

5 Rapp no. 18 (1973)

HOLDER V. BANKS

HEADNOTE

by Ira Brad Matetsky

Source: Papers of William H. Rehnquist, Box 6, the Hoover Institution Library and Archives, Stanford, California.

Opinion by: William H. Rehnquist (given in source).

Opinion date: October 5, 1973 (given in source).

Citation: Holder v. Banks, 5 Rapp no. 18 (1973).

Additional information:

This order is typed on an ordinary sheet of paper. Arthur Banks was a federal prison inmate in Indiana, serving a five-year sentence for Vietnam War-era draft evasion. While in prison, he was charged with assaulting a prison guard, a felony, during an inmate demonstration seeking better conditions. Banks retained the nationally known lawyer William M. Kunstler to represent him at his assault trial, but Kunstler was from out-of-state and District Judge Gale Holder refused to allow Kunstler to appear before him *pro hac vice*. The Seventh Circuit granted Banks a writ of mandamus and directed that Kunstler be allowed to represent Banks at his trial. The district judge – “supported by thirty establishment Indiana lawyers,” according to Kunstler’s autobiography – then sought a stay of the Seventh Circuit’s order, which Circuit Justice William Rehnquist granted. Subsequently, the Supreme Court granted certiorari, *Holder v. Banks*, 414 U.S. 1156 (1974), and heard oral argument; but the Court then dismissed the writ, without explanation, as improvidently granted, leaving the Seventh Circuit’s ruling in effect. *Holder v. Banks*, 417 U.S. 187 (1974). Ultimately, Banks was never tried on the assault charge. He was released on a writ of habeas corpus in 1976 and resumed his career as an actor in California. See William M. Kunstler with Sheila Isenberg, *My Life as a Radical Lawyer* 371 (Birch Lane/Citadel Press 1994).

OPINION

A-358

HONORABLE CALE J. HOLDER, UNITED STATES JUDGE,

Petitioner,

v.

ARTHUR BANKS,

Respondent.

ORDER

After careful consideration of the petition and decisions below in this case, I have decided that the Order of the Court of Appeals directing petitioner to permit counsel's appearance *pro hac vice* should be stayed pending petitioner's timely application for a writ of Certiorari in this Court. Since respondent's trial is set for Monday, October 8, 1973, and since a trial without his chosen counsel might moot the questions raised on the merits, the stay is expressly conditioned on continuance of respondent's trial, unless respondent should elect to proceed, during the time allowed petitioner to file a petition for Certiorari. If such petition shall be filed, the stay so conditioned shall continue until this Court disposes of the petition and the case.

It is so ordered.

/s/ William H. Rehnquist
Associate Justice of the Supreme
Court of the United States
Dated this 5th day
of October 1973