

SUPREME COURT OF THE UNITED STATES

No. 91-687

MONTANA, PETITIONER v. DONALD GLENN IMLAY
ON WRIT OF CERTIORARI TO THE SUPREME COURT
OF MONTANA
[November 3, 1992]

JUSTICE STEVENS, concurring.

When the trial judge revoked respondent's parole, he reinstated a 5-year sentence of imprisonment. On appeal, the Montana Supreme Court, in the decision before us, vacated the revocation order and remanded the case for resentencing. 92 Mont. 82, 813 P. 2d 979 (1991). The trial court subsequently resentenced respondent, again to a 5-year term of imprisonment, and the Montana Supreme Court upheld that sentence in a judgment not now before us for review.

Thus, no matter which party might prevail in this Court, the respondent's term of imprisonment will be the same. At oral argument, neither counsel identified any way in which the interests of his client would be advanced by a favorable decision on the merits—except, of course, for the potential benefit that might flow from an advisory opinion.¹ Because it is not the business of this Court to render such

¹Indeed, counsel for the State went so far as to explain that a victory for Montana on the merits would actually work to the advantage of respondent, by subjecting him to treatment leading to parole eligibility:

``Question: So you're really trying to advance his [respondent's] interests?

``[Answer]: Yes, sir, we are.

``Question: He is better off if you win than if you lose.

``[Answer]: In our judgment that is certainly the case." Tr. of Oral Arg. 5.

opinions, it wisely decides to dismiss a petition that should not have been granted in the first place.

91-687—CONCUR

MONTANA v. IMLAY