

392 U. S.

June 17, 1968.

POPE *v.* UNITED STATES.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 34, Misc. Decided June 17, 1968.

Certiorari granted; 372 F. 2d 710, vacated and remanded.

*Wallace M. Rudolph* for petitioner.

*Solicitor General Griswold, Assistant Attorney General Vinson, Ralph S. Spritzer, Beatrice Rosenberg, and Jerome M. Feit* for the United States.

## PER CURIAM.

The petitioner was convicted by a jury and sentenced to death under the Federal Bank Robbery Act, 18 U. S. C. § 2113 (e). The Solicitor General has filed a memorandum for the United States conceding that this death penalty provision "suffers from the same constitutional infirmity" as that found in the Federal Kidnaping Act, 18 U. S. C. § 1201 (a). *United States v. Jackson*, 390 U. S. 570. Accordingly, the Solicitor General concedes that the petitioner's "sentence must be vacated and the cause remanded . . . for resentencing." In light of this concession and upon an independent examination of the record, but without reaching any of the petitioner's other claims, the motion for leave to proceed *in forma pauperis* and the petition for writ of certiorari are granted, the judgment is vacated, and the case is remanded to the United States Court of Appeals for the Eighth Circuit for further proceedings consistent with this opinion.

MR. JUSTICE BLACK and MR. JUSTICE WHITE dissent for the reasons stated in the dissenting opinion of MR. JUSTICE WHITE in *United States v. Jackson*, 390 U. S. 570, 591.

MR. JUSTICE BLACK dissents for the further reasons stated in his dissenting opinion in *Lopinson v. Pennsylvania*, ante, p. 648.