

The Burger Court Opinion Writing Database

Thomas v. Arn

474 U.S. 140 (1985)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



(5)

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

CHAMBERS OF
THE CHIEF JUSTICE

November 5, 1985

Re: No. 84-5630 - Thomas v. Arn

Dear Thurgood:

I join.

Regards,

A handwritten signature in dark ink, appearing to be 'W. Marshall', written in a cursive style. The signature is positioned to the right of the typed name 'Justice Marshall' and extends downwards with a long, sweeping tail.

Justice Marshall

Copies to the Conference

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 21, 1985

No. 84-5630

Thomas v. Arn

Dear Harry and John,

We three are in dissent in the
above. Would you, John, take it on?

Sincerely,

Bill

Justice Blackmun

Justice Stevens

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

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

October 30, 1985

No. 84-5630

Thomas v. Arn

Dear Thurgood,

I'll await the dissent in the
above.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bill".

Justice Marshall

Copies to the Conference

Justice White
 Justice Marshall ✓
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens
 Justice O'Connor

From: **Justice Brennan**

Circulated: NOV 18 1985

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

**KATHY THOMAS, PETITIONER v. DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN**

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

[November —, 1985]

JUSTICE BRENNAN, dissenting.

Under the rule adopted by the United States Court of Appeals for the Sixth Circuit and sanctioned by this Court, a party waives his right to appeal the judgment of the district court by failing to file timely objections to a magistrate's report. Because this rule conflicts with the plain language of the Federal Magistrate's Act, I dissent.

The Magistrate's Act states that "any party may serve and file written objections to [the magistrate's] proposed findings and recommendations. . . . A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U. S. C. § 636(b)(1)(C). The Act clearly specifies the penalty for a party's failure to file objections to the magistrate's report—the party loses his right to *de novo* review by the district court. The Act does not *require* a party to file objections. And it does not, contrary to the Sixth Circuit's rule, provide that a party's failure to file objections deprives him of the right to *any* review by the district court,* or by the court of appeals. Rather, the district

*The absence of an objection "cannot relieve the district court of its obligation to act judicially, to decide for itself whether the Magistrate's report is correct." *Lorin Corp. v. Goto & Co.*, 700 F. 2d 1202, 1206 (CA8 1983).

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

From: **Justice Brennan**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

**KATHY THOMAS, PETITIONER v. DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN**

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

[November —, 1985]

JUSTICE BRENNAN, with whom JUSTICE BLACKMUN joins, dissenting.

Under the rule adopted by the United States Court of Appeals for the Sixth Circuit and sanctioned by this Court, a party waives his right to appeal the judgment of the district court by failing to file timely objections to a magistrate's report. Because this rule conflicts with the plain language of the Federal Magistrate's Act, I dissent.

The Magistrate's Act states that "any party may serve and file written objections to [the magistrate's] proposed findings and recommendations. . . . A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made." 28 U. S. C. § 636(b)(1)(C). The Act clearly specifies the penalty for a party's failure to file objections to the magistrate's report—the party loses his right to *de novo* review by the district court. The Act does not *require* a party to file objections. And it does not, contrary to the Sixth Circuit's rule, provide that a party's failure to file objections deprives him of the right to *any* review by the district court,* or by the court of appeals. Rather, the district

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

October 31, 1985

Re: 84-5630 - Thomas v. Arn

Dear Thurgood,

Please join me.

Sincerely yours,



Justice Marshall

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: **OCT 29 1985**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

KATHY THOMAS, PETITIONER *v.* DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN

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

[November —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1976, Congress amended § 101 of the Federal Magistrates Act, 28 U. S. C. § 636 (1982), to provide that a United States district judge may refer dispositive pretrial motions, and petitions for writ of habeas corpus, to a magistrate, who shall conduct appropriate proceedings and recommend dispositions. Pub. L. 94-577, 90 Stat. 2729 (1976).¹ The amendments also provide that any party that disagrees with the magistrate's recommendations "may serve and file written objections" to the magistrate's report, and thus obtain *de*

¹28 U. S. C. § 636(b)(1)(B) provides:

"a judge may also designate a magistrate to conduct hearings, including evidentiary hearings, and to submit to a judge of the court proposed findings of fact and recommendations for the disposition, by a judge of the court, of any motion excepted in subparagraph (A), of applications for posttrial relief made by individuals convicted of criminal offenses and of prisoner petitions challenging conditions of confinement."

The motions excepted in § 636(b)(1)(A), and included by reference in subparagraph (B), are motions

"for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action."

PP. 12, 13

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

From: Justice Marshall

Circulated: ~~OCT 21 1985~~

Recirculated: OCT 31 1985

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

KATHY THOMAS, PETITIONER *v.* DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN

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

[November —, 1985]

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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

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

KATHY THOMAS, PETITIONER *v.* DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN

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

[November —, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1976, Congress amended § 101 of the Federal Magistrates Act, 28 U. S. C. § 636, to provide that a United States district judge may refer dispositive pretrial motions, and petitions for writ of habeas corpus, to a magistrate, who shall conduct appropriate proceedings and recommend dispositions. Pub. L. 94-577, 90 Stat. 2729.¹ The amendments also provide that any party that disagrees with the magistrate's recommendations "may serve and file written objections" to the magistrate's report, and thus obtain *de novo* re-

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P. 4

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

From: Justice Marshall

Circulated: _____

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

Recirculated: DEC 2 1985

SUPREME COURT OF THE UNITED STATES

No. 84-5630

KATHY THOMAS, PETITIONER *v.* DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN

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

[December 4, 1985]

JUSTICE MARSHALL delivered the opinion of the Court.

In 1976, Congress amended § 101 of the Federal Magistrates Act, 28 U. S. C. § 636, to provide that a United States district judge may refer dispositive pretrial motions, and petitions for writ of habeas corpus, to a magistrate, who shall conduct appropriate proceedings and recommend dispositions. Pub. L. 94-577, 90 Stat. 2729.¹ The amendments also provide that any party that disagrees with the magistrate's recommendations "may serve and file written objections" to the magistrate's report, and thus obtain *de novo*

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The motions excepted in § 636(b)(1)(A), and included by reference in subparagraph (B), are motions

"for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action."

7A2

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 3, 1985

MEMORANDUM TO THE CONFERENCE

Re: Cases held for No. 84-5630 Thomas v. Arn

Two cases were held for Thomas v. Arn:

(1) In Carr v. Hutto, No. 84-6287, petitioner, a state prisoner, filed a pro se federal habeas corpus action challenging the sufficiency of the evidence supporting his convictions for rape, robbery, abduction, and using a firearm in the commission of a felony. The case was referred to a Magistrate, who concluded that there was sufficient evidence from which a jury could have concluded that petitioner committed the crimes for which he was convicted and, accordingly, recommended that the writ be denied. The Magistrate's report contained a notice that "Any party may serve upon the other party and file with the Clerk written objections to the foregoing findings and recommendations within 13 days from the date of mailing this report to the objecting party." The additional three days were allowed for service by mail as contemplated by Fed. R. Civ. Proc. 6(e). The report further stated: "The parties are further notified that failure to file timely objections to the findings and recommendations set forth above may result in waiver of right to appeal from a judgment of this court based on such findings and recommendations," and cited to the CA6's Walters decision and the CA1's Park Motor Mart decision.

Petitioner sought the advice of a lawyer, who wrote to him suggesting that he file an objection to the Magistrate's report. Petitioner then sent a copy of that letter to the District Court, which received the copy 21 days after the Magistrate's report was issued. The District Court declined to review the case de novo, concluding that the letter forwarded by petitioner, even if treated as an objection, was not timely and did not specifically state grounds for objecting to the Magistrate's decision.

The CA4 affirmed on the basis of its prior decision in United States v. Schronce. That case promulgated a waiver rule similar to that of the CA6. The CA4's opinion in Schronce seems to suggest that such a rule is mandatory under the statute, although that does not appear to me a necessary reading. In any event, petitioner clearly failed to file timely objections, and the CA4 clearly has the option under Thomas of refusing to hear the appeal. Accordingly, I shall vote to deny.

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 30, 1985

Re: No. 84-5630, Thomas v. Arn

Dear Thurgood:

I shall await the dissent in this case.

Sincerely,

A handwritten signature in cursive script, appearing to read 'H.A.', with a vertical line underneath it.

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

November 19, 1985

Re: No. 84-5630, Thomas v. Arn

Dear Bill:

Would you please join me in your dissenting opinion.

Sincerely,



Justice Brennan

cc: The Conference

②

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

October 30, 1985

84-5630 Thomas v. Arn

Dear Thurgood:

Please join me.

Sincerely,

Lewis

Justice Marshall

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

October 31, 1985

Re: 84-5630 - Thomas v. Arn

Dear Thurgood:

Please join me.

Sincerely,

wm

Justice Marshall

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 22, 1985

Re: 84-5630 - Thomas v. Arn

Dear Bill:

I'll be happy to undertake the dissent in this case.

Respectfully,

A handwritten signature in cursive script, appearing to read "John P. Stevens".

Justice Brennan

Copy to Justice Blackmun

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

October 30, 1985

Re: 84-5630 - Thomas v. Arn

Dear Thurgood:

Although I agree with much of what you have written, I shall try my hand at a brief dissent.

Respectfully,



Justice Marshall

Copies to the Conference

Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice O'Connor

From: **Justice Stevens**

Circulated: NOV 11 1985

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-5630

KATHY THOMAS, PETITIONER *v.* DOROTHY ARN,
 SUPERINTENDENT, OHIO REFORMATORY
 FOR WOMEN

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

[November —, 1985]

JUSTICE STEVENS, dissenting.

The waiver rule adopted by the United States Court of Appeals for the Sixth Circuit is neither required nor prohibited by the Federal Magistrates Act. As a product of that court's supervisory power, it need not conform to the practice followed in other circuits. Hence, despite the appearance of a conflict among the circuits, the interest in uniform interpretation of federal law is not implicated and this Court might have been well advised simply to deny the petition for certiorari. Since the Court has elected to review the application of the Sixth Circuit's rule, however, I believe it should modify it in one respect.

As the Court demonstrates, in most cases it is surely permissible to treat the failure to file timely objections to a magistrate's report as a waiver of the right to review, not only in the District Court, but in the Court of Appeals as well. But our precedents often recognize an exception to waiver rules—namely, when a reviewing court decides the merits of an issue even though a procedural default relieved it of the duty to do so. See, *e. g.*, *Oklahoma City v. Tuttle*, — U. S. —, — (1985) (slip op. 7) (reaching merits despite failure to object to jury instruction because Court of Appeals overlooked default); *On Lee v. United States*, 343 U. S. 747, 750, n. 3 (1952) (“Though we think the Court of Appeals



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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

October 30, 1985

Re: 84-5630 Kathy Thomas v. Dorothy Arn, Superintendent,
Ohio Reformatory for Women

Dear Thurgood,

Please join me.

Sincerely,

Justice Marshall

Copies to the Conference