

The Burger Court Opinion Writing Database

Skipper v. South Carolina

476 U.S. 1 (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

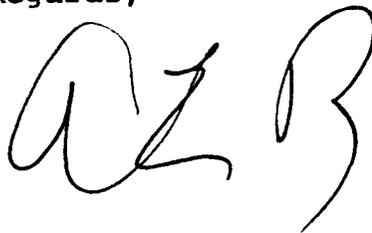
March 31, 1986

84-6859 - Skipper v. South Carolina

Dear Byron:

Although I am not fully at rest, I am generally in agreement with Lewis' memo of March 31st.

Regards,

A handwritten signature in cursive script, appearing to read 'BWB', is written in black ink.

Justice Byron White

Copies to the Conference

cc White - 4/6/86

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

CHAMBERS OF
THE CHIEF JUSTICE

April 17, 1986

84-6859 - Skipper v. South Carolina

Dear Lewis:

I join your concurring opinion.

Regards,



Justice Powell

Copies to the Conference

APR 17 1986

RECEIVED

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 28, 1986

No. 84-6859

Skipper v. South Carolina

Dear Byron,

I agree.

Sincerely,

A handwritten signature in cursive script, appearing to read "White", written in dark ink.

Justice White

Copies to the Conference

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

From: **Justice White**

Circulated: MAR 26 1986

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
 SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
 SOUTH CAROLINA

[March —, 1986]

JUSTICE WHITE delivered the opinion of the Court.

Petitioner Ronald Skipper was convicted in a South Carolina trial court of capital murder and rape. The State sought the death penalty, and a separate sentencing hearing was held before the trial jury under S.C. Code § 16-3-20 (1984), which provides for a bifurcated trial and jury sentencing in capital cases. Following introduction by the State of evidence in aggravation of the offense (principally evidence of petitioner's history of sexually assaultive behavior), petitioner presented as mitigating evidence his own testimony and that of his former wife, his mother, his sister, and his grandmother. This testimony, for the most part, concerned the difficult circumstances of his upbringing. Petitioner and his former wife, however, both testified briefly that petitioner had conducted himself well during the seven-and-one-half months he spent in jail between his arrest and trial. Petitioner also testified that during a prior period of incarceration he had earned the equivalent of a high school diploma and that, if sentenced to life imprisonment rather than to death, he would behave himself in prison and would attempt to work so that he could contribute money to the support of his family.

Petitioner also sought to introduce testimony of two jailers and one "regular visitor" to the jail to the effect that petitioner had "made a good adjustment" during his time spent in

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

From: **Justice White**

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2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

**RONALD DERAY SKIPPER, PETITIONER v.
 SOUTH CAROLINA**

**ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
 SOUTH CAROLINA**

[March —, 1986]

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

STYLISTIC CHANGES THROUGHOUT.
 SEE PAGES:

From: Justice White

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APR 7 1986

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3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
 SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
 SOUTH CAROLINA

[April —, 1986]

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

May 1, 1986

MEMORANDUM TO THE CONFERENCE

Holds for Skipper v. South Carolina, 84-6859

In each of these five cases, the petitioner has been convicted of a capital offense and is under sentence of death.

GVR
(1) 85-5087, Elmore v. South Carolina. In this case, the petitioner attempted to introduce at his sentencing hearing testimony from prison guards to the effect that he had behaved well in prison while an earlier conviction was on appeal. The trial court followed the South Carolina Supreme Court's ruling in State v. Koon, (Koon I), 278 S.C. 578, 298 S.E.2d 769 (1982), and held that such testimony was not relevant mitigating evidence. On appeal, the South Carolina Supreme Court, relying on its intervening decision in State v. Koon (Koon II), 285 S.C. 1, 328 S.E.2d 625 (1984), held that although the issue of the defendant's likely future conduct in prison was irrelevant to the sentencing determination, exclusion of the evidence was erroneous because it was relevant to petitioner's "character." The court held, however, that the exclusion of the evidence was harmless beyond a reasonable doubt, because petitioner had been permitted to introduce testimony from his mother and sisters that he had been a well-behaved child.

The state court's ruling that the opportunity to introduce testimony from close relatives on the general issue of character renders harmless the exclusion of testimony from disinterested third parties regarding the defendant's conduct in prison is at odds with the discussion of harmlessness in Skipper. Moreover, the decision is premised on the notion, rejected in Skipper, that the specific issue of behavior in prison (as to which there was apparently no other evidence) is irrelevant to the sentencing determination. I therefore recommend a GVR on Skipper.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 27, 1986

Re: No. 84-6859 - Skipper v. South Carolina

Dear Byron:

Please join me.

Sincerely,

Jm.
T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 1, 1986

Re: No. 84-6859-Skipper v. South Carolina

Dear Byron:

I am still with you.

Sincerely,



T.M.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 28, 1986

Re: No. 84-6859, Skipper v. South Carolina

Dear Byron:

Please join me.

Sincerely,

A handwritten signature in dark ink, appearing to be "H. White", written in a cursive style. The signature is positioned below the word "Sincerely," and above a small horizontal line.

Justice White

cc: The Conference

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 31, 1986

84-6859 Skipper v. South Carolina

Dear Byron:

Although I will join your judgment, I cannot join your opinion as presently written.

On the facts of this case, a decision to reverse is appropriate and easy to reach. A poorly advised prosecuting attorney introduced evidence of bad conduct in prison, and the trial court refused to allow the defendant to rebut this testimony. This was obvious error, and the case could be decided - as your footnote 1 makes plain - without adopting what appears to be a new constitutional rule not based on the facts of this case.

If I understand your opinion correctly, you rely on Lockett and Eddings to hold that at the sentencing hearing in every capital case evidence as to the defendant's good conduct in prison after he had been charged with capital murder, is relevant and admissible as a matter of constitutional right. Such a right probably would be the source of a significant increase in capital case litigation; including more ineffective assistance claims.

Neither Lockett nor Eddings supports such a holding, as both involved conduct and circumstances prior to the murder. It hardly need be said, that if subsequent conduct in prison prior to sentencing is relevant as to whether the defendant will receive a death sentence, any mentally competent defendant will behave like an Eagle Scout. Certainly, his counsel will so advise him.

Even in Lockett and Eddings, we did not hold that every determination by a trial court as to the relevance or remoteness of this type of evidence would raise a constitutional issue. Nor did we bar states from excluding categories of evidence based on grounds of relevance or remoteness, so long as exclusions were evenhanded and comported with the customary rules of evidence.

If your opinion remains unchanged, I will concur in the judgment on the grounds stated in footnote 1. I probably could join a narrower opinion based on Lockett, provided it makes clear that we are not identifying a new constitutional rule, one that would leave state courts with no discretion as to the admissibility of this kind of contrived evidence.

Sincerely,

Lewis

Justice White

lfp/ss

cc: The Conference

52 100-1 10-23

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 8, 1986

84-6859 Skipper v. South Carolina

Dear Byron:

I will write a brief opinion concurring only in the judgment, relying on the grounds summarized in my letter to you of March 31.

Sincerely,



Justice White

lfp/ss

cc: The Conference

04/16

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

From: **Justice Powell**

Circulated: **APR 16 1986**

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1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
 SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
 SOUTH CAROLINA

[April —, 1986]

JUSTICE POWELL, concurring in the judgment.

Although I agree that petitioner's death sentence must be vacated, that result is not required by our decisions in *Lockett v. Ohio*, 438 U. S. 586 (1978), and *Eddings v. Oklahoma*, 455 U. S. 104 (1982). I would reverse the judgment below, not because the trial court excluded "relevant mitigating evidence" within the meaning of those decisions, *Eddings, supra*, at 114; see *Lockett, supra*, at 604-605, but because petitioner was not allowed to rebut evidence and argument used against him. See *Gardner v. Florida*, 430 U. S. 349 (1977).

I

In the course of cross-examining petitioner at his sentencing proceeding, the prosecutor adduced testimony that petitioner had kicked the bars of his cell following his arrest.¹ In closing argument, the prosecutor contended that petitioner was likely to commit violent crimes in prison if allowed

¹ The following colloquy took place at the close of the cross-examination:
 "Q: You are the fellow that when you got to the Horry County jail went to kicking the cell, right?"

A: Yes, Sir.

Q: That's you. That's the kind of fellow you are, but you are nice today, right?"

Joint App. 7.

04/16

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

From: Justice Powell

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Recirculated: _____

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH CAROLINA

[April —, 1986]

JUSTICE POWELL, with whom JUSTICE REHNQUIST joins,
concurring in the judgment.

Although I agree that petitioner's death sentence must be vacated, that result is not required by our decisions in *Lockett v. Ohio*, 438 U. S. 586 (1978), and *Eddings v. Oklahoma*, 455 U. S. 104 (1982). I would reverse the judgment below, not because the trial court excluded "relevant mitigating evidence" within the meaning of those decisions, *Eddings, supra*, at 114; see *Lockett, supra*, at 604-605, but because petitioner was not allowed to rebut evidence and argument used against him. See *Gardner v. Florida*, 430 U. S. 349 (1977).

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Joint App. 7.

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

From: Justice Powell

Circulated: _____

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APR 18 1986

PP. 1, 4-7

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
SOUTH CAROLINA

[April —, 1986]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and
JUSTICE REHNQUIST join, concurring in the judgment.

Although I agree that petitioner's death sentence must be vacated, that result is not required by our decisions in *Lockett v. Ohio*, 438 U. S. 586 (1978), and *Eddings v. Oklahoma*, 455 U. S. 104 (1982). I would reverse the judgment below, not because the trial court excluded "relevant mitigating evidence" within the meaning of those decisions, *Eddings, supra*, at 114; see *Lockett, supra*, at 604-605, but because petitioner was not allowed to rebut evidence and argument used against him. See *Gardner v. Florida*, 430 U. S. 349 (1977).

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Joint App. 7.

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

From: **Justice Powell**

Circulated: _____

Recirculated: APR 24 1986

Stylistic Changes Throughout.

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 84-6859

RONALD DERAY SKIPPER, PETITIONER *v.*
 SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF
 SOUTH CAROLINA

[April —, 1986]

JUSTICE POWELL, with whom THE CHIEF JUSTICE and JUSTICE REHNQUIST join, concurring in the judgment.

Although I agree that petitioner's death sentence must be vacated, that result is not required by our decisions in *Lockett v. Ohio*, 438 U. S. 586 (1978), and *Eddings v. Oklahoma*, 455 U. S. 104 (1982). I would reverse the judgment below, not because the trial court excluded "relevant mitigating evidence" within the meaning of those decisions, *id.*, at 114; see *Lockett, supra*, at 604-605, but because petitioner was not allowed to rebut evidence and argument used against him. See *Gardner v. Florida*, 430 U. S. 349 (1977).

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"A: Yes, Sir.

"Q: That's you. [T]hat's the kind of fellow you are, but you are nice today, right?" App. 7.

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 1, 1986

Re: No. 84-6859 Skipper v. South Carolina

Dear Byron,

I am pretty much in agreement with the sentiments expressed in Lewis' letter to you of March 31st, and will wait to see what he writes.

Sincerely,

wm

Justice White

cc: The Conference

89 468 -1 VII 20

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 16, 1986

Re: 84-6859 - Skipper v. South Carolina

Dear Lewis:

Please join me in your concurring opinion.

Sincerely,



Justice Powell

cc: The Conference

1986 APR 19 6 35

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 28, 1986

Re: 84-6859 - Skipper v. South Carolina

Dear Byron:

Please join me.

Respectfully,



Justice White

Copies to the Conference

15 MAR 28 1986



CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

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

March 27, 1986

No. 84-6859 Skipper v. South Carolina

Dear Byron,

Please join me.

Sincerely,

Justice White

Copies to the Conference

30
MAY 5 11 45 AM '86
BAS 29