

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

CHAMBERS OF  
JUSTICE POTTER STEWART

December 11, 1980

MEMORANDUM TO THE CONFERENCE

Re: Case Held for No. 79-935, Allen v. McCurry

The only case held is NO. 79-1679, Waste Management of Wisconsin v. Fokakis. In that case, Petitioner, a corporation, was criminally prosecuted under the state's "Little Sherman Act" and fined \$4,000. In the state criminal proceedings, Petitioner raised several constitutional claims concerning evidentiary rulings, prejudicial remarks of the prosecutor, and erroneous jury instructions. The Wisconsin Supreme Court rejected all these claims. Petitioner then brought a § 1983 suit in federal district court against the clerk of the state court, seeking, among other things, a declaration that its conviction was unconstitutional. The DC dismissed the suit and the CA 7 (per Judge Wood) affirmed, reasoning that the exclusive federal district court remedy for an allegedly unconstitutional state conviction is § 2254, and that Petitioner, as a corporation and not an individual, obviously could not meet the "in custody" requirement of the statute. Petitioner argued to the CA that general principles of federal jurisdiction guarantee a party claiming a federal right at least one opportunity to bring that claim in federal district court. Petitioner therefore relied on the CA 8 decision in McCurry v. Allen.

In reversing that decision, we rejected the view that either § 1983 or some general principle of federal jurisdiction guaranteed a claimant access to district court under § 1983 when some independent factor -- in that case Stone v. Powell -- denied the claimant access to district court by an otherwise conventional route. To the extent the CA 7 decision in 79-1679 overlaps with the issue in McCurry, the Court's holding in McCurry clearly supports the CA 7.

I would therefore vote to deny certiorari in this case.

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