**Ratner Vs. U.S.**

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**Court** : US Supreme Court

**Decided On :** 1975

**Appeal No.** : 423 U.S. 898

**Appellant** : Ratner

**Respondent** : U.S.

**Judgement** :

RATNER v. U.S. - 423 U.S. 898 (1975)
U.S. Supreme Court RATNER v. U.S. , 423 U.S. 898 (1975)

423 U.S. 898

Samuel RATNER
v.
UNITED STATES.
No. 74-1282.

Supreme Court of the United States

October 14, 1975

On petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

The petition for a writ of certiorari is denied.

Mr. Justice DOUGLAS, being of the view, stated in his previous opinions1 and those

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of Mr. Justice Black,3 that any state or federal ban on, or regulation of, obscenity abridges freedom of speech and of the press contrary to the First and Fourteenth Amendments, would grant certiorari and summarily reverse.

Mr. Justice BRENNAN, with whom Mr. Justice STEWART and Mr. Justice MARSHALL join, dissenting.

Petitioner was convicted in the United States District Court for the Northern District of Texas of mailing obscene magazines and films, and mailing advertisements describing how to obtain such magazines and films, in violation of 18 U.S.C. 1461, which provides in pertinent part:

> 'Every obscene, lewd, lascivious, indecent, filthy or vile article, matter, thing, device, or substance;
>
> * * * * *
>
> 'Is declared to be nonmailable matter and shall not be conveyed in the mails or delivered from any post office or by any letter carrier.
>
> 'Whoever knowingly uses the mails for the mailing . . . of anything declared by this section . . . to be nonmailable, . . . shall be fined not more than $5,000 or imprisoned not more than five years . . ..'

The Court of Appeals for the Fifth Circuit affirmed, 502 F.2d 1300 .

I adhere to my dissent in United States v. Orito, 413 U.S. 139, 147 (1973), in which, speaking of 18 U.S.C. 1462, which is similar in scope to 1461, I expressed

the view that '[w] hatever the extent of the Federal Government's power to bar the distribution of allegedly obscene material to juveniles or the offensive exposure of such material to unconsenting adults, the statute before us is clearly overbroad and unconstitutional on its face.'

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413 U.S., at 147-148. For the reasons stated in my dissent in Miller v. California, 413 U.S. 15, 47 ( 1973), I would therefore grant certiorari, and, since the judgment of the Court of Appeals for the Fifth Circuit was rendered after Orito, reverse1

In that circumstance, I have no occasion to consider whether the other questions presented merit plenary review. See Heller v. New York, 413 U.S. 483, 494 (1973) (Brennan, J., dissenting).

Finally, it appears from the petition and response that the obscenity of the disputed materials was not adjudged by applying local community standards. Based on my dissent in Hamling v. United States, 418 U.S. 87, 141 (1974), I believe that, consistent with the Due Process Clause, petitioner must be given an opportunity to have his case decided on, and introduce evidence relevant to, the legal standard upon which his convictions have ultimately come to depend. Thus, even on its own terms, the Court should vacate the judgment below and remand for a determination whether petitioner should be afforded a new trial under local community standards. Footnotes

Footnote 1 Miller v. California, 413 U.S. 15 , 42-47 (1973); Paris Adult Theatre I v. Slaton, 413 U.S. 49 , 70-73 (1973); Memoris v. Massachusetts, 383 U.S. 413 , 426- 433 (1966); Ginzburg v. United States, 383 U.S. 463 , 491-492 (1966); Roth v. United States, 354 U.S. 476 , 508-514 (1957).

Footnote 3 Ginzburg v. United States, 383 U.S. 463, 476 , 16 L. Ed.2d 31 (1966); Mishkin v. New York, 383 U.S. 502 , 515-518 (1966).

[ Footnote 1 ] Although four of us would grant and reverse, the Justices who join this opinion do not insist that the case be decided on the merits.