

Syllabus

AIKENS v. CALIFORNIA

CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

No. 68-5027. Argued January 17, 1972—Decided June 7, 1972

California Supreme Court decision invalidating death penalty under state constitution has mooted this case, where certiorari was granted to consider whether death penalty comports with Federal Constitution.

70 Cal. 2d 369, 450 P. 2d 258, certiorari dismissed.

Anthony G. Amsterdam argued the cause for petitioner. With him on the brief were *Jerome B. Falk, Jr.*, *Paul N. Halvonik*, *Michael Meltsner*, *Jack Greenberg*, *James M. Nabrit III*, *Charles Stephen Ralston*, *Jack Himmelstein*, and *Elizabeth B. Dubois*.

Ronald M. George, Deputy Attorney General of California, argued the cause for respondent. With him on the brief were *Evelle J. Younger*, Attorney General, and *William E. James*, Assistant Attorney General.

Briefs of *amici curiae* were filed by *John E. Havelock*, Attorney General, for the State of Alaska; by *Willard J. Lassers* and *Elmer Gertz* for the National Council of the Churches of Christ in the United States et al.; by *Leo Pfeffer* for the Synagogue Council of America and its Constituents et al.; by *Paul Raymond Stone* for the West Virginia Council of Churches et al.; by *Donald M. Wessling* for the Committee of Psychiatrists for Evaluation of the Death Penalty; by *Gerald H. Gottlieb*, *Melvin L. Wulf*, and *Sanford Jay Rosen* for the American Civil Liberties Union; by *Chauncey Eskridge*, *Mario G. Obledo*, *Leroy D. Clark*, *Nathaniel R. Jones*, and *Vernon Jordan* for the National Association for the Advancement of Colored People et al.; by *Marshall J. Hartman* for the National Legal Aid and Defender Association; by

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Michael V. DiSalle for Edmund G. Brown et al.; by *Hilbert P. Zarky* for James V. Bennett et al.; and by *Luke McKissack*, *pro se*.

PER CURIAM.

Petitioner in this case, which has been orally argued and is now *sub judice*, has filed a Suggestion of Mootness and Motion for Remand based on the intervening decision of the California Supreme Court in *People v. Anderson*, 6 Cal. 3d 628, 493 P. 2d 880 (1972). That decision declared capital punishment in California unconstitutional under Art. 1, § 6, of the state constitution. The decision rested on an adequate state ground and the State's petition for writ of certiorari was denied. 406 U. S. 958. The California Supreme Court declared in the *Anderson* case that its decision was fully retroactive and stated that any prisoner currently under sentence of death could petition a superior court to modify its judgment. Petitioner thus no longer faces a realistic threat of execution, and the issue on which certiorari was granted—the constitutionality of the death penalty under the Federal Constitution—is now moot in his case. Accordingly the writ of certiorari is dismissed.