

Affirmed
on Exhaustion 7-2

The Chief Justice

Passed

On merits (8th Amend)
agrees with DC & would
reverse. (Merits reached only
as to McCray).

Agrees that Adms.
remedies have been
helpful - but ~~is~~ is not
clear yet as to best answer.

x x x

After discussion,
1st vote in D/C
2nd " is reluctant
Affirm only
on Exhaustion.

Stevens, J. Affirm

On exhaustion, should
identify the const. issue.

Need not say
exhaustion is never
~~not~~ required. Do not
think the remedy here
is adequate.

x x x

If conditions of confinement
are barbaric, courts
must intervene. Agree
with CA 4 on merits.

Brennan, J.

Affirm

Been read a recent
CA3 slip of supporting CA4.
Bill says our precedents
foreclose issue: no
exhausting of remedies
required.

Also agrees with
CA 4 on merits of 8th
Amend.

Stewart, J.

Dismiss
Affirm or as Imp.
Granted

Law is as Brennan
described it but "Court
backed into - w/o
argument or briefing".
Not a single signed
op.

Stepfel & Prieser are
not really relevant
precedents.

Can't distinguish
exhausting for prisoners
from 1983 ~~exhausting~~
cases from other
1983 cases.

Trapped by precedents
not clear on merits.

Affirm

Can't distinguish
bet. exhaustion in
litigation + exhaustion
of adm. remedies.

Not sure exhaustion
~~is~~ would
be enormously
beneficial.

Didn't vote on
8th amend issue

Affirm

On merits +
exhaustion.

Blackmun, J. DIG - of Affirm
on Exhaustion

Law is settled - tho
probably wrongly.

On merits would
reverse. Nothing
cruel + unusual
in strip cell or
solitary confinement.

In terms of numbers
the precedents are
impressive. But the
issue here - as Potter
says - has never been
addressed.

I'd reverse on 8th
Amend issue.

Passed on exhaustion
issue.

I may write on
"color of law" issue.

Kochie v. Norton

Potter recommends that
I read 343 F.S. 956

Reverse - both issues

Reverse on merits.

As to exhaustion,
Thurber reverse was
right as to state
remedy exhaustion
but this is different
from adm. exhaustion.

Suggests that adm. remedy
in a prison is a
part of process of
"color of state law".
This would not be a
quest. of exhaustion; it
would be ~~recognizing~~
that the "full process
of color of state law"
is not complete until
after adm. hearing.