencing decision was only a recommendation, and otherwise stressed the awesome responsibility in recommending death. John adds the following discussion of petr's fifth claim: "This case was held for Michigan v. Jackson, 84-1531, and Michigan v. Bladel, 84-1539, because petitioner seeks suppression of a confession obtained after arraignment and in the absence of counsel. However, the

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 21, 1986

MEMORANDUM TO THE CONFERENCE

Holds for No. 84-1865, Lockhart v. McCree:

Vacate 32
(1) No. 84-6187: Keeten, et al. v. Garrison (N.C. Warden).

Petr Keeten, Avery, and Williams were each convicted of first degree murder. Keeten and Avery received life sentences while Williams was sentenced to death. After their convictions and sentences were affirmed on direct appeal, all three petr raised Grigsby claims on federal habeas. The DC consolidated the cases and granted habeas relief on essentially the same grounds subsequently relied on by CA8 in Grigsby. The court also held that in Williams' case the exclusion of a prospective juror who stated several times that she was "not sure" she could impose the death penalty and expressed qualms about doing so violated Witherspoon. CA4 reversed. 742 F.2d 129 (1984). In addition to rejecting the Grigsby claim, the CA 4 held that the trial court had not abused its discretion in excluding the uncertain juror.

In this Court, all three petrs renew their Grigsby claim, and petr Williams contends that under Witherspoon and Wainwright v. Witt, 53 U.S.L.W. 4108 (1985), a prospective juror who is uncertain how she will respond to the death penalty cannot be excused for cause.

I will vote to deny cert. In Lockhart, we rejected the Grigsby claim. As to petr Williams' claim, the CA 4 noted that "[t]he trial judge was in the best position to observe [the juror in question] and to determine the true meaning of the words she used in her answers to the court's questions." 742 F.2d, at 135.

33 (2) No. 84-6590: Rowan v. Owens (Ind. Warden).

Petr was convicted of voluntary manslaughter, burglary, and criminal deviate conduct, and was sentenced to

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

May 28, 1986

MEMORANDUM TO THE CONFERENCE

19 Holds for No. 84-1865, Lockhart v. McCree:

(1) No. 85-5394, Jenkins v. Wainwright (Fla. Warden):

Petr and his two stepsons, Tony and Richard Schiver (ages 18 and 16), were arrested in connection with a robbery/murder. The police refused Tony's and Richard's requests for a lawyer. The police told Tony that Richard would be electrocuted if Tony didn't tell them about the murder, and also told Richard that he would be electrocuted if he didn't talk. Both Tony and Richard gave statements naming petr as the triggerman. Petr was charged with first-degree murder. Tony testified against petr under a grant of immunity. Richard and petr's girlfriend, Shirley Hudson, testified against petr as well, although both stated that they had made no deals with the prosecutor. Petr attempted to cross-examine Richard and Shirley as to why their lawyers had told them they should testify against petr. The TC ruled that while petr could question Richard and Shirley about any deals they may have made with the prosecutor, petr could not question them about their lawyers' advice, on the ground that such questioning would violate the attorney-client privilege.

Petr was convicted of third-degree murder and sentenced to 30 years in prison. Petr's conviction was affirmed on direct appeal. Petr filed a federal habeas petn, which was denied by the DC. The CA 11 affirmed. In addition to rejecting petr's Grigsby claim, the CA 11 held that (1) the restriction on cross-examination of Richard and Shirley did not violate petr's Confrontation Clause rights, and (2) the TC was entitled to conclude that the effects of the coercive police interrogation of Tony and Richard had dissipated during the three months between the interrogation and petr's trial.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

June 4, 1986

MEMORANDUM TO THE CONFERENCE

Holds for No. 84-1865, Lockhart v. McCree:

(1) No. 85-5555, Moore v. Blackburn (La. Warden):

This case was discussed in my memo of May 28, 1986, and has been relisted for Thurgood.

(2) No. 85-5868, Mapes v. Ohio:

Vacated
Petr was indicted on one count of having "purposefully caused the death of another" during the course of an aggravated robbery, and one count of having done so during the course of an aggravated burglary, in violation of Ohio Rev. Code §2903.01(B). App. 23-24, 39. The indictment also alleged the following "specifications," or aggravating circumstances: (1) petr committed the murder in the course of an aggravated robbery, either as the "principal offender" or "with prior calculation and design," (2) petr committed the murder in the course of an aggravated burglary, either as the "principal offender" or "with prior calculation and design," (3) petr committed the murder with a firearm, and (4) petr had previously committed another purposeful killing. Ibid.

The jury found petr guilty of both counts of aggravated murder and of the firearm specification. But the jury found petr not guilty of committing the murder in the course of an aggravated robbery or burglary, either as the "principal offender" or "as an accomplice and/or an aider and abettor [who acted] purposely and with prior calculation and design." App. 29-32 (emphasis added). [NOTE--The language in the jury's verdict differs from that in the indictment.] The fourth, or "prior murder," specification was tried to the trial judge, who found that petr had been previously convicted of another murder in New Jersey.

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

February 27, 1986

Re: 84-1865 - Lockhart v. McCree

Dear Bill:

I shall await the dissent in this case.

Respectfully,



Justice Rehnquist

Copies to the Conference

HAB

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

84-1865

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 25, 1986

Dear Byron:

After reviewing the cases listed in your memorandum of March 24, 1986, concerning the cases held for Lockhart, I agree with your view that we should now deny certiorari in Nos. 1, 3, 6, 9, 11, 13, and 14.

Like you, I would leave the others alone.

Respectfully,



Justice White

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 28, 1986

Re: 84-1865 - Lockhart v. McCree

Dear Thurgood:

My join is unconditional but I wonder if the word "dishonest" in the fifth line on page 21 isn't a trifle strong?

Respectfully,



Justice Marshall

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CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

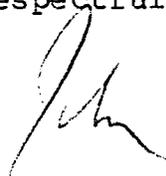
April 28, 1986

Re: 84-1865 - Lockhart v. McCree

Dear Thurgood:

Please join me.

Respectfully,



Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

February 24, 1986

No. 84-1865 Lockhart v. McCree

Dear Bill,

Please join me.

Sincerely,



Justice Rehnquist

Copies to the Conference