

**Smith Vs. United States**

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**SooperKanoon Citation :** [sooperkanoon.com/83083](http://sooperkanoon.com/83083)

**Court :** US Supreme Court

**Decided On :** 1876

**Appeal No. :** 94 U.S. 97

**Appellant :** Smith

**Respondent :** United States

**Judgement :**

Smith v. United States - 94 U.S. 97 (1876)

U.S. Supreme Court Smith v. United States, 94 U.S. 97 (1876)

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**94 U.S. 97**

*ERROR TO THE SUPREME COURT*

*OF WASHINGTON TERRITORY*

## **SYLLABUS**

This Court will refuse to hear a criminal case unless the convicted party suing out the writ of error is where he can be made to respond to any judgment which may be rendered here.

Mr. CHIEF JUSTICE WAITE delivered the opinion of the Court.

It is clearly within our discretion to refuse to hear a criminal case in error, unless the convicted party, suing out the writ, is where he can be made to respond to any judgment we may render. In this case it is admitted that the plaintiff in error has escaped, and is not within the control of the court below, either actually, by being in custody, or constructively, by being out on bail. If we affirm the judgment, he is not likely to appear to submit to his sentence. If we reverse it and order a new trial, he will appear or not, as he may consider most for his interest. Under such circumstances, we are not inclined to hear and decide what may prove to be only a moot case.

This cause was docketed here Dec. 29, 1870. In due time a brief was filed on behalf of the plaintiff in error, and the cause has been regularly continued at every term since, no one appearing here in person to represent the plaintiff. At this term we dismissed the writ, on motion of the United States, for want of prosecution, but have since reinstated it on motion of the counsel for the plaintiff in error, who now moves to have it set down for argument. This motion we deny, and order

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that unless the plaintiff in error submit himself to the jurisdiction of the court below on or before the first day of our next term, the cause be left off the docket after that time. *People v. Genet*, 59 N.Y. 80; *Leftwich's Case*, 20 Gratt. 723; *Commonwealth v. Andrews*, 97 Mass. 544; see also 31 Me. 592.

*Motion to set down the case for argument denied.*