

Appeal By Negroes In Trespass Case Is Dismissed

Supreme Court Opinion Says No Federal Question Involved

[Other court rulings, Front page.]

BY BRUCE JOLLY

Greensboro Daily News Washington Bureau

WASHINGTON, June 27—The U.S. Supreme Court today in a 5-4 decision dismissed an appeal from Greensboro Negroes who were convicted of violating a North Carolina criminal trespass statute when they used Gillespie Park Golf Club.

The appeal was from the Supreme Court of North Carolina, which had upheld the convictions by lower courts. Leon Wolfe and other appellants contended that

the state statute was used in this case to enforce a practice of racial discrimination by a state agency.

The majority opinion said the court had no choice but to determine that the appeal must be dismissed "because no federal question is before us."

Chief Justice Warren, and Justices Black, Douglas and Brennan dissented.

They maintained that the court's own precedents required that it either remand the case or decide the questions which it presents.

Involved in the case was a decision by Judge Johnson Hayes of Middle District Court that the appellants were excluded from Gillespie Park because of their race.

In view of that, the minority said, "these convictions give rise to serious constitutional doubts."

Almost Five Years Ago

The issue arose in December, 1955. The appellants entered the golf shop at the course and requested permission to play the course. It was refused. They placed money on the table and teed off. After they had played several holes they were ordered to leave by the manager.

When they refused, the manager then summoned a deputy sheriff and they were arrested on warrants sworn to by the manager, the majority pointed out.

In Municipal-County Court on Dec. 16, 1957, the five Negro defendants were given 30-day suspended terms by Judge Hampton Howerton Jr. and were fined \$1, and court costs, which amounted to \$17.50 each. They appealed to Guilford Superior Court.

The appeal before the court today was a Guilford Superior Court sentence of 15 days for each of the defendants; sentences which were upheld by the State Supreme Court.

During the period before the convictions went to the State Supreme Court, the case was taken before Judge Hayes. However, that opinion was not before the State Supreme Court when the convictions were upheld.

Question Raised

On the question raised before the U.S. Supreme Court, which was that the court might have made independent inquiry as to evidence offered in the trial court but not included in the case on appeal, the majority pointed out that decisions make it clear that the State Supreme Court has without exception refused to do that.

"Examination of the whole course of North Carolina decisions thus precludes the inference that the Supreme Court of North Carolina in this case arbitrarily denied the appellants an opportunity to present their fed-

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eral claim," the majority said.

The majority opinion also stated there is no issue in the case as to the constitutional right of Negroes to use a public golf course free of racial discrimination.

"From first to last the courts of North Carolina fully recognized that under the Constitution these appellants could not be convicted if they were excluded from the golf course because of race," the opinion said.

The minority said that the appellants made the mistake which deprived them of the opportunity to have the federal question reviewed.

"They failed to include their offer of proof and the rejected exhibits in their case on appeal, although they did include the ruling on the state's objection," the minority opinion held.

Even if the state's ground is adequate in not considering the federal aspect, it does not follow that the case should be dismissed, it was argued.

"This court should either proceed directly to a consideration of the federal question or—if deemed desirable—should remand the case to the state court for further consideration," the minority held.

Defendants Named

The Negroes are Dr. George Simpkins Jr., Greensboro dentist; Elijah H. Herring Sr., Samuel Murray, Joseph Studivant and Leon Wolfe.

Phillip Cooke, who was one of the defendants, died last year.

J. Kenneth Lee of Greensboro, an attorney for the Negroes, declined comment until he has read the Supreme Court opinion.

Justice Stewart, in emphasizing that there was no issue as to the constitutional right of Negroes to use a public golf course, said, "From first to last, the courts of North Carolina fully recognized that under the Constitution these appellants could not be convicted if they were excluded from the golf course because of their race. . . ."