

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

ORTEGA-RODRIGUEZ v. UNITED STATES

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE
ELEVENTH CIRCUIT

No. 91-7749. Argued December 7, 1992—Decided March 8,
1993

In *United States v. Holmes*, 680 F. 2d 1372, 1373, the Court of Appeals held that "a defendant who flees after conviction, but before sentencing, waives his right to appeal from the conviction unless he can establish that his absence was due to matters completely beyond his control." Relying on that authority, and without further explanation, the court issued a *per curiam* order dismissing the appeal of petitioner, who failed to appear for sentencing following his conviction on federal narcotics charges, but was recaptured before he filed his appeal.

Held: When a defendant's flight and recapture occur before appeal, the defendant's former fugitive status may well lack the kind of connection to the appellate process that would justify an appellate sanction of dismissal. Pp. 5-18.

(a) This Court's settled rule that dismissal is an appropriate sanction when a convicted defendant is a fugitive during "the ongoing appellate process," see *Estelle v. Dorrrough*, 420 U. S. 534, 542, n. 11, is amply supported by a number of justifications, including concerns about the enforceability of the appellate court's judgment against the fugitive, see, e.g., *Smith v. United States*, 94 U. S. 97; the belief that flight disentitles the fugitive to relief, see *Molinero v. New Jersey*, 396 U. S. 365, 366; the desire to promote the "efficient . . . operation" of the appellate process and to protect the "dignity" of the appellate court, see *Estelle*, 420 U. S., at 537; and the view that the threat of dismissal deters escapes, see *ibid.* Pp. 5-8.

(b) The foregoing rationales do not support a rule of dismissal for all appeals filed by former fugitives who are returned to custody before they invoke the jurisdiction of the appellate tribunal. These justifications all assume some

connection between the defendant's fugitive status and the appellate process, sufficient to make an appellate sanction a reasonable response. When both flight and recapture occur while a case is pending before the district court, the justifications are necessarily attenuated and often will not apply. Pp. 8-15.

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(c) This Court does not hold that a court of appeals is entirely without authority to dismiss an appeal because of fugitive status predating the appeal, since it is possible that some actions by a defendant, though they occur while his case is before the district court, might have an impact on the appellate process sufficient to warrant an appellate sanction. As this case reaches the Court, however, there is no indication in the record that the Court of Appeals made such a judgment under the standard here announced. Application of the *Holmes* rule, as formulated by the lower court thus far, does not require the kind of connection between fugitivity and the appellate process that is necessary; instead it may rest on nothing more than the faulty premise that any act of judicial defiance, whether or not it affects the appellate process, is punishable by appellate dismissal. Pp. 15-18.

Vacated and remanded.

STEVENS, J., delivered the opinion of the Court, in which BLACKMUN, SCALIA, KENNEDY, and SOUTER, JJ., joined. REHNQUIST, C. J., filed a dissenting opinion, in which WHITE, O'CONNOR, and THOMAS, JJ., joined.