

The Burger Court Opinion Writing Database

North Carolina v. Rice

404 U.S. 244 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



2
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

December 9, 1971

Re: No. 70-77 - North Carolina v. Rice

Dear Byron:

Please join me in your Per Curiam.

Regards,

WRB

Mr. Justice White

cc: The Conference

67
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

December 7, 1971

Re: No. 70-77 -
Dear Byron: North Carolina v. Rice

Would you kindly add at the end of your
Per Curiam in this case the following:

Mr. Justice Douglas would affirm the
judgment below ⁱⁿ the opinion of the Court of Appeals
in 434 F. 2d 297.

W. O. D.

Mr. Justice White

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

December 6, 1971

RE: No. 70-77 - North Carolina v. Rice

Dear Byron:

I agree.

Sincerely,

Bill

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE POTTER STEWART

December 7, 1971

70-77 - No. Carolina v. Rice

Dear Byron,

I am glad to join your Per Curiam
in this case.

Sincerely yours,

P.S.

Mr. Justice White

Copies to the Conference

On Dec 6, 1971
To: The Chief Justice
Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
✓Mr. Justice Marshall
Mr. Justice Blackmun

1st DRAFT

From: White, J.

SUPREME COURT OF THE UNITED STATES

Circulated: DEC 6 1971

No. 70-77

Recirculated: _____

North Carolina, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Wayne Claude Rice. } of Appeals for the Fourth
Circuit.

[December —, 1971]

PER CURIAM.

On July 2, 1968, respondent Rice was arrested for driving while intoxicated on a North Carolina state highway. He was tried in the General County Court of Buncombe County, convicted and sentenced to imprisonment for nine months with sentence suspended upon payment of \$100.00 fine and costs. On appeal he was tried *de novo* in the Superior Court, found guilty and sentenced to two years' imprisonment. State post-conviction procedures were unavailing. On appeal from denial of federal habeas corpus, the Court of Appeals for the Fourth Circuit held that under *North Carolina v. Pearce*, 395 U. S. 711 (1969), "the more drastic sentence on the second trial [was] a denial of Federal due process of law, in that by discouragement it impinges upon the State-given appeal." 434 F. 2d 297 (1970). The result was that Rice was not to be held to his conviction. Although "he was completely discharged by North Carolina on January 24, 1970 . . . this did not moot the case on habeas corpus" because injurious consequences from the conviction might still obtain. *Ibid.* The judgment was that Rice was entitled to have the record of his conviction expunged. The State's petition for writ of certiorari was granted. 401 U. S. 1008 (1971).

The State claims that *Pearce* does not apply to a

1
pp: 5
JW

To: The Chief Justice
Mr. Justice Black
~~Mr.~~ Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

2nd DRAFT

Circulated: 12-10-1

SUPREME COURT OF THE UNITED STATES

No. 70-77

North Carolina, Petitioner, } On Writ of Certiorari to
v. } the United States Court
Wayne Claude Rice. } of Appeals for the Fourth
Circuit.

[December —, 1971]

PER CURIAM.

On July 2, 1968, respondent Rice was arrested for driving while intoxicated on a North Carolina state highway. He was tried in the General County Court of Buncombe County, convicted and sentenced to imprisonment for nine months with sentence suspended upon payment of \$100.00 fine and costs. On appeal he was tried *de novo* in the Superior Court, found guilty and sentenced to two years' imprisonment. State post-conviction procedures were unavailing. On appeal from denial of federal habeas corpus, the Court of Appeals for the Fourth Circuit held that under *North Carolina v. Pearce*, 395 U. S. 711 (1969), "the more drastic sentence on the second trial [was] a denial of Federal due process of law, in that by discouragement it impinges upon the State-given appeal." 434 F. 2d 297, 300 (1970). Although "he was completely discharged by North Carolina on January 24, 1970 . . . this did not moot the case on habeas corpus" because injurious consequences from the conviction might still obtain. *Ibid.* The judgment was that Rice was entitled to have the record of his conviction expunged. The State's petition for writ of certiorari was granted. 401 U. S. 1008 (1971).

Oct 7
Wm. Douglas

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

December 9, 1971

Re: No. 70-77 - North Carolina v. Rice

Dear Byron:

Please join me in your per curiam.

Sincerely,


T.M.

Mr. Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

December 7, 1971

Re: No. 70-77 - North Carolina v. Rice

Dear Byron:

Please join me in your Per Curiam.

Sincerely,

Harry

Mr. Justice White

cc: The Conference