

In the

ORIGINAL

Supreme Court of the United States

MICHAEL P. LANE, DIRECTOR,
ILLINOIS DEPARTMENT OF CORRECTIONS,

Petitioner,

v.

LAWRENCE WILLIAMS AND OSCAR SOUTHALL

)
)
)
)
)
)
)

NO. 80-1240

Washington, D. C.

December 1, 1981

PAGES 1 thru 36

ALDERSON  REPORTING

400 Virginia Avenue, S.W., Washington, D. C. 20024

Telephone: (202) 554-2345

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

IN THE SUPREME COURT OF THE UNITED STATES

- - - - -;

MICHAEL P. LANE, DIRECTOR, :

ILLINOIS DEPARTMENT OF CORRECTIONS, :

Petitioner, :

v. : No. 80-1240

LAWRENCE WILLIAMS AND OSCAR SOUTHALL :

- - - - -;

Washington, D. C.

Tuesday, December 1, 1981

The above-entitled matter came on for oral

argument before the Supreme Court of the United States at

1:31 o'clock p.m.

APPEARANCES:

MICHAEL B. WEINSTEIN, ESQ., Assistant Attorney

General of Illinois, Chicago, Illinois; on

behalf of the Petitioner.

MARTHA A. MILLS, ESQ., Chicago, Illinois; on

behalf of the Respondents.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C O N T E N T S

<u>ORAL ARGUMENT OF:</u>	<u>PAGE</u>
MICHAEL B. WEINSTEIN, ESQ., on behalf of the Petitioner	3
MARTHA A. MILLS, ESQ., on behalf of the Respondents	23
MICHAEL B. WEINSTEIN, ESQ., on behalf of the Petitioner - rebuttal	34

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

P R O C E E D I N G S

CHIEF JUSTICE BURGER: We will hear arguments next in Lane against Williams and Southall.

Mr. Weinstein, I think you may proceed whenever you are ready.

ORAL ARGUMENT OF MICHAEL B. WEINSTEIN, ESQ.,

ON BEHALF OF THE PETITIONER

MR. WEINSTEIN: Thank you, Mr. Chief Justice, and may it please the Court, this case is here on a petition for certiorari to the United States Court of Appeals for the Seventh Circuit. The issue presented is whether the court of appeals decision conflicts with this Court's 1979 decision in United States versus Timmreck, and thereby goes beyond those due process requirements required for a knowing and voluntary guilty plea. In other words, does Timmreck mandate a contrary result?

It is our position that the court of appeals decision does indeed conflict with Timmreck. We believe that if any error occurred, it was only a failure to comply with the formal requirements of Illinois Supreme Court Rule 21402. That is the Illinois rule which pertains to the entry of guilty pleas, and it is the state counterpart to Rule 11 of the Federal Rules of Criminal Procedure, which was the issue, or which was the rule involved in Timmreck.

We also submit that Rule 402 is very similar in

1 content to the Federal Rule of Civil Procedure, Rule 11 --
2 Criminal Procedure. Therefore, we believe --

3 QUESTION: Mr. Weinstein, before you get into your
4 argument, may I ask you a question about the facts? As I
5 understand it, the relief granted by Judge Marshall, was it,
6 in this case, was to cancel the three-year mandatory parole
7 term, to modify the sentence.

8 MR. WEINSTEIN: That is correct, Your Honor.

9 QUESTION: And as I also understand it, these two
10 Respondents have actually served their sentences.

11 MR. WEINSTEIN: That is correct.

12 QUESTION: Why isn't the case moot?

13 MR. WEINSTEIN: The question arose in the Seventh
14 Circuit the first time it was before the Seventh Circuit,
15 and that court ruled and, we believe, correctly, that there
16 were certain collateral consequences that would attach to
17 the Petitioners -- at that time there were three, actually
18 four -- if the use of their parole term or the fact that
19 they had violated parole and had started to serve a parole
20 term could later be used if they committed another crime in
21 that regard.

22 However, more importantly, perhaps, we perceive a
23 situation of, because the parole terms are so short -- at
24 that time they were five, three, and two years, and now they
25 have been modified by statute to three, two, and one -- we

1 have a situation where we have a problem which is capable of
2 repetition yet evading review.

3 QUESTION: Well, but all the judge has to do is
4 order -- I mean, if he had granted relief in the form of
5 requiring that the man be allowed to plead again, to enter a
6 new plea, then it wouldn't be moot, because you would set
7 aside the judgment of guilt, which would seem to me to be
8 the correct relief on habeas corpus.

9 I don't understand the relief on habeas corpus
10 where you modify a sentence. Where does the judge get the
11 power to do that?

12 MR. WEINSTEIN: I assume that -- and far be it
13 from me to assume what Judge Marshall felt, but I assume
14 that his feeling was that it would be unfair to allow the
15 individuals to replead because in fact they had already
16 started serving their time, that is, the mandatory parole.
17 If they were allowed to replead, the state could then
18 prosecute them all over again, and who knows --

19 QUESTION: Well, maybe they are unwise to seek
20 that relief, but isn't that the only relief the statute
21 offered them?

22 MR. WEINSTEIN: Well, the Seventh Circuit didn't
23 allow that type of relief in Baker versus Finkbeiner, which
24 was the first case, and Judge Marshall was obviously
25 applying the Baker case to these particular facts.

1 QUESTION: Mr. Weinstein, certainly this Court has
2 virtually bent itself into a corkscrew on mootness on behalf
3 of habeas plaintiffs in cases like Sedbaum versus New York
4 and Carafas versus Lavalay, talking about the future
5 consequences, denial of job opportunities, and that sort of
6 thing, as to mootness, hasn't it?

7 MR. WEINSTEIN: Yes, Justice Rehnquist. The point
8 that I want to make is that Judge Marshall has before him a
9 class action involving the same issue. He has certified the
10 class already. I assume that if this Court were to
11 determine that this case were moot, and from our particular
12 standpoint, of course, the decision would be vacated and we
13 would technically win, nevertheless Judge Marshall will
14 probably go ahead and still make the same ruling with regard
15 to the class, and we would be back -- well, we may not be
16 back here --

17 QUESTION: Yes, but the question is --

18 MR. WEINSTEIN: -- but we would be back arguing
19 the case once again.

20 QUESTION: Well, maybe it would be unfortunate,
21 but if it is moot, we don't have any power to do anything
22 about it.

23 MR. WEINSTEIN: I understand.

24 QUESTION: And the cases Justice Rehnquist
25 referred to were cases where there were collateral

1 consequences of the conviction which was set aside. Here
2 the conviction stands, as I understand it.

3 MR. WEINSTEIN: I understand that.

4 QUESTION: Well --

5 MR. WEINSTEIN: Yes, Justice White?

6 QUESTION: When they asked for habeas corpus,
7 where were they?

8 MR. WEINSTEIN: Where were they at the time? At
9 the time that they initially filed their petitions, they
10 were incarcerated at -- I believe both of them were at
11 Stateville.

12 QUESTION: Where were they when the very latest
13 petition, habeas corpus --

14 MR. WEINSTEIN: Well, their initial petitions were
15 filed in 1977, and this case has been up and down to the
16 Seventh Circuit twice. Today, in 1981, they are out of
17 custody of the Department of Corrections. They -- as far as
18 I know, the Department of Corrections has no control over
19 them.

20 QUESTION: Their relief was denied?

21 MR. WEINSTEIN: Excuse me, Your Honor.

22 QUESTION: Was their relief denied or not?

23 MR. WEINSTEIN: Was their relief denied? No,
24 their relief was granted originally.

25 QUESTION: All right. Now, when was it granted?

1 MR. WEINSTEIN: Initially it was granted in
2 January of 1978.

3 QUESTION: And they were in prison then?

4 MR. WEINSTEIN: They were. One of them was not
5 actually in prison, but he was still in custody because he
6 was serving out the remainder of his sentence on a new
7 parole.

8 QUESTION: Was there any question about their
9 having exhausted state remedies?

10 MR. WEINSTEIN: Yes. In the first case Williams
11 won, when we went to the Seventh Circuit the first time, we
12 argued the substantive issues, but we also argued the
13 question of exhaustion of state court remedies.

14 QUESTION: Well, why had they exhausted state
15 remedies? You still don't know, do you?

16 MR. WEINSTEIN: Well, Your Honor, the Seventh
17 Circuit ruled that they had to exhaust state remedies. The
18 case was returned to Judge Marshall. Judge Marshall placed
19 it on what he called his past case calendar. Actually, he
20 held it in abeyance. There was another case which did not
21 involve these Petitioners that was pending before the
22 Illinois Supreme Court on a petition for leave to appeal,
23 which is the same as petition for certiorari.

24 The Illinois Supreme Court denied that petition.
25 Judge Marshall then felt that taking that into --

1 QUESTION: That it would be futile.

2 MR. WEINSTEIN: That it would be futile. That is
3 correct.

4 QUESTION: And is that the rule around in
5 Illinois, that you don't need to exhaust state remedies in
6 those --

7 MR. WEINSTEIN: Well, I don't believe it is, Your
8 Honor. We did not -- We did not subsequently re-raise the
9 exhaustion issue when we went back to the Seventh Circuit
10 for two reasons. The first was that the Post-Conviction
11 Hearing Act, which is our belief what these Respondents
12 should have exhausted, the Post-Conviction Hearing Act in
13 Illinois specifies they must be in prison, and at that time
14 they were no longer in prison.

15 QUESTION: I see.

16 MR. WEINSTEIN: Secondly, there was and still is
17 another case pending in the Seventh Circuit, Norman versus
18 Scott, in which the exhaustion once again --

19 QUESTION: So there is no collateral relief --
20 there was no -- at least there is no collateral relief
21 available now in Illinois for these people?

22 MR. WEINSTEIN: For these particular people, I do
23 not believe so.

24 QUESTION: I don't understand, Mr. Weinstein,
25 getting back to my brother Stevens' question to you, what

1 happens to them if you prevail? Are they now released, did
2 I understand you to say?

3 MR. WEINSTEIN: If we were to prevail?

4 QUESTION: Yes.

5 MR. WEINSTEIN: If we were to prevail, the
6 decision of the Seventh Circuit as well as Judge Marshall's
7 decision that the mandatory parole term admonishments should
8 have been given, and that there was a constitutional
9 deprivation. Those decisions obviously --

10 QUESTION: No, my question is, what happens to
11 these Petitioners?

12 MR. WEINSTEIN: To these -- to these --

13 QUESTION: Williams and Southall. What happens to
14 them?

15 MR. WEINSTEIN: If we prevail?

16 QUESTION: Yes.

17 MR. WEINSTEIN: Specifically to them I do not
18 believe that anything will happen, except that their records
19 will now be reflected -- their records that are with the
20 Department of Corrections shows that the district court
21 entered a writ of -- granting habeas corpus relief and --

22 QUESTION: I know, but habeas ordinarily ends up,
23 if the habeas petitioner prevails, in a release, doesn't it?

24 MR. WEINSTEIN: That's correct, Your Honor.

25 QUESTION: But if you prevail here, you can't put

1 them back in prison, as I understand you.

2 MR. WEINSTEIN: No, we cannot.

3 QUESTION: Do you want to?

4 MR. WEINSTEIN: Do we want to? Well --

5 QUESTION: You just want to restore their
6 mandatory parole, don't you?

7 MR. WEINSTEIN: That is correct, Your Honor, and --

8 QUESTION: Will there then be, if you prevail,
9 will they from now on be on mandatory parole?

10 MR. WEINSTEIN: The individuals were both -- or
11 one of them was released on bail pending the first Seventh
12 Circuit decision, and the Department of Corrections let
13 their time run out. They then subsequently released them.
14 They would not have revoked them had they done something
15 else.

16 QUESTION: Well, your answer to me then is, they
17 do not -- if you prevail, they will not be restored to
18 mandatory parole.

19 MR. WEINSTEIN: No, Your Honor. I do not believe
20 that they will be.

21 QUESTION: Then why isn't it moot?

22 MR. WEINSTEIN: Excuse me?

23 QUESTION: Why isn't the case moot?

24 MR. WEINSTEIN: Again, Your Honor, we believe it
25 is not moot because of the possible collateral consequences

1 to these individuals as well as the --

2 QUESTION: If they commit crimes in the future.

3 MR. WEINSTEIN: If they commit crimes in the
4 future.

5 QUESTION: No matter what you do, the records are
6 going to be the same.

7 QUESTION: Certainly the recidivist statute --
8 this would be a conviction of a crime with a mandatory
9 parole sentence on their record that if we reversed and it
10 would not be if we affirmed.

11 MR. WEINSTEIN: That is my point exactly, Justice
12 Rehnquist.

13 QUESTION: You have to explain that to me. As I
14 understand it, the conviction of the crime will remain, no
15 matter what happens in this case.

16 MR. WEINSTEIN: The conviction of the crime will
17 remain.

18 QUESTION: And the records that show that they
19 violated their parole will remain there.

20 MR. WEINSTEIN: The records show at the present
21 time that the district court entered a writ of habeas
22 corpus, that their mandatory parole terms could not continue
23 to be served, and if in fact we were to prevail, that would
24 be expunged from the records. There would be no indication
25 that they ever prevailed at all in the district court and in

1 the Seventh Circuit.

2 QUESTION: All you want to do is get rid of the
3 opinion.

4 QUESTION: Well, the significance of the --

5 QUESTION: Isn't that right?

6 MR. WEINSTEIN: No, Justice Marshal. We have this
7 class --

8 QUESTION: Well, what would the judgment --

9 MR. WEINSTEIN: We have this class pending in the
10 Northern District of Illinois. The issue is there. We have
11 a case pending in the Seventh Circuit. The issue is there.

12 QUESTION: Yes, but it is not here.

13 MR. WEINSTEIN: We are talking about -- we are
14 talking about many, many prisoners who were involved from
15 January 1st of 1973 until May -- I think it was May 19th of
16 1975, who were subject to the admonishments of the mandatory
17 parole and may not have received those admonishments.

18 QUESTION: Do you think the state need only show
19 that a writ of habeas corpus was granted on the record if
20 you lose this case? Didn't the writ of habeas corpus, as
21 Justice Stevens suggested, really mean that the plea was
22 invalid?

23 MR. WEINSTEIN: Justice White, I believe you are
24 correct. I believe --

25 QUESTION: Well, then, there has been no

1 conviction.

2 MR. WEINSTEIN: I believe you are correct that in
3 any case that the plea was invalid, but that the --

4 QUESTION: In which event if you lose this case --

5 MR. WEINSTEIN: -- but that the relief --

6 QUESTION: -- he would be entitled to have his
7 record show that he was never properly convicted.

8 MR. WEINSTEIN: That is correct.

9 QUESTION: And have a new trial.

10 MR. WEINSTEIN: Excuse me, Your Honor?

11 QUESTION: And have a new trial.

12 MR. WEINSTEIN: And have a new trial. The key is
13 that the relief -- the relief that was granted was simply
14 the expungement of the parole term. It was not --

15 QUESTION: That may be the relief, but the
16 rationale was that he was never convicted.

17 MR. WEINSTEIN: That's correct. That is correct.

18 QUESTION: And you don't want that kind of a
19 record to -- you want the record to show he was properly
20 convicted.

21 MR. WEINSTEIN: Absolutely, Justice White.

22 QUESTION: And you surely, I take it, do not want
23 it sent back if Judge Marshall, District Judge Marshall was
24 in error. You don't want it sent back and have a new trial.

25 MR. WEINSTEIN: No, Your Honor.

1 QUESTION: Although -- the potential sentence was
2 up to 20 years here, wasn't it?

3 MR. WEINSTEIN: The potential sentence, both of
4 the individuals plead guilty to the crime of burglary. At
5 that time burglary carried a potential sentence of anywhere
6 from one to 20 years incarceration.

7 QUESTION: In a new trial, in your view, could
8 they be given a sentence exceeding the one that was
9 originally given, even though it would have then been
10 declared to be a nullity?

11 MR. WEINSTEIN: I hesitate to go that far, Mr.
12 Chief Justice.

13 QUESTION: But, Mr. Weinstein, I thought you
14 answered me earlier that if you win, nothing can happen to
15 these fellows. You can't get them back to prison. How can
16 they retry them?

17 MR. WEINSTEIN: As Justice White has pointed out,
18 while the relief that was ordered was that they would
19 expunge the mandatory parole term, the rationale is that the
20 underlying plea was invalid because they had never been
21 admonished --

22 QUESTION: Well, is there any judgment setting
23 aside the conviction? Judge Marshall certainly entered no
24 such judgment.

25 MR. WEINSTEIN: I don't believe he actually

1 entered that judgment.

2 QUESTION: They didn't ask for any such judgment,
3 did they?

4 MR. WEINSTEIN: Not to my knowledge.

5 QUESTION: They didn't ask to have the judgment
6 set aside, as I remember the record.

7 MR. WEINSTEIN: I suspect that the --

8 QUESTION: They didn't even allege they wouldn't
9 have pleaded guilty.

10 MR. WEINSTEIN: I suspect that they probably
11 wouldn't have, because both of these petitions were filed
12 just after the Seventh Circuit decided the Baker versus
13 Finkbeiner case. In fact, one of the petitions quite
14 frankly refers right to that Baker case, and I think it is
15 very clear that they saw the Baker case and they said, aha,
16 we are home free.

17 QUESTION: Well, they didn't want the plea set
18 aside because they might be retried.

19 MR. WEINSTEIN: That's correct.

20 QUESTION: Whereas, if they just expunge their
21 mandatory parole, they are home free.

22 MR. WEINSTEIN: They simply felt that they were
23 home free, they would be out right then and there.

24 QUESTION: And if retried, they might get a
25 sentence conceivably ten years, and then you would have

1 another case to test whether they could have an increased
2 sentence the second time around.

3 MR. WEINSTEIN: Well, that is possible.

4 QUESTION: Mr. Weinstein, how can you retry them
5 without setting aside the judgment of convictions?

6 QUESTION: Yes.

7 QUESTION: How can you treat this as if it were an
8 invalid plea, which meant that the conviction was improper?

9 MR. WEINSTEIN: Well, unfortunately --

10 QUESTION: That is not the way the case comes to
11 us.

12 MR. WEINSTEIN: Unfortunately, that is the
13 rationale that Judge Marshall used.

14 QUESTION: The rationale that the district court
15 used.

16 QUESTION: Well, it was one of the questions from
17 the bench that raised the question whether Judge Marshall
18 had authority to do what he did, that is, to modify the
19 sentence by striking the mandatory parole. He either had to
20 grant full relief, which meant a new trial, or nothing.

21 MR. WEINSTEIN: Judge Marshall was relying upon
22 the Baker disposition. I believe Baker was relying,
23 perchance, on the Santobello disposition.

24 QUESTION: Did Baker come here, Mr. Weinstein?

25 MR. WEINSTEIN: Baker did not come here. The

1 companion case, Ferris, there was a petition for certiorari
2 and that was denied by this Court.

3 QUESTION: But Santobello was a very different
4 case. Santobello was a case where there was deliberate
5 misrepresentation and withholding information from the court.

6 MR. WEINSTEIN: That is correct, Mr. Chief Justice.

7 QUESTION: That is not present here.

8 MR. WEINSTEIN: That is our belief. That is not
9 present in this case. In Timmreck, the Solicitor General's
10 office stated the question as being whether a defendant may
11 obtain collateral relief from his conviction under Section
12 2255 solely because the district court violated Rule 11 in
13 accepting his guilty plea. We submit that if one
14 substitutes Section 2254 for 2255, and Illinois Supreme
15 Court Rule 402 for Rule 11, our case raises the same issue.

16 We believe that Timmreck held that the failure to
17 admonish as to a mandatory parole term, in Timmreck's case
18 the mandatory special parole term, merely constitutes a
19 failure to comply with the formal requirements of a rule
20 governing the entry of guilty pleas, and does not constitute
21 a constitutional defect so as to give rise to habeas corpus
22 relief.

23 Indeed, habeas corpus relief should not be allowed
24 to do service for an appeal. In this particular case,
25 neither of the Petitioners ever took a direct appeal, nor

1 did they file an Illinois Post-Conviction Hearing Act.
2 Indeed, they have not filed any type of petition, sought any
3 type of appeal in the Illinois courts.

4 We believe the cases are similar in that both this
5 case and Timmreck involved a plea bargain. Neither in
6 Timmreck nor here was a direct appeal taken. Indeed, as we
7 indicated, this issue was not raised at all until after the
8 Baker decision of -- in response to that decision making the
9 rounds of Stateville.

10 And most importantly, neither respondent has ever
11 alleged or argued that he would not have plead guilty had he
12 known of the mandatory parole term.

13 The Illinois Supreme Court in the People versus
14 Wills decision found that the mandatory parole term
15 admonishment is required under Supreme Court Rule 402.
16 However, it also found that the failure to admonish, while
17 error, is not of constitutional significance. It is simply
18 one factor to be taken into account when determining whether
19 or not the plea was voluntary.

20 QUESTION: Would that be particularly so if there
21 is no allegation that the man was -- had not been informed
22 by his counsel, for example, of the three-year mandatory
23 sentence -- mandatory parole provision?

24 MR. WEINSTEIN: Excuse me. I don't --

25 QUESTION: If the Petitioner seeking habeas corpus

1 failed to allege that he was misled, that is, that his
2 lawyer didn't tell him that there was a three-year mandatory
3 parole, and that the court didn't tell him, are you
4 suggesting that that is a prerequisite to any relief in a
5 case like this, under the Illinois rules?

6 MR. WEINSTEIN: Well, I don't know for sure under
7 the Illinois rules, but as I have stated under the Illinois
8 rules, the court will take -- will look at each case on a
9 case by case basis and decide whether or not the failure to
10 admonish was of sufficient importance as to indicate that
11 the plea itself was not knowing and voluntary.

12 We believe that the -- by the way, the Wills
13 decision is not specifically applicable to these cases
14 because Wills was decided in May of 1975. Both of the
15 Respondents in this case were -- plead guilty in March of
16 1975, and Wills was specifically made prospective only.

17 Indeed, at the time that these individuals plead
18 guilty, there existed in Illinois a decision entitled People
19 versus Krantz, which had been decided approximately ten
20 months prior to Wills, and in the Krantz opinion, the
21 Illinois Supreme Court *indicta* indicated that no
22 admonishment as to the mandatory parole term was required at
23 all. The Wills decision overrules Krantz to that extent.

24 We believe that the appropriate inquiry on
25 collateral attack is not whether an error of law occurred,

1 but rather whether the resulting conviction violated due
2 process. We submit that in this case it did not. We
3 believe that the mandatory parole term is not a direct
4 consequence of the plea, since reincarceration comes into
5 play only if a defendant violates the terms of parole.

6 As Judge Tone noted in the Bachner case, the
7 Seventh Circuit decision in Bachner versus United States --
8 here we are -- "The failure to advise a defendant of the
9 mandatory parole term does not inherently result in a
10 complete miscarriage of justice. Unlike ineligibility for
11 parole, the mandatory parole term has no effect on the
12 period of incarceration, and does not ever become material
13 unless the defendant violates the conditions of his parole.
14 It would be as unrealistic, we think, to assume that he
15 would expect to do so and be influenced by that expectation
16 at the time he is considering whether to plead guilty as it
17 would be to assume that he would be influenced by other
18 contingencies he is not advised about."

19 QUESTION: Mr. Weinstein, I would like to get back
20 to the mootness point for a minute, since several of my
21 colleagues as well as I seem to be interested in it. The
22 decision we are reviewing is that of the Seventh Circuit set
23 forth -- which begins on Page 45 of the Joint Appendix?

24 MR. WEINSTEIN: I believe that is correct, Your
25 Honor.

1 QUESTION: And in that case, in Judge Cummings'
2 opinion, he referred on Page 46 --

3 MR. WEINSTEIN: Footnote 1.

4 QUESTION: -- to an earlier case in which the
5 Seventh Circuit had held the petitions were not moot because
6 of the surviving consequences.

7 MR. WEINSTEIN: That is correct, Your Honor.

8 QUESTION: So at least that obviously doesn't bind
9 this Court, but the Seventh Circuit did not feel that the
10 case was moot.

11 MR. WEINSTEIN: Yes, Justice Rehnquist. It does
12 not bind this Court, but the issue was raised in the Seventh
13 Circuit and the Seventh Circuit felt it was not moot.

14 QUESTION: And it is no more moot now than it was
15 then.

16 MR. WEINSTEIN: I do not believe it is any more
17 moot now than it was then.

18 In conclusion --

19 QUESTION: What is the cite on the case on the
20 Illinois Supreme Court case that --

21 MR. WEINSTEIN: People versus Wills, Your Honor?

22 QUESTION: Wills.

23 MR. WEINSTEIN: The Wills decision is at 330
24 Northeast Second 505, 61 Illinois Second 105, May 19th, 1975.

25 I believe we have cited it in our brief. I am

1 sure we have.

2 In conclusion, we believe that if the federal
3 courts are not to grant Section 2255 relief due to a failure
4 to admonish as to the mandatory special parole term, since
5 the error is "neither constitutional nor jurisdictional" in
6 the words of this Court in the Timmreck decision, then they
7 certainly should not grant Section 2254 relief against a
8 state court prisoner for the very same problem.

9 Thank you very much.

10 CHIEF JUSTICE BURGER: Very well.

11 Ms. Mills?

12 ORAL ARGUMENT OF MARTHA A. MILLS, ESQ.,

13 ON BEHALF OF THE RESPONDENTS

14 MS. MILLS: Mr. Chief Justice, and may it please
15 the Court, we are talking about a -- just one issue in this
16 case, and that is the fairness of a negotiated plea
17 agreement where one of the sides to the agreement did not
18 live up to its bargain.

19 The Timmreck case, I think, is not applicable to
20 this case at all. In the first place, it was not the same
21 kind of plea bargain, and to the extent that there was a
22 plea bargain, the bargain in that case was kept. Timmreck
23 plead guilty to one charge, with an agreement with the
24 prosecutor to drop certain other charges. There was no
25 agreement with the court at all. The charges were dropped

1 that the prosecutor agreed to drop. So in that sense his
2 plea agreement was kept.

3 The court was not a party to that agreement. The
4 court merely informed him of the sentence, later sentenced
5 him to a term which included mandatory parole, which he had
6 not told him about, but that was not highly relevant in his
7 case as the maximum sentence he got was well within the
8 range that he was informed in the first place, i.e., 15
9 years.

10 QUESTION: Now, is there any representation on
11 behalf of the Respondents that in fact they were not aware
12 of the mandatory --

13 MS. MILLS: No, sir. There is no such allegation.

14 QUESTION: Let me move from there to a
15 hypothetical. Suppose hypothetically that a lawyer
16 representing him felt that as an officer of the court,
17 confronted with this, he had an obligation to the court to
18 inform the court that before going in on the plea he had in
19 fact advised that there was a mandatory -- three-year
20 mandatory parole provision.

21 MS. MILLS: I think that might change the
22 situation, but that is not the case here. In this case,
23 both --

24 QUESTION: Why doesn't that --

25 MS. MILLS: Pardon?

1 QUESTION: Why doesn't it logically follow that to
2 get any relief at all, there must be a representation that
3 counsel did not advise, that he was not informed by anyone,
4 and that the judge at the time of sentencing did not inform
5 him, all three of these things?

6 MS. MILLS: In a sense, Mr. Justice, it is a
7 practical question. These two petitioners came in pro se.
8 I was appointed to represent them by Judge Marshall at a
9 time at which he had already rendered an opinion in the
10 petitioners' favor. And therefore there was no necessity at
11 that time to amend or supplement the petitions. Should the
12 case be remanded on that sole point, presumably I could go
13 talk to these people and ask them, can you make that kind of
14 a representation. So I think it is a practical pleading
15 problem, really.

16 QUESTION: When they were tried and sentenced
17 originally, did they have counsel?

18 MS. MILLS: I think they had public defenders.

19 QUESTION: They had --

20 MS. MILLS: Public defenders.

21 QUESTION: Well, that is counsel.

22 QUESTION: I suppose if the state wanted to create
23 an issue, they could have a trial on whether or not, A, they
24 were told, or whether their lawyers knew or should have
25 known.

1 MS. MILLS: The record below -- well, I am trying
2 to remember. It has been a long time since the first
3 petition. I believe they --

4 QUESTION: Well, you wouldn't think -- would you
5 think there was a breach of the plea bargain if it were
6 tried out and it was found or they admitted that, yes, we
7 knew of the special parole term, but the judge didn't advise
8 us of it?

9 MS. MILLS: No, I think that would put it in a
10 Timmreck class where it is more of a technical violation.
11 Here they don't know. If I recall, and I hesitate to say
12 this because I don't want to misrepresent anything to the
13 Court, and I mixed up the four petitioners we had originally
14 -- there are affidavits from both counsel and judge, I
15 believe, saying that this was a negotiated plea agreement
16 that they all entered into, and looking at the record, and
17 there was no mention of mandatory parole here.

18 QUESTION: I am sure there wasn't a mention of it,
19 but how about knowledge that there was on the part of at
20 least the attorneys?

21 MS. MILLS: That is not in the record.

22 QUESTION: I think your brief says -- I haven't
23 checked the appendix -- that the Respondent alleged that he
24 didn't appeal because he didn't know about the imposition --
25 that he would be subject to mandatory parole, which I

1 thought fairly alleged that he did not know. I thought the
2 record did -- and then I thought also the record showed that
3 he found out just about a month before he was to be released.

4 MS. MILLS: Mr. Williams found out two months
5 before he was released, when the parole board gave him the
6 terms of his release, and Mr. Southall said that -- he
7 didn't say what date he found out, but he did say he found
8 out after the date to appeal had expired.

9 QUESTION: I thought therefore, it seemed to me,
10 the record did establish that at the time of the plea they
11 did not know about the mandatory parole.

12 MS. MILLS: I agree. At any rate, in Timmreck --

13 QUESTION: That, I take it, would go only to
14 themselves, and not their attorneys.

15 MS. MILLS: Their attorneys may have known, but
16 according to their own statements in the petition, they did
17 not know.

18 QUESTION: They might have a malpractice problem.

19 MS. MILLS: In Timmreck --

20 QUESTION: May I ask this question?

21 MS. MILLS: Yes, sir.

22 QUESTION: I have lost track of your answer to the
23 query whether or not the public defender had a duty to
24 inform his client of the provision of Illinois law that
25 provided for this term.

1 MS. MILLS: I assume the public defender had a
2 duty, the judge had a duty, and the prosecutor had a duty,
3 and obviously this is a case in which nobody did it.

4 QUESTION: They all neglected it.

5 MS. MILLS: In Timmreck, when Timmreck was
6 sentenced, he was told that there would be a provision of
7 mandatory parole attached to his incarceration. He did not
8 say anything at that time about that. He did not appeal.
9 He sat on his rights. That was not true in this case.
10 These defendants, petitioners, habeas petitioners, did not
11 know until long after their pleas, plea changes, long after
12 the time to appeal had gone, that there would be a provision
13 of mandatory parole, and they did not sit on their rights,
14 and that therefore changes or makes less compelling the good
15 policy that one would prefer errors to come by direct appeal
16 rather than belatedly by habeas corpus. Collateral attack
17 is these petitioners' only remedy.

18 The state argues that this is a technical,
19 procedural sort of defect. It very definitely is not. In
20 the case of Mr. Williams, he agreed to change his plea from
21 not guilty to guilty. He agreed to waive his panoply of
22 rights in connection with the criminal trial in exchange for
23 an agreement entered into by himself, the prosecutor, and
24 the court of a sentence of one to two years. The court --

25 QUESTION: Where did the district judge -- from

1 what source did his power come to strike the mandatory
2 sentence as distinguished from ordering the total relief,
3 that is, set aside the judgment of conviction?

4 MS. MILLS: That is an issue that we did not
5 directly confront at any stage in these many cases. Judge
6 Marshall, of course, was following the Baker decision.
7 Baker relied in part on Santobello. It was thought that
8 since these people had served all or portions of their
9 sentence, that it would not be an appropriate form of relief
10 to actually set aside the conviction, because they had
11 performed their part of the bargain they made with the
12 state. It was the state that had not performed its, and
13 therefore the appropriate relief was to strike the mandatory
14 parole so that the state would then have been compelled to
15 perform its part of the bargain for plea agreements.

16 In Mr. Williams' case, when he agreed to one to
17 two years, he actually was in custody either by
18 incarceration or parole for three years and four months. In
19 the case of Mr. Southall, who had agreed to one to three
20 years, he was actually in the custody of the state of
21 Illinois for four years and seven months.

22 QUESTION: Ms. Mills, if you lose today, what
23 happens to your clients?

24 MS. MILLS: The only thing that will happen to my
25 clients is that the mandatory parole term in the record of

1 violations and revocations that occurred during that term
2 which --

3 QUESTION: You mean --

4 MS. MILLS: -- they shouldn't have had --

5 QUESTION: -- that there would be a change in the
6 prison record? That is all?

7 MS. MILLS: Yes.

8 QUESTION: They couldn't be retried? They can't
9 go back to prison or anything else?

10 MS. MILLS: I don't believe so.

11 QUESTION: Will the judgment of conviction be
12 expunged?

13 MS. MILLS: No. They didn't ask for that, and
14 that was not the relief that was given. The relief was --

15 QUESTION: They haven't asked for it yet. I would
16 think they might.

17 MS. MILLS: The relief was solely to make the
18 state enforce their portion of the bargain that these
19 defendants had made, and the effect that their record will
20 have will only be apparent if they are engaged in some other
21 criminal activity and it might enhance their sentence or the
22 way the parole board treats them, or something like that.

23 QUESTION: But you would agree, would you not,
24 that the theory on which your clients would get relief is
25 that the plea was not voluntarily entered into?

1 MS. MILLS: The plea was an invalid plea because
2 it was not voluntarily entered into, but I don't think it
3 follows that the relief has to be going back to the
4 beginning and letting them re-enter the whole new plea,
5 because in this case they have made an agreement, they have
6 lived up to it, they have served the time.

7 QUESTION: Even if the judge under Illinois state
8 law was required to provide for mandatory parole, you don't
9 think that the remedy and the only remedy is to set aside
10 the plea agreement entirely and start over?

11 MS. MILLS: I don't think you can do that when you
12 are at a point where they have served the entire sentence
13 they agreed to serve. They have done it.

14 QUESTION: Well, it has happened in other states
15 and other circumstances, and not infrequently. Now, that
16 would have the effect, would it not, of expunging the parole
17 violation? You would set it aside and start over. Right?

18 MS. MILLS: Yes. You would set aside the entire
19 portion of mandatory parole so that if --

20 QUESTION: Well, the entire sentence. Let them
21 start over. Either with a new trial or a new plea. Right?

22 MS. MILLS: I think that has other constitutional
23 problems. We have not directly addressed that before, but I
24 don't think --

25 QUESTION: Well, in addition, Ms. Mills, certainly

1 we can't order that the conviction be set aside.

2 MS. MILLS: No, sir. You are only being asked to
3 affirm the Seventh Circuit judgment, which I would ask you
4 to affirm or to dismiss this writ as improvidently granted.

5 QUESTION: Perhaps it is not relevant, but if, as
6 you suggest, this judgment and the sentence was invalid, and
7 I take it that that is what you have told us, do these
8 people have some kind of a tort claim action against the
9 state of Illinois for unlawful confinement for whatever
10 number of years they were confined?

11 MS. MILLS: I think that is a wonderful subject
12 for a law review article, but I doubt it would get very far
13 in court.

14 QUESTION: It wouldn't be surprising if such a
15 claim were made these days, would it?

16 MS. MILLS: Many claims are made these days that
17 are surprising.

18 QUESTION: That is a good answer.

19 MS. MILLS: Going back to the state's argument
20 that this is just a technical error, the Illinois courts,
21 while paying lip service to the McCoy case, or to the Baker
22 case in their McCoy opinion have never enforced the Baker
23 case, and have refused consistently to allow any kind of
24 relief either by appeal or any of the post-conviction
25 statutes for people whose negotiated guilty pleas fell

1 within the one period of time from January, 1973 --

2 QUESTION: Well, the Illinois courts aren't bound
3 by the Baker case, are they?

4 MS. MILLS: The Illinois courts are bound to
5 follow federal constitutional constructions, which I think
6 Baker is, and they have consistently refused to follow that,
7 and I could refer this Court --

8 QUESTION: But hasn't this Court held -- didn't it
9 hold back in the early seventies that the Supreme Court of
10 Illinois was not bound to follow a case of the Seventh
11 Circuit?

12 MS. MILLS: It may be a case of the Seventh
13 Circuit, but this is not new law, that guilty pleas must be
14 voluntary and only made with full knowledge of the
15 consequences. It goes back to Kercheval and many cases in
16 between through Boykin and Bradey and Santobello and others.
17 It is not -- the Baker decision did not announce a brand new
18 and surprising rule of law, and I think the Illinois Supreme
19 Court in making their decision in McCoy wilfully ignored
20 both Baker and the prior law on which it was based when they
21 were presented, as Mr. Weinstein said, with an identical
22 case. At the invitation of the Seventh Circuit from the
23 first Williams opinion, it said, we think the language in
24 McCoy indicates that the Supreme Court in understanding
25 comity in federalism has decided that Baker is good law. We

1 invite you to solve these problems, so we are not fighting,
2 and the Illinois Supreme Court refused to take the case
3 directly on point with the Williams language and with the
4 invitation from the Seventh Circuit.

5 I think as a matter of comity, comity is a two-way
6 street, and I think in this case it is Illinois that has not
7 gone along the route of comity and the federal courts have
8 been more than generous in giving them guidance, both from
9 the Seventh Circuit and from old Supreme Court decisions.

10 Again, we are not talking about -- well, I won't
11 address myself to that. Thank you very much.

12 CHIEF JUSTICE BURGER: Do you have anything
13 further? You have a little time left.

14 ORAL ARGUMENT OF MICHAEL B. WEINSTEIN, ESQ.,
15 ON BEHALF OF THE PETITIONER - REBUTTAL

16 MR. WEINSTEIN: Very shortly, Your Honor.

17 With regard to Mr. Justice Rehnquist's comment
18 that the Illinois courts are not bound by the Seventh
19 Circuit decisions, that is correct. They are not bound by
20 the Seventh Circuit decision. They are only bound by the
21 decisions of the U. S. Supreme Court. However, we have a
22 practical problem. If the Seventh Circuit is going to hold
23 that mandatory parole term admonishments must be given as a
24 matter of constitutional law, the Illinois courts
25 consistently say, no, you are out of the ball park, each

1 petitioner is simply going to file a federal habeas corpus
2 petition, and presumably he will win in the Northern
3 District of Illinois, because the Northern District of
4 Illinois is required to follow the Seventh Circuit.
5 Ms. Mills has talked a great deal about the
6 bargain that was involved in this case, and we don't see a
7 bargain having been involved. We don't see the prosecutor
8 having made any kind of promise or agreement that would be
9 part of the inducement or consideration, in the language of
10 Santobello. The mandatory parole term in Illinois attached
11 automatically to every sentence involving incarceration,
12 every felony sentence involving incarceration, whether these
13 individuals had received a one-year sentence or a 20-year
14 sentence. There was nothing the prosecutor could have
15 done. There was nothing the judge could have done. It was
16 going to be in there, no matter what.

17 With regard to whether or not the public defender
18 had a duty to inform his client and that type of
19 questioning, it is quite possible he did, but keep in mind
20 that at the time that these pleas were entered, this Krantz
21 decision was -- appeared to be the law in Illinois, and
22 presuming that the individuals were aware of the Krantz
23 decision, and I am sure that they were, they could only have
24 read into that decision that in fact no admonishment need be
25 given at all.

1 Krantz subsequently was overturned, at least in
2 that portion, by the Illinois Supreme Court. But we can't
3 really fault the prosecutor and the defense counsel and, for
4 that matter, the judge for not giving the mandatory parole
5 term admonishment when Illinois law appeared to say you
6 didn't have to give it.

7 Unless there is anything further, I thank you very
8 much.

9 CHIEF JUSTICE BURGER: Thank you, counsel. The
10 case is submitted.

11 (Whereupon, at 2:10 o'clock p.m., the case in the
12 above-entitled matter was submitted.)

13

14

15

16

17

18

19

20

21

22

23

24

25

CERTIFICATION

Alderson Reporting Company, Inc. hereby certifies that the attached pages represent an accurate transcription of electronic sound recording of the oral argument before the Supreme Court of the United States in the matter of:
MICHAEL P. LANE, DIRECTOR, ILLINOIS DEPARTMENT OF CORRECTIONS v.
LAWRENCE WILLIAMS AND OSCAR SOUTHALL NO. 80-1240

and that these pages constitute the original transcript of the proceedings for the records of the Court.

BY Sharon Lynn Connelly

RECEIVED
SUPREME COURT, U.S.
MARSHAL'S OFFICE

1981 DEC 7 PM 3 25