

SMITH ET AL. v. FLORIDA

CERTIORARI TO THE SUPREME COURT OF FLORIDA

No. 70-5055. Argued December 8, 1971—

Decided February 24, 1972

Petitioners' convictions for violation of the Florida vagrancy statute for "wandering or strolling around from place to place without any lawful purpose or object" are vacated and the case is remanded for reconsideration in light of *Papachristou v. City of Jacksonville*, ante, p. 156. Pp. 172-173.

239 So. 2d 250, vacated and remanded.

DOUGLAS, J., delivered the opinion of the Court, in which all Justices joined, except POWELL and REHNQUIST, JJ., who took no part in the consideration or decision of the case.

Phillip A. Hubbard argued the cause and filed briefs for petitioners.

Nelson E. Bailey, Assistant Attorney General of Florida, argued the cause for respondent *pro hac vice*. With him on the brief was *Robert L. Shevin*, Attorney General.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

Florida's vagrancy statute¹ includes in the term "vagrants," who can be criminally charged and convicted, "persons wandering or strolling around from place to place without any lawful purpose or object."² The defendants were so charged and pleaded not guilty, waived trial by jury, and were tried by a judge, who denied a motion to dismiss. The Florida Supreme Court affirmed, two judges dissenting. 239 So. 2d 250. The

¹ Fla. Stat. § 856.02 (1965). See *Papachristou v. City of Jacksonville*, decided this day, ante, at 157 n. 2.

² § 856.02.

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case is here on a petition for a writ of certiorari which we granted. 403 U. S. 917.

We have this day decided *Papachristou v. City of Jacksonville*, ante, p. 156. We therefore vacate and remand the judgment in the instant case for reconsideration in light of *Papachristou*.

So ordered.

MR. JUSTICE POWELL and MR. JUSTICE REHNQUIST took no part in the consideration or decision of this case.