

SUPREME COURT OF MARYLAND

Fooks v. State of Maryland

Fooks v. State, No. 24, September Term, 2022 (Md. Aug. 15, 2023) · No. No. 24, September Term, 2022 ·

Decided August 15, 2023

SUMMARY

The Supreme Court of Maryland granted the State's unopposed motion to stay Robert L. Fooks's case pending the United States Supreme Court's decision in *United States v. Rahimi*. Judge Gould dissented, concluding that *Rahimi* involved a materially different federal statute and that the Maryland court should decide the fully briefed case without waiting.

OPINION

PER CURIAM.

Circuit Court for Wicomico County Case No. C-22-CR-21-000030 Argued: March 2, 2023 IN
THE SUPREME COURT OF MARYLAND* No. 24 September Term, 2022
____ ROBERT L. FOOKS v. STATE OF MARYLAND
____ Fader, C.J., Watts, Hotten, Booth, Biran, Gould, Eaves,
JJ. _____ Per Curiam Order Gould, J., dissents.
____ Pursuant to the Maryland Uniform Electronic Legal
Materials Filed: August 15, 2023 Act (§§ 10-1601 et seq. of the State Government Article) this
document is authentic.

2023-08-15 09:46-04:00 Gregory Hilton, Clerk *During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland.

The name change took effect on December 14, 2022. * IN THE * ROBERT L. FOOKS
SUPREME COURT * v. OF MARYLAND * STATE OF MARYLAND No. 24 * September
Term, 2022 * ORDER Upon consideration of the State's unopposed motion to stay this case
pending a decision by the United States Supreme Court in *United States v. Rahimi*, Docket No.
22-915, October Term, 2023, it is this 15th day of August 2023, by the Supreme Court of
Maryland, a majority of the Court concurring, ORDERED that the motion is granted; and it is
further ORDERED that, pending a decision by the United States Supreme Court in *United States*
v. Rahimi, Docket No. 22-915, October Term, 2023, this case is stayed.

Upon a final disposition by the United States Supreme Court in *Rahimi*, the parties shall promptly
notify the Clerk and propose a schedule for supplemental briefing. /s/ Matthew J. Fader Chief

Justice Circuit Court for Wicomico County Case No. C-22-CR-21-000030 Argued: March 2, 2023 IN THE SUPREME COURT OF MARYLAND* No. 24 September Term, 2022 ROBERT L. FOOKS v. STATE OF MARYLAND Fader, C.J., Watts, Hotten, Booth, Biran, Gould, Eaves, JJ. Dissenting Opinion by Gould, J. Filed: August 15, 2023 *During the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals to the Supreme Court of Maryland.

The name change took effect on December 14, 2022. Respectfully, I dissent from the Court's Order staying this case pending the Supreme Court of the United States' disposition of *United States v. Rahimi*, No. 22-915, 2023 WL 4278450 (U.S. Jun. 30, 2023).

The State filed an Unopposed Motion to Stay this case pending the outcome of *Rahimi*, arguing that: [T]he U.S. Supreme Court undoubtedly will clarify the scope of the Second Amendment—particularly whether restrictions on the possession of firearms by non-felons are constitutional—and will offer further guidance on how to apply the new standard for assessing Second Amendment claims enunciated in *New York State Rifle & Pistol Association, Inc. v. Bruen*, 142 S. Ct.

2111 (2022). Furthermore, the U.S. Supreme Court likely will address some of same [sic] historical sources and arguments that the parties have discussed in *Fooks*. In sum, the U.S. Supreme Court's forthcoming decision in *Rahimi* will surely overlap with the issues and arguments currently before this Court in *Fooks*. Resp't's Unopp'd Mot. to Stay 2.

In my view, the State has not offered a sufficient reason to stay this case. First, the issue in *Rahimi* is fundamentally different than the one presented here. In *Rahimi*, the Supreme Court granted certiorari to decide the following question: "Whether 18 U.S.C. 922(g)(8), which prohibits the possession of firearms by persons subject to domestic- violence restraining orders, violates the Second Amendment on its face." There, the statute at issue is a federal statute; the statute at issue here is a Maryland statute.

That difference alone warrants a different constitutional analysis under the system of federalism established in the United States Constitution. Moreover, even if the Supreme Court's analysis in *Rahimi* could be helpful, so what? This Court grants certiorari when it is "desirable and in the public interest." Md. Code Ann. (1974, 2020 Repl. Vol.), Cts. & Jud.

Proc. § 12-203. We did so here. Our job, therefore, is to decide this case by applying the governing principles of law as they now exist. As Chief Judge Bell put it when dissenting from the dismissal of a writ of certiorari as improvidently granted: The Court of Appeals has a responsibility to decide any case properly presented that meets the threshold criteria: presenting issues that it is desirable and in the public interest to decide.

That responsibility, as to any issue, may be triggered by such considerations as novelty, complexity, conflicting precedents, impact or importance and the breadth or extent thereof and likelihood of recurrence. *Koenig v. State*, 368 Md. 150, 151 (2002) (Bell, C.J., dissenting).

The case has been fully briefed and argued, and is awaiting this Court's decision. There's no need or compelling reason to wait for the Supreme Court's decision in *Rahimi*. And in doing so, we are passing on the opportunity to weigh in on an issue of significant local and national importance, which is unfortunate, to say the least.

Accordingly, I respectfully dissent. 2