
ANNUAL SUPPLEMENT – 2007

VOLUME 4 RAPP – PART 4

PAGES i-xliv; 1543-1564

A COLLECTION OF

IN CHAMBERS OPINIONS

BY THE

JUSTICES OF THE SUPREME COURT
OF THE UNITED STATES

covering the 2006 Term

and

previously unpublished or uncollected in chambers opinions from
1945, 1947, 1948, 1949, 1950, 1951, 1953, 1955, 1959, and 1961

with

cumulative, up-to-date Tables and Indexes for Volumes 1, 2, 3, and 4

Compiled by

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and

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with

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December 2007

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For sale by The Green Bag, Inc., 6600 Barnaby Street NW, Washington, DC 20015, www.greenbag.org.

Recommended citation form:

[case name], 4 RAPP [page number] ([date])

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First Edition

Green Bag Press
6600 Barnaby Street NW
Washington, DC 20015

Green Bag Press is a division of
The Green Bag, Inc., publisher of the
Green Bag, Second Series, an Entertaining Journal of Law.

For more information, please email
editors@greenbag.org or visit
<http://www.greenbag.org>.

ISSN: 1933-5806
ISBN 13: 978-1-933658-06-3
ISBN 10: 1-933658-06-1
Library of Congress Control Number: 2007926683



GREEN BAG PRESS
WASHINGTON, DC
2007

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PREFACE

In this *Supplement* we present two opinions delivered by Chief Justice John G. Roberts during the 2006 Term, as well as the usual crop of discoveries from our ongoing archeological pursuits in the National Archives and Records Administration, the Library of Congress, and other repositories of judicial papers.

Just what does and does not merit classification as an “in chambers opinion” is an issue on which reasonable minds might differ and over which we continue to agonize. Our inclusion this year of Justice William O. Douglas’s opinion in *Thompson v. United States* is a case in point. The substance of the opinion is so telegraphically abrupt and empty of explanatory value – “Motion for stay of execution denied ...” – that it would not merit publication here as an in chambers opinion if it were not for what comes next: “... after consultation with all members of the Court except Murphy who was absent.” See 4 Rapp 1551 (1948). In our estimation, a report of Justice Douglas’s *Thompson* opinion is potentially valuable to future litigants and to other Justices and judges not because of what it says about the substantive law governing Miran Edgar Thompson’s motion for a stay, but, rather, for what it says about Court practices when dealing with such matters. The *Thompson* opinion deals with three such practices. First, it reveals that since 1948 at the latest, a Justice sometimes polls colleagues before deciding a matter on which he or she has the power to act alone. Second, it shows that a poll of available Justices, rather than all sitting Justices, is at least sometimes considered appropriate. Third, it shows that a Justice sometimes discloses the results of such a poll to the parties. See also *In re Wyckoff*, 4 Rapp 1561 (1961).

We also continue to turn up interesting and potentially useful non-opinion in chambers materials. Consider, for example, rule-making by Justices sitting on circuit. On October 29, 1959, Justice John M. Harlan wrote,

Dear Brethren:

I thought you might be interested in the attached memorandum which I am asking the Clerk to publicize in the Second Circuit, and also to send to the Solicitor General. It seems to me that this “extension” practice is getting very loose, and I am wondering whether the consideration of a change in our Rules might commend itself to the Brethren.

Sincerely,
J.M.H.¹

¹ Justice John M. Harlan to The Conference, Oct. 29, 1959, in Papers of Hugo LaFayette Black, Box 340, Manuscript Division, Library of Congress, Washington, DC.

PREFACE

The attached memorandum:

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1959.

[October 29, 1959.]

Memorandum of MR. JUSTICE HARLAN as Circuit Justice for the Second Circuit.

In the course of acting on applications for extensions of time within which to file petitions for certiorari, I have found that lawyers so applying usually do not serve copies of the papers on their adversaries. Although that practice is in conformity with Rules 50(2) and 34(4) of this Court, I believe that, except in unusual circumstances, such service should be made, and that the respondent should be given a reasonable opportunity to voice any objections. Accordingly, it is requested that lawyers addressing such applications to me in the future show in the application that a copy of it has been served upon the attorney for the respondent, or that appropriate reasons making such service impracticable exist. A respondent desiring to oppose a requested enlargement should file his response with the Clerk of this Court within two days of the receipt of the application.²

Which raises some intriguing questions: What power do Supreme Court Justices sitting on circuit have to make rules for their circuits? What power do they have to enforce them, and what recourse do parties have? Where do those powers come from? We welcome your thoughts.

Finally, we renew our *Hooper v. Goldstein* (1929) appeal. It remains the only opinion we have yet to track down from the 21 missing opinions listed in Cynthia Rapp's introduction to the first volume in this series. Please help us if you can.

We continue to follow the conventions we've used in the other chambers volumes: (1) brackets not accompanied by a "Publisher's note" are in the original; (2) running heads are preserved where they appear in the originals, and added to those that lack them; (3) a caption misdesignating the Term in which an opinion was issued is in the original; and (4) party designations ("applicant", "movant", "petitioner", "plaintiff",

² *Id.*

PREFACE

etc.) are sometimes used more loosely than is the Court's wont, but in each case the identity and posture of the parties are clear, and so they remain unchanged. Also bear in mind that those who would cite for its legal authority an opinion in *In Chambers Opinions* should check for the existence of a version in the *United States Reports*, and, if there is one, read it and cite to it as the primary authority, with a parallel citation if appropriate to the *In Chambers Opinions* version. The relevant *U.S. Reports* citation appears in a "Publisher's note" above each opinion.

The page numbers here are the same as they will be in the bound volume 4 of *In Chambers Opinions*, thus making the *permanent* citations available upon publication of this *Supplement*. If you find any errors — or any in-chambers opinions that we have missed — please let us know at editors@greenbag.org. We will give credit where credit is due.

Thanks as always to Cynthia Rapp for performing such a useful public service by collecting and indexing the Justices' solo efforts; to William Suter, Clerk of the Court, for his support of this project; to the George Mason University School of Law and the George Mason Law & Economics Center for their support of the *Green Bag*; to Green Bag Fellow Christine Kymn; to Brenda Haseman; and to Susan Davies. And, again, to the indefatigable Ira Matetsky, without whom our offerings would be leaner and our work less interesting.

Ross E. Davies
December 25, 2007



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[Publisher's note: This opinion was typed on a sheet of plain paper, with an "OFFICE OF THE CLERK SUPREME COURT, U.S." stamp dated "NOV 6 1945" in the upper right corner, and an autograph signature of Chief Justice Stone at the bottom. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 8.]

SATTERFIELD v. SMYTH, Supt.

MEMORANDUM

On this application for habeas corpus it does not appear that petitioner has exhausted his remedies in the state courts, or sought appellate review of denials of his petitions in either the state or the federal courts. The application must therefore be denied. See Ex Parte Hawk, 321 U.S. 114, 116, 117; White v. Ragen, 324 U.S. 760, 764; Ex Parte Abernathy, 320 U.S. 219.

Application denied.

Dated Washington, D.C.
November 5, 1945

Harlan F. Stone
Chief Justice

[Publisher's note: This case should be captioned *Lynch v. Watson*. The original of this opinion was written and signed in Justice Frankfurter's hand on a piece of his Court stationery. The version sent to the petitioner – and reproduced here – is contained in a copy (typed on a sheet of plain paper) of a letter sent to him by the Office of the Clerk Supreme Court. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 11.]

August 1, 1947.

Mr. H.L. Lynch,
Arden, Nevada.

Dear Sir:

I have been directed by Mr. Justice Frankfurter to acknowledge receipt of your petition for the allowance of an appeal in the case of *Lynch v. Watson, etc., et al.* The Justice has returned your papers to this office today, together with the following memorandum:

“The petition for allowance of appeal in *Lynch et al. v. Watson et al.* sought to be brought here from the Supreme Court of California is timely but on due consideration of all that is submitted is herewith denied.

“Since I'm not the Circuit Justice for California and the petition may have been submitted to me under some misapprehension, its denial is made without prejudice to its submission (if the statutes and the rules of this Court permit) to the Circuit Justice for the Ninth Circuit.

Felix Frankfurter
Associate Justice, U.S.S.C.”

July 30, 1947.

Your papers are returned herewith.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

E.P. Cullinan,
Assistant.

EPC:BB
Encls.

[Publisher's note: This opinion was typed on a sheet of plain paper, with no signature on the signature line at the bottom. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 10.]

Franklin Wells Shearer,)
)
 Petitioner,)
 vs.) S.S. Before Wiley Rutledge, Circuit
) Justice for the Eighth Circuit.
United States of America)

No. _____

Re: Application of Franklin W. Shearer for Admission to Bail
Pending Appeal to the Eighth Circuit Court of Appeals.

Be it remembered that the above-entitled matter came on for hearing on the 18th day of August, A.D. 1947, at Ogunquit, Maine, before the undersigned Wiley Rutledge, as Circuit Justice for the Eighth Circuit, and the following proceedings were had.

Appearances, Mr. Carl Berueffy, of Washington, D.C., and Mr. A. Jerome Hoffman, of St. Paul, Minnesota, for the applicant Shearer.

Mr. Lesard, United States Attorney for Maine, and Mr. Harrigan, Assistant United States Attorney for Maine, both of Portland, for the United States of America.

And now on this the 23d day of August, A.D. 1947, upon full consideration of the oral presentations of counsel, both as to the facts and as to the law, as well as of various documents, including points and authorities and transcript of oral testimony taken upon prior application to the District Court for the Eastern District of Missouri, as well as affidavits then and there submitted, also of memorandum submitted to Circuit Judge Sanborn on prior application, all submitted without objection, the undersigned concludes and determines, upon the presentation so made, that there was no abuse of discretion upon the part of the said District Court in denying the application made to it for admission to bail pending appeal or in Judge Sanborn's denial of the like further application made to him thereafter without prejudice to further such application to the Eighth Circuit Court of Appeals.

Accordingly, the application for admission to bail pending appeal to the Circuit Court of Appeals for the Eighth Circuit, made to the undersigned as Circuit Justice for that Circuit should be and it is hereby denied without prejudice to further like application to the said Circuit Court of Appeals.

SHEARER v. UNITED STATES

Done at Ogunquit, Maine, this 23d day of August, A.D. 1947.

Circuit Justice, Eighth Circuit.

[Publisher's note: This opinion was typed on a sheet of plain paper, with an "OFFICE OF THE CLERK SUPREME COURT, U.S." stamp dated "AUG 25 1947" in the upper right corner, and an autograph signature of Chief Justice Vinson at the bottom. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 9.]

SUPREME COURT OF THE UNITED STATES

PEOPLE OF THE)	
UNITED STATES OF AMERICA)	
ex rel)	
)	
THOMAS JORDAN)	
)	WRIT OF
vs.)	HABEAS CORPUS
)	
DONALD CLEMMER, DIRECTOR)	
OF THE DEPARTMENT OF CORRECTIONS)	

Petition denied without prejudice for lack of showing that the petitioner has exhausted his remedies before the federal courts of the District of Columbia, or the Justices thereof, qualified to entertain this application.

Fred M. Vinson
Chief Justice of the United States

[Publisher's note: This case should be captioned *Cote v. New Hampshire*. The original of this opinion was written and initialed in Justice Frankfurter's hand at the bottom of the application. The version sent to counsel – and reproduced here – is contained in a copy (typed on a sheet of plain paper) of a letter sent to him by the Office of the Clerk Supreme Court. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 9.]

May 17, 1948.

Stanley M. Burns, Esquire,
Dover, New Hampshire.

Dear Sir:

Your letter of the 12th instant and enclosures therein in the case of Donat F. Cote, et al. v. State of New Hampshire, et al. were duly received and submitted to Mr. Justice Frankfurter for his consideration. The Justice has denied the application for a stay of proceedings in the following words:

“On the papers I feel compelled to deny the stay. Even after the decision of the Supreme Court of New Hampshire, the motion for rehearing is restricted to State issues and no suggestion of a federal question. Were that difficulty to be overcome, I would deny because I do not think the question is substantial for us.

May 15, 1948.”

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

Deputy.

HBW:tw

[Publisher's note: This case should be captioned *Pon v. United States*. The original of this opinion was written and signed in Justice Frankfurter's hand at the bottom of the application. The version sent to counsel – and reproduced here – is contained in a copy (typed on a sheet of plain paper) of a letter sent to him by the Office of the Clerk Supreme Court. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 11.]

Michael Carchia, Esquire,
Boston, Massachusetts.

Dear Sir:

I have today received from Mr. Justice Frankfurter an endorsement upon your application for an extension of time within which to file a petition for certiorari in the case of *Pon v. United States of America*. The endorsement reads as follows:

“I am advised by the Office of the Clerk that the judgment of the Circuit Court of Appeals for the First Circuit in this case was rendered on May 25th, 1948. The time for filing a petition for certiorari, or for filing an application for extension of the time within which to file such a petition, therefore expired on June 24th. See Rule 37(b)(2) of the Criminal Rules. I am therefore powerless to grant the application. -- Charlemont, Mass. July 17, 1948. Felix Frankfurter, A.J., U.S.S.C.”

In view of the action of the Justice, I assume that you do not intend to file a petition for certiorari and I am, accordingly, returning under separate cover the original and additional copies of the record.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

E.P. Cullinan,
Assistant.

EPC:ds

[Publisher's note: This case should be captioned *Numer v. United States*. The original of this opinion was typed at the bottom of the application and signed in Justice Reed's hand. The version sent to the applicant – and reproduced here – is contained in a copy (typed on a sheet of plain paper) of a letter sent to him by the Office of the Clerk Supreme Court. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 11.]

November 27, 1948.

Mr. Richard A. Numer,
Alcatraz, California.

Dear Sir:

Your letter of the 22nd enclosing an application for an extension of time within which to file a petition for certiorari in the case of *Numer v. United States of America* was received on November 26th and immediately presented to Mr. Justice Reed, who on that day endorsed thereon:

“Motion denied. If a criminal proceeding, motion reached me too late. See *Coy v. U.S.*, 316 US 342. If a civil proceeding, there is no showing of necessity for extension.”

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

E.P. Cullinan,
Assistant.

EPC:MSD

[Publisher's note: This case should be captioned *Thompson v. United States*. The original of this opinion was written and initialed in Justice Douglas's hand on the telegraphic application. The version reproduced here is contained in a copy (typed on a sheet of plain paper) of a letter sent to Harley Teets – the warden of San Quentin State Prison, where the applicant was incarcerated and scheduled to be executed – by the Office of the Clerk of the Supreme Court. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 11.]

December 3, 1948.

Mr. Harley Teets,
San Quentin, California.

Dear Sir:

Confirming our telephone conversation, I quote below the order entered today by Mr. Justice Douglas in the case of *Miran Edgar Thompson v. United States*:

“Motion for stay of execution denied after consultation with all members of the Court except Murphy who was absent. W.D., 12:20 a.m., Dec. 3, 1948.”

In view of the action of the Justice, I assume that you do not intend to file a petition for certiorari and I am, accordingly, returning under separate cover the original and additional copies of the record.

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

E.P. Cullinan,
Assistant.

EPC:MSD

[Publisher's note: This letter was typed on a sheet of plain paper. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 11.]

April 15, 1949.

Jacob Friedman, Esquire,
New York, New York.

Re: East Coast Lumber Terminal, Inc. v. Town of Babylon.

Dear Sir:

I acknowledge receipt of your letter of the 14th, together with the papers referred to therein. As requested, these papers were presented to Mr. Justice Jackson who has endorsed on the back thereof:

“Memo

Two Federal Courts have considered that this case presents serious questions of a federal nature if, and only if, the action which so far is that of Town authorities is so far approved as to become State action. They have held this action to allow determination in State Courts of this question. The plaintiff is losing valuable time seeking action from this Court until the action of the State Court is obtained as the courts below suggest. Application for a stay is denied without prejudice.

Robert H. Jackson
A.J.S.C.

April 15, 1949.”

Yours truly,

CHARLES ELMORE CROPLEY, Clerk,

By

E.P. Cullinan,
Assistant.

EPC:ds

[Publisher's note: This letter was typed on a sheet of plain paper, with Justice Burton's autograph signature and title at the bottom. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 12.]

January 17, 1950

Ralph W. Wescott, Esquire
507 Wilson Building
Camden 2, New Jersey

State of New Jersey v. Harold Auld

Dear Sir:

In response to your letter of January 16, 1950, I have examined and considered with care the petition which you have presented on behalf of Howard Auld, asking for an extension of the time prescribed by Rule 38½ of this Court within which to file with this Court a petition for a writ of certiorari in the case of the State of New Jersey v. Howard Auld. I have likewise examined the opinions filed in that case in the Supreme Court of New Jersey, June 30, 1949. (2 N.J. 426, 67 A.2d 175.)

I have also received from you a printed record of this case in the Supreme Court of New Jersey, consisting of the three volumes of the joint appendix, three briefs and a petition for rehearing.

It appears from these papers that a petition for re-argument was denied in this case by the Supreme Court of New Jersey, September 7, 1949, and that the time specified in our Rule 38½ for filing a petition for a writ of certiorari expired 90 days thereafter, on December 6, 1949. No application for an extension having been made until now, I am, as a Justice of this Court, without power to grant the extension you request. See Rule 38½, 335 U.S. 915; 28 U.S.C. § 2101 (c) and (d), as amended by § 106 of the Act of May 24, 1949, P.L. 72; Finn v. Railroad Commission, 286 U.S. 559; Cresswell ex rel. Di Pierro v. Tillinghast, 286 U.S. 560; Robertson and Kirkham, Jurisdiction of the Supreme Court of the United States § 386 (1936).

Yours truly,

Harold H. Burton
Associate Justice

HMB/thc

HURST v. WEST VIRGINIA

prior acquittal of the different crime of manslaughter barred further prosecution on principles of res judicata. The trial court denied each of the pre-trial motions and the Supreme Court of Appeals of West Virginia declined to grant writs of error to review the convictions.

I have considered the applications, the response submitted by the State of West Virginia, and the portions of the record necessary for resolution of the questions presented. Since it does not appear that any substantial federal question has been raised, I must deny the applications for stay and bail pending disposition of petitions for certiorari.

Fred M. Vinson

Fred M. Vinson

Chief Justice of the United States.

Dated this 29th day of August, 1951.

[Publisher’s note: This opinion was typed on a sheet of plain paper, with Justice Burton’s signature under the word “memo.” and the date “2/25/53” written in the upper right corner. In addition, Justice Burton scribbled the following on the first page of petitioners’ proposed order:

Feb. 25, 1953
Denied (see memo.
attached
dated 2/25/53)
Harold H. Burton
Associated Justice

From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 16.]

SUPREME COURT OF THE UNITED STATES

In the Matter of the Estate of) On Petition for Allowance
Julia Simon) of an Appeal from the
) Supreme Court of New Jersey

In this case the Supreme Court of New Jersey affirmed the judgment of the Superior Court “for the reasons expressed in the opinion of Judge Jayne in the court below.”

In that opinion Judge Jayne reviewed the merits of the case apparently drawing in question the validity of a New Jersey statute, as interpreted by a Probate Court of New Jersey, on the ground that as so interpreted it was repugnant to certain treaties of the United States and resulting in a decision in favor of its validity. Judge Jayne, however, concluded his opinion as follows:

“However, rudimentary considerations confront us. The order sought to be reviewed was entered on December 8, 1951. Notice of this appeal was not filed until January 22, 1952. No application for leave to appeal was requested or granted. Our Supreme Court has determined that an order entered in pursuance of this statute is not a final judgment but interlocutory in character. In re Url, 5 N.J. 507, 5-12 (1950).”

The case cited demonstrates that, on state procedural grounds, the Superior Court lacked jurisdiction to decide the federal question at that

time.¹ Accordingly, neither Judge Jayne nor the Supreme Court of New Jersey has in the instant case passed upon the federal question suggested by appellants, but on the other hand dismissed the appeal expressly upon State procedural grounds. This leaves no jurisdiction in this Court to consider the appeal and compels a denial of its allowance.

¹ The “synopsis” of the case cited correctly states its effect as follows:

“Proceeding in the matter of the estate of John Url, deceased, wherein the executor sought a determination as to existence of the beneficiary entitled to residuary estate and propriety of paying residuary estate to beneficiary, a Hungarian citizen, in view of existing political and economic conditions in that country. The Somerset County Court, Probate Division, 7 N.J. Super. 455, 71 A. 2d 665, entered a judgment directing executor to pay residuary estate into court for the benefit of such legatee, next of kin or person as might thereafter appear to be entitled thereto and an appeal was taken to the Appellate Division and the cause was certified to the Supreme Court on motion of such court. The Supreme Court, Oliphant, J., held that the judgment was interlocutory and not a final judgment from which an appeal could be taken.

“Appeal dismissed.” In re Url, 5 N.J. 507.

In that case the Supreme Court of New Jersey said:

“(1) The judgment entered was not of such finality [Publisher’s note: “finality”J should be “finality”.] as to entitle appellant to appeal therefrom under Rule 4:2-1. It merely postponed the meritorious question of title to and ownership of the residuary estate until the facts and circumstances can be developed and properly proven. It is an interlocutory, not a final judgment. Louisiana National Bank v. Whitney, 121 U.S. 284, 7 S. Ct. 897, 30 L. Ed. 961 (1887).

“(2) Appellant argues the judgment is appealable under Rule 4:2-2(a) because it is, in form and substance, a prohibitory injunction against the distribution of the estate and a mandatory injunction requiring the executor to pay the residue of the estate to the Clerk of the Court. The premise is not sound. The judgment is not an injunction in any form, it is a custodial order to preserve the res pending a final determination. An injunction was neither prayed for nor granted.

• • • •

“[4-7] ‘Final judgments’ as used in Rule 4:2-1 are those from which writs of error would lie under the old practice. At common law and under the Practice Act of 1912 a writ of error, or an appeal tantamount thereto, would not lie until after final judgment or final disposition of the case, not only as to all issues but as to all parties. Gottfried v. Gottfried, 106 N.J.L. 115 (E. & A. 1930). . . . In the instant cause the rights of the parties with respect to the funds in the residuary estate have not as yet been determined and final decision thereon has been expressly reserved.

• • • •

“When competent and adequate proof can be offered to warrant the court in making final disposition of the matter this must be done.” Id., at 512-513.

[Publisher's note: This opinion was typed on a sheet of plain paper, with an autograph signature of Justice Reed and the date at the bottom. From RG 267, Records of the Supreme Court of the United States, Entry 30 – Applications for Actions by the Court, 1929-1989, Box 25.]

December 21, 1955.

Merrifield v. Kentucky,
No. 312 Misc., 1954 Term.

This case is now here on a motion and affidavit to proceed in forma pauperis, petition for writ of certiorari, and petition for order staying execution which is set for 12:01 a.m., December 23, 1955, Friday of this week.

The petition is directed at a decision by the trial court and court of appeals of Kentucky on Merrifield's petition for writ of error coram nobis on the ground of newly discovered evidence.

At the murder trial, Thomas Riggs, an eye witness for the Commonwealth, testified that he did not know the accused Merrifield. The alleged newly discovered evidence is the affidavits of two witnesses, Malone and Griffith, who swore that Riggs was introduced to them in 1952 by the accused.

This raises a contradiction of the statement of the witness Riggs as to acquaintance. Merrifield testified that he did know Riggs. At the original trial three witnesses testified that Merrifield committed the murder.

Petitioner also alleges that he filed before the circuit court in support of this petition for coram nobis the affidavits of two newly discovered eye witnesses to the murder. The affidavits were filed and contained a statement that Merrifield was not the person who committed the murder. Neither testified at the trial. The trial court in this coram nobis proceeding pointed out that the affidavits say the alleged witnesses told a police officer that they had witnessed the shooting. No one interviewed them thereafter. The police officer is not described by the affidavits. The trial court says that the police officers denied this statement. The court does not identify the police officers and it appears to be referring to police officers generally. Affiants were inmates of the penitentiary and did not appear at the trial for cross-examination.

The trial court held the affidavits were insufficient to show the trial unfair and that due diligence had not been exercised in an effort to have the witnesses appear at the earlier trial.

The Court of Appeals held that coram nobis was an extraordinary remedy for the correction of a wrong in a trial resulting from the deprivation of life or liberty without due process of law. Where it is sought, upon newly discovered evidence, it will not be granted "unless the new evi-

MERRIFIELD v. KENTUCKY

dence is of such a conclusive character as to remove from the case the basis upon which the conviction and judgment were predicated.”

It further ruled that the affidavits as to the acquaintanceship of Riggs and the accused were merely an attack on the credibility of Riggs. “Impeaching testimony of this character ... [is not] to be considered as a basis of coram nobis.”

As to the affidavits by eye witnesses that the accused did not murder the victim, the court pointed out that the affiants were convicted felons in the same prison as appellant. Since the affidavits did not say who fired the shot nor furnish any description of that person, the Court of Appeals determined they were insufficient. Three witnesses had testified Merrifield did fire the shots which killed the police officer. It held they were wholly insufficient to require a reversal of the judgment of the trial court as an abuse of discretion.

For order denying stay, see p. 2 of the petition for stay.

Stanley Reed
Dec 21–1955

[Publisher’s note: This opinion was typed on a sheet of plain paper, with “(signed)” written above the signature line, “Sent to Mr. Blanchard” written below it, and “HLB:fl” stamped in the lower left corner. From the Papers of Hugo LaFayette Black, Box 340, Manuscript Division, Library of Congress, Washington, DC.]

No. 387 – October Term 1959.)
)
American Trading and Production)
Corporation,)
 Petitioner)
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Railroad Commission of Texas.)

Application for a stay is denied without prejudice to its renewal in the event petition for certiorari in this case is granted.

It appears that petitioners have produced a sufficient quantity of gas and oil in excess of allowables under state law to authorize a shut-in of their well for approximately four and one-half months, and that since the well was shut-in on July 29, 1959, the four and one-half months’ period will expire about December 15, 1959. Petition for certiorari was filed in this Court September 9, 1959, and respondent’s period for reply will therefore expire on October 17th. Under these circumstances the Court will most likely be in a position to pass upon the petition for certiorari prior to December 15th.

Accordingly, it appears that petitioners are not apt to suffer any irreparable injury on account of suspended allowables. This is particularly so as the Attorney General of Texas states that the Railroad Commission of Texas will credit on its books, as an offset to previous over-production, the amount of allowables to which petitioner’s well would have been entitled had the stay here requested been granted.

Associate Justice

October 8, 1959.

[Publisher's note: This opinion was typed on a sheet of plain paper, with no signature on the signature line at the bottom. From the Papers of Hugo LaFayette Black, Box 344, Manuscript Division, Library of Congress, Washington, DC. It is reported at 6 Race Relations Law Reporter 794 (1961-62). In addition, the first paragraph of the opinion is quoted in its entirety in *Cameron v. Johnson*, 381 U.S. 741, 746 n.7 (1965) (Black, J., dissenting), and in *Brown v. Rayfield*, 320 F.2d 96, 99 (5th Cir. 1963).]

IN THE SUPREME COURT OF THE UNITED STATES

In the Matter of the Application of

ELIZABETH PORTER WYCKOFF

For a Writ of Habeas Corpus

[Publisher's note: Justice Black issued this opinion on July 26, 1961. *Black Denies Writ to Release Rider*, N.Y. TIMES, July 27, 1961, at 31.]

This petition for habeas corpus is denied because the factual allegations fall far short of showing that there are not Mississippi state processes available by appeal or otherwise for Petitioner to challenge her state conviction, which processes would effectively protect her constitutional rights, particularly since any denial of such rights by the highest court of a State can be remedied by appropriate appellate proceedings in the Supreme Court of the United States. See 28 U.S. Code, Sections 2241, 2254 and 1257.

Mr. Justice Clark, who is the only other Justice available at this time for consideration of this motion [Publisher's note: There should be a comma here.] concurs in this denial.

The petition is denied without prejudice to the right of its presentation to any other member of the Court.

Associate Justice

[Publisher's note: See 549 U.S. ____ for the official version.]

SUPREME COURT OF THE UNITED STATES

No. 06A592

RODGER STROUP, DIRECTOR, SOUTH CAROLINA DEPARTMENT OF ARCHIVES AND HISTORY,
ET AL. v. THOMAS L. WILLCOX, ET AL.

ON APPLICATION FOR STAY

[December 18, 2006]

CHIEF JUSTICE ROBERTS, Circuit Justice.

The State of South Carolina and Rodger Stroup, the director of the State's Department of Archives and History, apply for a stay of the judgment issued by the Court of Appeals for the Fourth Circuit pending the filing and disposition of a petition for writ of certiorari in this Court. Their request fails to meet our standard for such relief. See *Barnes v. E-Systems, Inc. Group Hospital Medical & Surgical Ins. Plan*, 501 U.S. 1301, 1302 (1991) (SCALIA, J., in chambers).

Moreover, a request for extraordinary equitable relief is certainly undermined when the central argument pressed was only mentioned by applicants in passing in the court below. Applicants' request is based almost exclusively on the Court of Appeals' failure to certify to the Supreme Court of South Carolina contested questions of state property law. In their initial submission to the Court of Appeals, however, applicants requested that the court rule on the merits of the matter. They merely noted that certification "is an option for [the] Court if it wants guidance from the South Carolina Supreme Court." Brief for Appellants in No. 06-1179 (CA4), p.37, n.9.

Accordingly, the request for a stay is denied.

[Publisher's note: See 550 U.S. ____ for the official version.]

SUPREME COURT OF THE UNITED STATES

Nos. 06A1001 and 06A1002 (06–1195 and 06–1196)

LAKHDAR BOUMEDIENE ET AL.

06-1195

v.

GEORGE W. BUSH, PRESIDENT OF THE UNITED STATES, ET AL.

KHALED A. F. AL ODAH, NEXT FRIEND OF FAWZI KHALID ABDULLAH FAHAD AL ODAH, ET AL.

06-1196

v.

UNITED STATES ET AL.

ON APPLICATIONS FOR EXTENSION OF TIME AND SUSPENSION OF ORDER DENYING CERTIORARI

[April 26, 2007]

CHIEF JUSTICE ROBERTS, Circuit Justice.

We denied applicants' petitions for certiorari, 549 U. S. ____ (2007), and they now bring two requests: first, a 122-day extension of time in which to file a petition for rehearing of the order denying certiorari, and second, suspension of the order denying certiorari. Both applications are denied.

1. This Court's Rules expressly provide for extensions of time in which to file a petition for writ of certiorari, Rule 13.5, or a petition for rehearing of a "judgment or decision ... on the merits," Rule 44.1, but they do not provide for any extension of time in which to file a petition for rehearing of an order denying certiorari. Such an order is plainly not a "judgment or decision ... on the merits." Indeed, while Rule 44.1 establishes a 25-day period for filing a petition for rehearing of a judgment on the merits "unless the Court or a Justice shortens or extends the time," Rule 44.2, articulating a 25-day period for filing a petition for rehearing of an order denying certiorari, contains no such exception, confirming that the Rules do not contemplate granting an extension for such petitions.

2. An order denying certiorari "will not be suspended pending disposition of a petition for rehearing except by order of the Court or a Jus-

tice.” Rule 16.3. This most extraordinary relief will not be granted unless there is a “reasonable likelihood of this Court’s reversing its previous position and granting certiorari.” *Richmond v. Arizona*, 434 U.S. 1323 (1977) (Rehnquist, J., in chambers). In arguing for suspension, applicants point to a motion filed by the Government in the District Court as part of ongoing proceedings below. They contend that, if the motion is granted, or if certain other actions are taken by the lower courts, there will be an adverse effect on the review available to them under the Detainee Treatment Act of 2005, Tit. X, 119 Stat. 2739. This does not satisfy the rigorous standard we have established for Rule 16.3 relief. Applicants do not even point to any action by the lower courts as prompting their request for extraordinary relief — only the filing of motions and possible court action. Such grounds can hardly provide a basis for believing this Court would reverse course and grant certiorari. Accordingly, suspension of the order is not warranted.

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