10-1976

Swain v. Pressley

Lewis F. Powell Jr.

Grant

whether a Δ convicted in a Dist. of Col. court may seek H/corpus relief in an Art. III D.C. DISCUSS

23 D.C. Code § 110(g) seems to say "no". But CA D.C., to avoid Const. issues, interpreted ~~interpreted~~ interpreted § 110(g) - contrary to its language - as allowing H/C.

Preliminary Memo

February 20, 1976 Conference
List 5, Sheet 2

No. 75-811

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

v.

PALMORE

SWAIN [Superintendent]

v.

PRESSLEY

SG argues that Congress was justified in not extending H/C from one Fed Timely court to another Fed Ct.

Cert to CA D.C.
(Tamm + 6;
Robb, dissenting)
Federal/Civil (habeas)

1. SUMMARY: The question in this case is whether 23 D.C. Code § 110(g) precludes review by habeas corpus of a local District of Columbia criminal conviction in any

Discuss with a view to Grant.

I think the memo writer is correct in saying the real decision here is how this Court should proceed, not whether cert should be granted. Carl

Article III court and, if so, whether 23 D.C. Code § 110(g) is constitutional.

2. FACTS: The government seeks review, in a single petition, of two cases. Each respondent filed a petition for a writ of habeas corpus in the Federal District Court for the District of Columbia, seeking to review his criminal conviction in local District of Columbia courts for violation of the District of Columbia code. Each raised constitutional issues -- Palmore a Fourth Amendment claim and Pressley an effective assistance of counsel claim. Each claim had -- according to the D.C. Circuit Court of Appeals -- previously been fully litigated and decided by the local D.C. Superior Court. The government moved to dismiss the petitions on the ground that jurisdiction to consider the claims was removed by 23 D.C. Code § 110(g). It provides:

> "An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." (emphasis added)

In each case the District Court granted the motion to dismiss. The Court of Appeals, en banc, reversed over one dissent.

That court held that § 110(g) was simply an exhaustion statute, requiring that a prisoner not present a claim by way of habeas corpus until he had first presented the claim to the local District of Columbia courts. In so holding, the D.C. Circuit Court of Appeals simply read out of the statute the words "or that the Superior Court has denied him relief." It did so because it thought that otherwise serious constitutional questions would be raised under the no suspension of the writ of habeas corpus clause and the equal protection (due process) clause. The problems seemed to be that the Suspension Clause can plausibly be construed to prevent Congress from denying access to an Article III court in which to collaterally attack a criminal conviction; and that the equal protection clause might, in any event, prevent Congress from providing access to an Article III court to every convicted prisoner in the country, except those convicted in the local District of Columbia courts. The court was not really able to find anything in the congressional purpose to support its result, except that it could not believe Congress would deliberately create such serious constitutional problems. It concluded, therefore, that the statute was designed to make the situation in the District of Columbia parallel the situation in the states -- availability of Article III habeas corpus subject to an exhaustion requirement.

3. CONTENTIONS: The SG argues that the statute means what it says. The statute tracks almost word for word 28 U.S.C. § 2255 -- which provides for collateral relief only before the same court before which the original trial took place. The SG says that the D.C. Circuit's holding is for all intents and purposes a constitutional holding masquerading as statutory construction. The SG says that the D.C. Circuit's "statutory" holding is wrong and should be reversed. I am not entirely clear whether the SG wants us to remand for a "constitutional" decision or whether he wants us to decide the constitutional question. As I read his petition, it is the latter which he wants.

The SG does not discuss the merits of the constitutional issue in the petition. He just says it is an important question. Presumably he agrees with Judge Robb who dissented below -- reaching the constitutional issue. He said that the writ of habeas corpus is not suspended by this statute -- it simply is made available only in courts manned by judges without life tenure. There is no equal protection problem. Collateral relief is available only in the court system in which the original conviction was obtained -- except where the original conviction was in state court or courts martial. Congress could rationally conclude that in those instances the original court system was more suspect than are the local District of Columbia courts, which are created and supervised by the federal government.

4. DISCUSSION: It seems to me that the SG is right on the statutory construction issue. I would think that the judgment below is wrong enough on that issue so that cert should be granted. If it is, I would also guess that the constitutional issue would not be reached; but that the case would be remanded for a decision on that issue -- foregone though the conclusion on that issue may be in the Court of Appeals. Possibly, however, this Court might agree with the SG that the District of Columbia Circuit has in effect decided the constitutional issue and cert could be granted to resolve it here. The suspension clause issue seems hard to me. The Court has always avoided it in the past. Sanders v. United States, 373 U.S. 1. See The Japanese Immigrant Case, 189 U.S. 86, 23 S.Ct. 611, 47 L.Ed. 721 (1903); United States v. Jung Ah Lung, 124 U.S. 621, 8 S.Ct. 663, 31 L.Ed. 591 (1888). See also Chin Yow v. United States, 208 U.S. 8, 28 S.Ct. 201, 52 L.Ed. 369 (1908). The "equal protection" argument made by resps seems weak.

There are responses.

2/4/76 Nields Opinion attached to Petition

ME

Conference 2-20-76

Court CA - D.C. Voted on ....., 19...

Argued ....., 19... Assigned ....., 19... No. 75-811

Submitted ....., 19... Announced ....., 19...

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA, ET AL., Petitioners

vs.

ROOSEVELT F. PALMORE, ET AL.

12/5/75 Cert. filed.

White says statute doesn't support CA D.C. decision. Thus the decision must be on Const. ground - & this is with Stevens. Number CA D.C. was wrong.

Grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
.....		✓											
Stevens, J.		✓											
Rehnquist, J.		✓											
Powell, J.		✓											
Blackmun, J.					Jour-3								
Marshall, J.													
White, J.		✓											
Stewart, J.		✓	✓										
Brennan, J.			✓										
Burger, Ch. J.													

DM

DENY
Goldberg

LP

October 8, 1976 Conference
List 1, Sheet 4

No. 75-811

SUPERIOR COURT OF
DIST. OF COLUMBIA

v.

PALMORE

4 SG
Motion to Vacate and Remand

Letter from Palmore counsel of Oct 13 recites no objection to SG's motion.

(4th Amend issue decided in Palmore's favor by Art III Cts. on H/C ■ may be controlled by

Dang. I agree with the memo-writer's analysis. -Dave

SUMMARY: On February 23, the Court granted cert to CADC to review two separate en banc judgments presenting the single question whether 23 D.C. Code §110(g) renders federal habeas relief unavailable to persons incarcerated pursuant to convictions in D.C. Sup. Ct. and, if so, whether §110(g) is constitutional. This is the SG's motion to vacate and remand in light of No. 74-1055, Stone v. Powell, as to the judgment in Palmore only. (In the companion case, Swain v. Pressley, resp prisoner sought collateral relief in USDC (D.C.) on Sixth Amendment grounds; resp Palmore's habeas petn presented a Fourth Amendment claim.)

CONTENTIONS OF THE SG: The SG points out that Palmore's search and seizure claim was considered and rejected by the trial court and on appeal to DCCA. [This Court granted plenary review to consider Palmore's contention that he was entitled to be tried by an Art. III judge on the charge of committing a felony in violation of the D.C. Code. The Court affirmed, Palmore v. United States, 411 U.S. 389 (1973); in fn. 6 at 397, the Court expressly noted its "denial of the writ (of cert) with respect to (Palmore's) Fourth Amendment claim."] In the federal habeas action, the DC dismissed on jurisdictional grounds, but the CA reversed and remanded for a determination on the merits.

The SG, noting the above history and implicitly treating Palmore as a "state prisoner," argues that, in light of Stone v. Powell, Palmore would not be entitled to the relief he seeks below regardless of the determination of this Court on the jurisdictional question before it. The SG suggests that the Court remand Palmore to CADC for consideration of the disposition of Palmore's habeas petn in light of Stone.

DISCUSSION: Assuming that Stone v. Powell is applicable to federal habeas proceedings initiated prior to the date of decision, that case does not operate as a jurisdictional bar to relief. Presumably, if the Court affirms in the instant case, Palmore would have the opportunity in DC to refute the claim that his Fourth Amendment contention was fully and fairly reviewed on direct appeal or to make whatever argument available to him to except his case from the Stone holding. The practical question presented by Palmore's cert petn is whether or not he will get his day in federal court not whether he will prevail here.

There is no response.

9/28/76 Goltz

PJN

OCT 8 1976

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 75-811

SUPERIOR COURT OF DIST. OF COLUMBIA

vs.

PALMORE

Motion to vacate and remand.

D

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
.....			✓										
Stevens, J.			✓										
Rehnquist, J.			✓										
Powell, J.			✓										
Blackmun, J.			✓										
Marshall, J.			✓										
White, J.			✓										
Stewart, J.			✓										
Brennan, J.			✓										
Burger, Ch. J.			✓										

Linda

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

October 12, 1967

MEMORANDUM TO THE CONFERENCE

After a conversation with Mr. Rodak, I asked that No. 75-811, Superior Court v. Palmore, be relisted for this Friday's conference.

HAB.

There is correspondence on this which I am not familiar.

GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON, D.C. 20001

OFFICE OF THE ASSOCIATE DEAN

October 13, 1976

Michael Rodak, Jr., Esquire
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Superior Court of the District of Columbia
v. Roosevelt F. Palmore, No. 75-811.

Dear Mr. Rodak:

Enclosed is the formal letter outlining our position with regard to the pending motion to vacate and remand in Superior Court v. Palmore, No. 75-811. While I did not think it was appropriate to include a further fact in a formal statement of position, I wanted you to know that I was confined in bed with hepatitis during almost the entire month of September. For that reason, I was unable to file a formal response to the Government's motion in a timely fashion. I sincerely regret any inconvenience to you or to the Court which the absence of such a response may have caused.

With appreciation for your consideration and courtesy, I am,

Sincerely,

Frank F. Flegal

Frank F. Flegal

Enclosure: As stated above.

FFF/11

GEORGETOWN UNIVERSITY LAW CENTER
WASHINGTON, D.C. 20001

OFFICE OF THE ASSOCIATE DEAN

October 13, 1976

Michael Rodak, Jr., Esquire
Clerk
Supreme Court of the United States
Washington, D.C. 20543

Re: Superior Court of the District of Columbia
v. Roosevelt F. Palmore, No. 75-811.

Dear Mr. Rodak:

Confirming our earlier telephone conversations, this is to advise you that respondent ("Palmore") will not oppose the pending motion filed by the Solicitor General to vacate the judgment and remand this case to the United States Court of Appeals for further consideration in light of Stone v. Powell, ___U.S.___ (1976).

Palmore's application for a writ of habeas corpus alleged violations of Fourth Amendment rights and necessarily brought into consideration the availability of the post-conviction writ in such circumstances. The judgment of the Court of Appeals directs the district judge to decide the merits of Palmore's Fourth Amendment claims. In view of this Court's holding in Kaufman v. United States, 394 U.S. 217 (1969), neither of the parties seriously briefed or argued before the Court of Appeals the issue of whether the post-conviction writ will lie in the circumstances of Palmore's case, and that court relied solely on Kaufman when it directed the District Court to proceed to a determination of the Fourth Amendment issues involved. After this Court had granted the petition for writ of certiorari in this case, it handed down its decision in Stone v. Powell and further explicated the principles announced in Kaufman and which govern disposition of post-conviction claims for relief involving Fourth Amendment claims. In these circumstances, and after consultation with members of the Solicitor General's staff, we advised the Government and your office that Palmore would not oppose the pending motion to vacate and remand for further consideration. We did so in the belief that it was altogether

appropriate to afford the United States Court of Appeals an opportunity to consider in the first instance a potentially dispositive issue which it had not considered seriously debatable when the appeal was decided prior to issuance of this Court's Stone decision.

Respectfully,

Frank F. Flegal

Frank F. Flegal
Attorney for Respondent

cc: The Solicitor General

FFF/ll

OCT 1 5 1976

Court .....
Argued ....., 19...
Submitted ....., 19...

Voted on ....., 19...
Assigned ....., 19...
Announced ....., 19...

No. 75-811

SUPERIOR COURT OF DIST. OF COLUMBIA

vs.

PALMORE

Relisted for Mr. Justice Blackmun - Motion to vacate and remand

Probably Relisted

See Palmore's counsel's letter of 10/13 concurring in SG's motion to remand

I need enlightenment on this - if it is relisted. I voted to deny motion on 10/8 - & did everyone else apparently. But appears there has been some conference with which I was not familiar

to remand in State 10/82

	HOLD FOR	CERT. G	CERT. D	JURISDICTIONAL STATEMENT N	JURISDICTIONAL STATEMENT POST	JURISDICTIONAL STATEMENT DIS	MERITS AFF	MERITS REV	MOTION AFF	MOTION G	MOTION D	ABSENT	NOT VOTING
.....													
Stevens, J.													
Rehnquist, J.													
Powell, J.													
Blackmun, J.													
Marshall, J.													
White, J.													
Stewart, J.													
Brennan, J.													
Burger, Ch. J.													

OCT 2 9 1976

Court ..... *Voted on*....., *19*...

Argued ....., *19*... *Assigned* ....., *19*... No. 75-811

Submitted ....., *19*... *Announced* ....., *19*...

SUPERIOR COURT OF DIST. OF COLUMBIA

vs.

PALMORE

RELIST for Justice Blackmun - Motion to vacate and remand.

on Stone v Powell

grant

	HOLD FOR	CERT.		JURISDICTIONAL STATEMENT				MERITS		MOTION		ABSENT	NOT VOTING
		G	D	N	POST	DIS	AFF	REV	AFF	G	D		
Stevens, J.			✓										
Rehnquist, J.		✓											
Powell, J.		✓											
Blackmun, J.		✓											
Marshall, J.		✓											
White, J.		✓											
Stewart, J.		✓											
Brennan, J.		✓											
Burger, Ch. J.		✓											

BOBTAIL BENCH MEMO

To: Justice Powell Date: 12/10/76

From: Tyler Baker

Re: Swain v. Pressley, No 75-811

Supports reversal, as urged by S.G.

Both because the briefs in this case are quite good and because statutory construction arguments are difficult to compress, this memo will lay out the basic framework of the two arguments, augmenting that framework with appropriate citations to the briefs and my reactions.

At this stage in the litigation this case presents a problem of statutory construction; the constitutional issue concerning the Suspension Clause is present only to the extent that it informs the approach to the statutory construction. At issue is 23 D.C. Code 110(g), which provides as follows:

> "An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention." (Emphasis added.)

The SG relies on the plain meaning of the words emphasized above. Despite the apparently unambiguous meaning of the words, the SG does not argue that any reference to legislative history is incorrect. He does argue that CADC asked the wrong questions in conducting the examination of the legislative history. The SG argues that CADC was incorrect to read the second phrase of §110(g) out of the statute because of silence or ambiguity in the legislative history. SG's

Brief, at 29. The SG contends that the appropriate approach in this case is as follows:

> "[The Court should not ask] whether the pertinent extrinsic materials demonstrate that 'Congress clearly intended' (Pet. App. 27a) the full jurisdictional consequences of Section 110(g), but rather whether the legislative history is so manifestly inconsistent with the legislation itself as to warrant the extraordinary conclusion that giving effect to the second clause of that section would negate rather than promote the Congressional will." SG's Brief, at 30.

The SG recognizes that it is appropriate to construe legislation so as to avoid constitution questions, but argues that the construction used to avoid the problem must be "fairly possible." SG's Brief at 31.

The SG finds in the legislative history no inconsistency with his suggested reading of the statute. The disputed section is part of a general 1970 reform of the D.C. court system designed to increase the efficiency of the system. There was a total transfer of local jurisdiction to the new local courts, and the role of §110 is to insulate the Article III courts from collateral involvement in such local criminal litigation in duplication of the collateral proceedings in the Superior Court. Although Congress did analogize the new D.C. courts to the state systems, the analogy is not perfect. The local judges, while lacking Article III status, are nominated by the President and confirmed by the Senate for 15 year terms. The SG draws support from the fact that §110 is patterned on 28 U.S.C. §2255. Section 2255 is clearly not only an exhaustion of remedies provision; rather, it provides a complete, self-contained substitute for habeas corpus. The SG asks why Congress would use §2255 as a model for a law which, if resps are correct, was intended to have such a different effect from §2255. The SG also points out, with great effect, that §2255 requires that persons convicted by Article I

make their collateral challenges by motion

territorial courts, ~~must be made~~ to those courts. Although that problem has not apparently been litigated on a constitutional basis, it raises the same question as raised here. The absence of debate about §110 may be explained by the fact that Congress presumed it constitutional because of the previous similar treatment of territorial courts. SG's Brief, at 48 and n. 27. The SG also points out that under the CADC interpretation, habeas petitions may be filed in the districts in which persons convicted in the D.C. courts are confined. One of the purposes of §2255 was to channel the challenges ~~these petitions~~ through the courts of conviction, and the same point applies here.. Finally, the SG distinguishes those cases relied upon by resps where the Court interpreted statutes so as to avoid the question of the Suspension Clause. The cases either involved a greater infringement on habeas corpus or less explicit statutory provisions. See SG's Brief, at 49-52.

The SG also goes into considerable detail about the underlying constitutional question. He agrees ~~agrees~~ with Judge Robb's dissent in essence, arguing that the problem here is answered ~~answered~~ by Palmore v. United States, 411 U.S. 389, in which the Court held that there was no problem in being convicted in the District by a non-Article III judge. Assuming that the fact that non-Article III judges would hear the §110 motions, and assuming that the lack of protection of such judges' tenure and salary results in a "diminution" of the right of habeas corpus, the SG argues that there is still no "suspension." SG's Brief, at 59. Using history, the SG argues that there would be no constitutional problem if habeas corpus were pared back to its original limitation to jurisdictional questions. ~~understanding.~~ He notes that this case does not involve that problem because the scope of issues that can be raised under §110 covers all of present-day habeas corpus.

The equal protection argument is answered by the assertion that there is not right to litigate in any particular tribunal.

Resps rely on the arguments used by CADC. They would read §110(g) as nothing more than an exhaustion provision. Under their theory the purpose of the statute was to codify a previously vague, common law power of collateral review. Responding to the SG's argument, resps admit that improving efficiency was a motivating factor in the 1970 reform, but argue that there is not evidence that Congress thought of collateral attack as being part of the problem of backlog. Resps' Brief, at 18 n. 15. Resps point to the limited legislative history in which the only point that is clearly made is a reference to the previously unsettled, inherent power of review. They rely on the absence of statements recognizing the effect of the statute that is now advanced by the SG, putting this absence of reaction in comparision to strong reactions to other provisions contemplating a cut-back in habeas corpus. Resps Brief, at 23 n.21. Resps rely heavily on the analogy to the relationship that exists between federal and state courts, drawing on the analogy to those systems in the discussions of the 1970 reform of the District court system. From the pattern of the statute as a whole, they see an intent by Congress to emulate that relationship for the District.[1] In this same vein, they argue that there were no amendments here to the basic jurisdictional provisions of Title 28. Resps answer the argument about habeas petitions being brought in districts in which D.C. prisoners are confined, by referring to an understanding that such cases will be transferred back to the D.C. for action.

[1] of course, that relationship includes the right to habeas in federal court

Resps spend considerably less energy on the underlying constitutional question; for purposes of interpretation of the

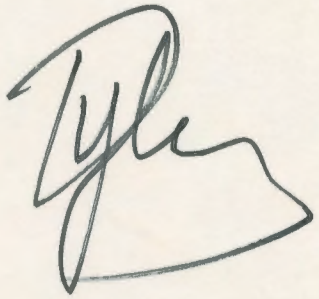
statute there can be no doubt that there is a problem which might justify an interpretation which eliminates the need to address the question. Resps argue that the Article III protections are important enough to justify a conclusion that this statute would amount to a suspensiion. They argue, without much force, that the local D.C. judges are likely to be more responsive to the parochial concerns of their locality. Resps' Brief, at 49. Resps do not have much of an answer to the SG's point about this same problem existing for §2255 and territorial courts. They state that the Suspension Clause applies to current unincorporated territories only by legislative grace, so the full force of the Suspension Clause problem cannot arise. Resps' Brief, at 54 n. 53

Discussion:

Resps have identified some problems. I certainly would have expected more discussion of the effect claimed by the SG than there is. There is a tradition of avoiding interpretations that require addressing the Suspension Clause. But, the statutory language here is plain. At most the legislative history fails to support positively the apparent effect of the language of the statute. I do not see any inconsistency, and the fact that §2255 does seem to have this same effect for territorial courts is important. Despite the fact that 8 good judges reached the result, I do not think that this legislative history is nearly strong enough to justify ignoring the language of the statute.

I do not think that the Court should decide the constitutinnal question. I would remand so that the Court will have a good, full consideration below on which to draw. I tend, however, to agree with Judge Robb that the first Palmore is at least very

of the result here. The XXX District of Columbia is sui generis in many respects. I do not see that the difference in the Article III protections in this context is sufficient to justify the conclusion that habeas has been suspended by this statute. [redacted]



75-811 SWAIN v. PRESSLEY Argued 1/19/77

CADC construed §110 of D.C. Court Reform Act as allowing writs of H/C ~~to~~ by Art III Cts with respect to convictions in D.C. Superior Courts. ~~—~~

Statutory quest. I agree with SG that §110(g) - by its plain language (similar to that of §2255) - precludes H/C relief in Art III courts of D.C. §110 provides fully for collateral review by the DC Court Reform courts (i.e. D.C. Superior Ct).

Const. quest. Nor is there any Const. infirmity in so limiting collateral review to the DC statutory courts. Const. issue is resolved by our decision in Palmore - holding that Art III does not ~~require~~ ~~that~~ prevent Congress from conferring felony juris in the DC Superior Court

Bork (SG) - His last argument as SG
(? Think he has been a
fmr SG).

§ 1106(g) is so clear on its face
in denying juris that Const. issue
can't be avoided.

§ 110 confers juris on DC courts
(Dist Cts) to grant collateral relief
(SG Brief is informative)

Forster (Reply)

Responding to J. White, Forster
says that one convicted in
~~Sup'r~~ Superior Ct does not have to ~~[redacted]~~
seek collateral relief in that
Court before going to Art III
Court on H/C.

Relies on difference between
judges appointed for life & one
appointed for 15 yrs.

No. 75-811, Swain v. Pressley — Conf. 1/21/77

Reversed 7-2

The Chief Justice **Reverse**

apply literal language of § 110(g) - agree with S.G. Palmore held that Sup Court is a court of competent jurisdiction to convict. Thus controls on Court. issue

[redacted] Stevens, J. **Reverse**

There is a safety valve in statute

Brennan, J. **Affirm**

Right of fed. H/C for fed. prisoners goes back to 1789. § 110(g) should not be construed to with the purpose to seek H/C in an Art III Court.

Stewart, J. **Reverse**

Language of § 110(g) is clear & controlling. Also agree with SG on Court. issue

White, J.

Reverse

Agree with Potter

Marshall, J.

Affirm

Agree with W & B

Blackmun, J. Reverse

Powell, J. Reverse

See my note

Rehnquist, J. Reverse

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

CHAMBERS OF
THE CHIEF JUSTICE

March 8, 1977

Re: 75-811 - Swain v. Pressley

MEMORANDUM TO THE CONFERENCE:

Enclosed is concurring opinion in the above. I may refine it somewhat.

Regards,

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

CHAMBERS OF
JUSTICE POTTER STEWART

March 8, 1977

75-811, Swain v. Pressley

Dear John,

I am glad to join your opinion for the Court in this case.

Sincerely yours,

P.S.

Mr. Justice Stevens

Copies to the Conference

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

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 11, 1977

RE: No. 75-811 Swain v. Pressley

Dear John:

Please join me.

Sincerely,

Bill

Mr. Justice Stevens

cc: The Conference

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

March 11, 1977

Re: No. 75-811 - Swain v. Pressley

Dear Chief:

Please join me in your concurring opinion.

Sincerely,

WHR

The Chief Justice

Copies to the Conference

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

March 11, 1977

Re: No. 75-811 - Swain v. Pressley

Dear John:

Please join me.

Sincerely,

Byron

Mr. Justice Stevens

Copies to Conference

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

March 16, 1977

Re: No. 75-811 - Swain v. Pressley

Dear Chief:

Please join me in the recirculation today of your opinion concurring in part and concurring in the judgment.

Sincerely,

H.A.B.

The Chief Justice

cc: The Conference

March 16, 1977

No. 75-811 Swain v. Pressley

Dear John:

Please join me in your opinion for the Court.

In view of the Chief's concurring opinion, I think I will add something along the following lines:

> "I concur in the opinion of the Court. In view, however, of the concurrence filed today by the Chief Justice, I write merely to make clear that I do not read Part II of the Court's opinion as being incompatible with the views I have expressed previously with respect to the nature and scope of habeas corpus. Schneckloth v. Bustamonte, 412 U.S. 218, 250 (Powell, J., concurring)."

Sincerely,

Mr. Justice Stevens

lfp/ss

cc: The Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 16, 1977

Re: No. 75-811, Swain v. Pressley

Dear John:

Please join me.

Sincerely,

T.M.

Mr. Justice Stevens

cc: The Conference

To: The Chief Justice
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Rehnquist
Mr. Justice Stevens

From: Mr. Justice Powell

Circulated: MAR 18 1977

1st DRAFT

Recirculated: _____

SUPREME COURT OF THE UNITED STATES

No. 75-811

C. L. Swain, Superintendent, Lorton Reformatory, Petitioner, *v.* Jasper C. Pressley.

On Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit.

[March —, 1977]

MR. JUSTICE POWELL, concurring.

I concur in the opinion of the Court. In view, however, of the concurrence filed today by THE CHIEF JUSTICE, I write merely to make clear that I do not read Part II of the Court's opinion as being incompatible with the views I have expressed previously with respect to the nature and scope of habeas corpus. *Schneckloth* v. *Bustamonte,* 412 U. S. 218, 250 (1973) (POWELL, J., concurring).

THE C. J.	W. J. B.	P. S.	B. R. W.	T. M.	H. A. B.	L. F. P.	W. H. R.	J. P. S.
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Concurring opinion Typed draft 3/8/77	join JPS 3/11/77	join JPS 3/8/77	join JPS 3/11/77	join JPS 3/16/77	join CJ 3/16/77	join JPS 3/16/77	join CJ 3/11/77	3rd draft 3/8/77
2nd draft 3/10/77 3rd draft 3/16/77 4th draft 3/18/77						Concurring opinion 1st draft 3/18/77		4th draft 3/16/77 5th draft 3/17/77
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