

Johnson Vs. United States

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Court : US Supreme Court

Decided On : Apr-05-1971

Appeal No. : 401 U.S. 846

Appellant : Johnson

Respondent : United States

Judgement :

Johnson v. United States - 401 U.S. 846 (1971)

U.S. Supreme Court Johnson v. United States, 401 U.S. 846 (1971)

Johnson v. United States

No. 5247

Argued March 24, 1971

Decided April 5, 1971

401 U.S. 846

CERTIORARI TO THE UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

138 U.S.App.D.C. 174, 426 F.2d 651, certiorari dismissed as improvidently granted.

PER CURIAM.

The writ of certiorari is dismissed as improvidently granted.

THE CHIEF JUSTICE took no part in the consideration or decision of this case.

MR. JUSTICE STEWART, with whom MR. JUSTICE DOUGLAS joins, dissenting.

In the petitioner's trial on a charge of rape, the District Judge instructed the jury that it could return a verdict of guilty with the death penalty. Yet that verdict was constitutionally impermissible in light of this Court's decision in *United States v. Jackson*, [390 U. S. 570](#) . See *Bailey v. United States*, 132 U.S.App.D.C. 82, 86 and n. 3, 405 F.2d 1352, 1356 and n. 3. I think the extreme prejudice arising from this erroneous instruction requires reversal of the judgment of conviction and a remand of this case for a new trial. Cf. *Price v. Georgia*, [398 U. S. 323](#) , [398 U. S. 331](#) -332.

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