

The Burger Court Opinion Writing Database

Smith v. Murray

477 U.S. 527 (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

June 4, 1986

85-5487 - Michael Marnell Smith v. Murray, Dir., Va.
Dept. of Corrections

Dear Sandra:
I join.

Regards,

Justice O'Connor

Copies to the Conference

M

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1986

No. 85-5487

Smith v. Murray

Dear Thurgood, Harry and John,

We four are in dissent in the
above. Would you, John, be willing to
take it on?

Sincerely,



Justice Marshall

Justice Blackmun

Justice Stevens

82 MAR 11 11:04

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

April 7, 1986

85-5487 - Smith v. Murray

Dear Sandra,

I agree.

Sincerely yours,



Justice O'Connor

Copies to the Conference

APR 11 1986

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 4, 1986

Re: No. 85-5487-Smith v. Murray

Dear Sandra:

I await the dissent.

Sincerely,



T.M.

Justice O'Connor
cc: The Conference

over 175

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

May 22, 1986

Re: No. 85-5487-Smith v. Murray

Dear John:

Please join me in your dissent.

Sincerely,



T.M.

Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

June 19, 1986

Re: No. 85-5487, Smith v. Murray

Dear John:

Please join me in your dissenting opinion.

Sincerely,



Justice Stevens

cc: The Conference



CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

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

April 7, 1986

85-5487 Smith v. Murray

Dear Sandra:

Please join me.

Sincerely,

Justice O'Connor

lfp/ss

cc: The Conference

APR 11 1986

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 7, 1986

Re: No. 85-5487 Smith v. Murray

Dear Sandra,

Please join me in your opinion.

Will you give some consideration to revising the sentence presently beginning at the bottom of page 10 and running over to page 11 which now reads as follows:

"Thus, even assuming that, as a legal matter, Dr. Pile's testimony should not have been presented to the jury, its admission did not serve to pervert the jury's deliberation or otherwise deflect their attention from the ultimate question whether in fact petitioner constituted a continuing threat to society."

I think the phrase "otherwise deflect their attention from the ultimate question whether in fact petitioner constituted a continuing threat to society," goes a good deal further than your "actual innocence" exception to the procedural bar enunciated in Murray v. Carrier. I think this phrase would allow lower courts to avoid the procedural bar of Sykes by simply determining that irrelevant evidence had been admitted which, simply because it was irrelevant, might serve to "deflect" the attention of the jury from the ultimate question of whether petitioner constituted a continuing threat to society. This could conceivably embrace situations over and above those in which it is determined that "a constitutional violation has probably resulted in the conviction of one who is actually innocent..." (quote on page 10 of circulating draft from Murray v. Carrier). I think the more different ways you try to state the exception, the more it will be subject to enlargement beyond its purpose by other courts.

cc: WBB-8 b1:SS

Sincerely,



Justice O'Connor

cc: The Conference

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

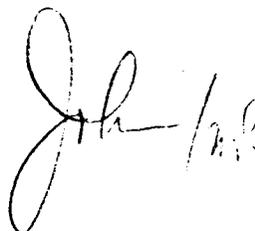
March 11, 1986

Re: 85-5487 - Smith v. Murray

Dear Bill:

I shall be happy to take on the dissent in this case.

Respectfully,



Justice Brennan

cc: Justice Marshall
Justice Blackmun

80 MAR 11 6 10 PM

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2

1
2

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

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

April 24, 1986

Re: 85-5487 - Smith v. Murray

Dear Sandra:

Inadvertently I failed to advise you earlier, but I am working on the dissent in this case.

Respectfully,



Justice O'Connor

Copies to the Conference

APR 24 1986

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

From: **Justice Stevens**

Circulated: MAY 22 1986

Recirculated: _____

Handwritten notes and initials:
1/2
JMS
4

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER v. EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[May —, 1986]

JUSTICE STEVENS, dissenting.

The record in this case unquestionably demonstrates that petitioner's constitutional claim is meritorious, and that there is a significant risk that he will be put to death *because* his constitutional rights were violated.

The Court does not take issue with this conclusion. It is willing to assume that (1) petitioner's Fifth Amendment right against compelled self-incrimination was violated; (2) his Eighth Amendment right to a fair, constitutionally sound sentencing proceeding was violated by the introduction of the evidence from that Fifth Amendment violation; and (3) those constitutional violations made the difference between life and death in the jury's consideration of his fate. Although the constitutional violations and issues were sufficiently serious that this Court decided to grant *certiorari*, and although the Court of Appeals for the Fourth Circuit decided the issue on the merits, this Court concludes that petitioner's presumably meritorious constitutional claim is procedurally barred and that petitioner must therefore be executed.

In my opinion, the Court should reach the merits of petitioner's argument. To the extent that there has been a procedural "default," it is exceedingly minor. Petitioner's counsel raised a timely objection to the introduction of the evidence obtained in violation of the Fifth Amendment. A

similar to Paulson error

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

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 1, 9

From: Justice Stevens

Circulated: _____

Recirculated: MAY 27 1986

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[May —, 1986]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

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In my opinion, the Court should reach the merits of petitioner's argument. To the extent that there has been a procedural "default," it is exceedingly minor—perhaps a kind of "harmless" error. Petitioner's counsel raised a timely objec-

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

From: **Justice Stevens**

Circulated: _____

Recirculated: JUN 14 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[June —, 1986]

JUSTICE STEVENS, with whom JUSTICE MARSHALL joins, dissenting.

The record in this case unquestionably demonstrates that petitioner's constitutional claim is meritorious, and that there is a significant risk that he will be put to death *because* his constitutional rights were violated.

The Court does not take issue with this conclusion. It is willing to assume that (1) petitioner's Fifth Amendment right against compelled self-incrimination was violated; (2) his Eighth Amendment right to a fair, constitutionally sound sentencing proceeding was violated by the introduction of the evidence from that Fifth Amendment violation; and (3) those constitutional violations made the difference between life and death in the jury's consideration of his fate. Although the constitutional violations and issues were sufficiently serious that this Court decided to grant certiorari, and although the Court of Appeals for the Fourth Circuit decided the issue on the merits, this Court concludes that petitioner's presumably meritorious constitutional claim is procedurally barred and that petitioner must therefore be executed.

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

1, 15

From: Justice Stevens

Circulated: _____ 6 1986

Recirculated: _____

4th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* ED-
 WARD W. MURRAY, DIRECTOR, VIRGINIA
 DEPARTMENT OF CORRECTIONS

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

[June —, 1986]

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

The record in this case unquestionably demonstrates that petitioner's constitutional claim is meritorious, and that there is a significant risk that he will be put to death *because* his constitutional rights were violated.

The Court does not take issue with this conclusion. It is willing to assume that (1) petitioner's Fifth Amendment right against compelled self-incrimination was violated; (2) his Eighth Amendment right to a fair, constitutionally sound sentencing proceeding was violated by the introduction of the evidence from that Fifth Amendment violation; and (3) those constitutional violations made the difference between life and death in the jury's consideration of his fate. Although the constitutional violations and issues were sufficiently serious that this Court decided to grant certiorari, and although the Court of Appeals for the Fourth Circuit decided the issue on the merits, this Court concludes that petitioner's presumably meritorious constitutional claim is procedurally barred and that petitioner must therefore be executed.

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

71
St. 300

From Justice Stevens

Circulated _____

Recirculated _____ JUN 4 1986

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[June 26, 1986]

JUSTICE STEVENS, with whom JUSTICE MARSHALL and JUSTICE BLACKMUN join and with whom JUSTICE BRENNAN joins as to Parts II and III, dissenting.

The record in this case unquestionably demonstrates that petitioner's constitutional claim is meritorious, and that there is a significant risk that he will be put to death *because* his constitutional rights were violated.

The Court does not take issue with this conclusion. It is willing to assume that (1) petitioner's Fifth Amendment right against compelled self-incrimination was violated; (2) his Eighth Amendment right to a fair, constitutionally sound sentencing proceeding was violated by the introduction of the evidence from that Fifth Amendment violation; and (3) those constitutional violations made the difference between life and death in the jury's consideration of his fate. Although the constitutional violations and issues were sufficiently serious that this Court decided to grant certiorari, and although the Court of Appeals for the Fourth Circuit decided the issue on the merits, this Court concludes that petitioner's presumably meritorious constitutional claim is procedurally barred and that petitioner must therefore be executed.

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To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: APR 4 1986

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER v. EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[April —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

We granted certiorari to decide whether and, if so, under what circumstances, a prosecutor may elicit testimony from a mental health professional concerning the content of an interview conducted to explore the possibility of presenting psychiatric defenses at trial. We also agreed to review the Court of Appeals' determination that any error in the admission of the psychiatrist's evidence in this case was irrelevant under the holding of *Zant v. Stephens*, 462 U. S. 862 (1983). On examination, however, we conclude that petitioner defaulted his underlying constitutional claim by failing to press it before the Virginia Supreme Court on direct appeal. Accordingly, we decline to address the merits of petitioner's claims and affirm the judgment dismissing the petition for a writ of habeas corpus.

I

Following a jury trial, petitioner was convicted of the May, 1977 murder of Audrey Weiler. According to his confession, petitioner encountered Ms. Weiler in a secluded area near his home and raped her at knifepoint. Fearing that her testimony could send him back to prison, he then grabbed her by the neck and choked her until she fell unconscious. When he realized that she was still alive, he dragged her into a nearby river, submerged her head, and repeatedly stabbed her with

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 11, 1986

No. 85-5487 Smith v. Murray

Dear Bill,

I am circulating a second draft opinion in this case which includes a minor change to the sentence you found troublesome. I hope the change adequately addresses your concern.

Sincerely,



Justice Rehnquist

50 166 11 110 33

Copies to the Conference

To: The Chief Justice
 Justice Brennan
 Justice White
 Justice Marshall
 Justice Blackmun
 Justice Powell
 Justice Rehnquist
 Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: APR 11 1986

Stylistic Changes Throughout

pp. 10

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* ED-
 WARD W. MURRAY, DIRECTOR, VIRGINIA
 DEPARTMENT OF CORRECTIONS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
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[April —, 1986]

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To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens

From: **Justice O'Connor**

Circulated: _____

Recirculated: JUN 9 1986

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 85-5487

MICHAEL MARNELL SMITH, PETITIONER *v.* EDWARD W. MURRAY, DIRECTOR, VIRGINIA DEPARTMENT OF CORRECTIONS

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

[June —, 1986]

JUSTICE O'CONNOR delivered the opinion of the Court.

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PP. 3, 7, 11

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

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 25, 1986

85-6011, Tuggle v. Virginia
(Hold memo for 85-5487 Smith v. Murray)

Vacate
MEMORANDUM TO THE CONFERENCE

Petitioner was convicted of murder and sentenced to death. On his motion, the trial court ordered a psychiatric examination to determine his sanity at the time of the offense and his competency to stand trial. Prior to the examination, the state psychiatrist validly administered the Miranda warnings, but apparently did not inform petitioner's counsel that information obtained at the interview might later be used to prove future dangerousness at the sentencing hearing. The examining doctors reported to the court that petitioner was sane at the time of the offense and competent to stand trial. Petitioner then sought to arrange for a second psychiatric interview at his own expense. The trial court denied the motion.

During voir dire, petitioner sought to interview prospective jurors individually about the possibly prejudicial effect of the extensive media coverage the crime had received. The motion was denied, although petitioner was permitted to explore the possibility of bias with the venire as a group. Petitioner also sought to remove for cause several jurors who admitted to having read newspaper accounts of the killing and who admitted to prior contacts with the local sheriff's office concerning their service as jurors in a prior unrelated case. Those motions were denied as well.

At the sentencing hearing, the psychiatrist who had conducted the pretrial examination testified that petitioner was a continuing danger to society. The jury recommended the death penalty, concluding that the crime was especially vile and that petitioner remained a danger to society. Under Virginia Law, either finding would support the imposition of the death penalty.

The Supreme Court of Virginia affirmed the conviction and sentence, and this Court GVRed in light of Ake v. Oklahoma. On remand, the Supreme Court of Virginia again affirmed the conviction and sentence. Because petitioner had not made a sufficient threshold showing, the court held, there was no error