

# 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



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M  
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

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 on the opinion of the Court of Appeals  
in 434 F. 2d 297.

W. O. D.

Mr. Justice White

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7

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

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, }  
v. }  
Wayne Claude Rice. } On Writ of Certiorari to  
the United States Court  
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

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: \_\_\_\_\_

SUPREME COURT OF THE UNITED STATES

Circulated: 12-10-71

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).

Wm Douglas

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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



3 M  
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,

H.A.B.

Mr. Justice White

cc: The Conference