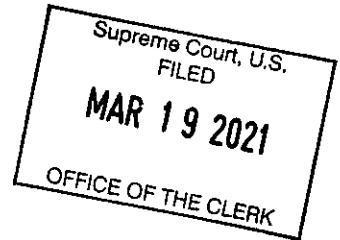


No. 20-7585

ORIGINAL

IN THE
SUPREME COURT OF THE UNITED STATES



CHARLES D. BOWSER,
Petitioner,
v.
STATE OF KANSAS,
Respondent.

**On Petition for a Writ of Certiorari
to the Supreme Court of the State of Kansas**

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Whether this Court should grant certiorari to resolve the issue if the Due Process Clause and *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed.2d 656 (1969) applies where evidence exists of bias and prejudice by the sentencing court prior to trial, and, after a trial, the defendant receives a greater sentence than he would have under the plea bargain?

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PETITION FOR A WRIT OF CERTIORARI

Petitioner, Charles D. Bawser (herein after Bawser) respectfully prays that a *Writ of Certiorari* be issued to review the judgement of the Supreme Court of the State of Kansas

OPINION BELOW

The Opinion of the Supreme Court of Kansas is published at State v. Bawser, 474 P.3d 744 (2020) A copy of the opinion is attached as Appendix A.

JURISDICTION

The Kansas Supreme Courts decision was entered on October 23rd, 2020. This petition is timely filed under Order, 2020 U.S. dated March 19th, 2020, authorizing 150 days from day of final judgement to file a Writ of Certiorari due to COVID-19. This courts certiorari jurisdiction is invoked under 28 USCS § 1257 (a)

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, Amendment V (in pertinent part)

. . . ; nor shall [any person] be deprived of life, liberty or property without due process of law; . . .

United States Constitution Amendment XIV (in pertinent part)

. . . ; nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .

STATEMENT OF THE CASE

The Petitioner, Charles Bowser, was charged after several robberies in Kansas City, Missouri and Kansas with other co defendants. The jury convicted Bowser of 10 counts of criminal conduct, including attempted capital murder of Deputy Scott Wood. Bowser was sentenced to a hard 25 life sentence plus an additional 455 months for the other offenses. (Appendix A Pg 2)

Bowser rejected a plea offer of 35 years. *Id* at 12. The District Court, prior to trial, advised Bowser that if convicted he would receive a hard 25 sentence plus an additional 228 months. *Id*. After trial Bowser was sentenced to the hard 25 plus 455 months. *Id*

The District Court engaged in a lengthy colloquy with the defendant, multiple times emphasizing the plea deal. *Id* at 13-15.

On direct appeal to the Kansas Supreme Court Bowser argued that District Court violated Kansas Judicial Canon 2, Rule 2.3, concerning "Bias, Prejudice, and Harrassment". *Id* at 13. Bowser argued the District Court abandoned its natural role and actively advocated for Bowser to accept the plea deal. *Id* at 14.

The Kansas Supreme Court did note the District Court "may have come close to the advocacy line" *Id* at 15. However the Court ruled there was no error. *Id*

Bowser's conviction rested on DNA evidence, recovered stolen items from Bowser's car, a recovered firearm from King's house where he was arrested. *Id* at 23. No eyewitness or co defendant statements directly tied Bowser to the crimes. In fact all the direct evidence implicated the co defendants.

REASONS FOR GRANTING THE WRIT OF CERTIORARI

I. Whether this Court should grant certiorari to resolve the issue if *North Carolina v. Pearce*, 395 U.S. 711, 89 S. Ct. 2072, 23 L.Ed.2d 656 (1969) applies where evidence exists of bias and prejudice by the sentencing court prior to trial, and, after a trial, the defendant receives a greater sentence than he would have under the plea bargain?

In *North Carolina v. Pearce*, 395 U.S. 711 (1969), a defendant's sentence was enhanced by the trial court following a successful appeal. This Court held that such enhancement is unconstitutional since it penalizes convicted felons who elect to exercise their appellate remedies; due process requires that vindictiveness against a defendant who has successfully challenged his conviction must play no role in sentencing since the fear of vindictiveness would deter others from exercising their constitutional rights. A sentence can only be enhanced where events subsequent to the first trial have thrown new light upon the defendant's character. *Id.* at 723-725.

In *Bordenkircher v. Hayes*, 434 U.S. 357, 98 S. Ct. 663 (1978) this Court refused to broaden the scope of *Pearce* to include instances where a defendant has repudiated a plea bargain agreement. In *Bordenkircher*, the defendant and the prosecutor entered into plea negotiations wherein the prosecutor offered a five year sentence for a plea but informed the defendant that if he insisted on a trial, he would be charged as a habitual offender. Despite the warning, the defendant insisted on trial, and he was charged and convicted as a habitual offender and sentenced to life imprisonment. This Court found *Pearce* to be distinguishable from these facts. In *Pearce*, the State unilaterally imposed a penalty upon a defendant who had chosen to exercise his right to appeal his original conviction which this Court found to be a situation "very different from the give-and-take negotiations

common in plea bargaining between the prosecution and defense, which arguably possess relatively equal bargaining power." *Id* at 362

In *Ala. v. Smith*, 490 U.S. 794, 109 S. Ct. 2201, 104 L.Ed.2d 865 (1989) the Court later restricted *Pearce* and stated that the circumstances of sentencing there must be a "reasonable likelihood," *Id* at 799 that the increase in sentence is the product of actual vindictiveness on the part of the sentencing authority. Absent of evidence of "reasonable likelihood" the defendant bears the burden to prove vindictiveness. *Id*

In the case at bar, under Kansas Judicial Canon 2, Rule 2.3 "Bias, Prejudice, and Harassment" it reads in relevant part:

"(A) A judge shall perform the duties of judicial office, including administrative duties, without bias or prejudice.

"(B) A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, or engage in harassment, including but not limited to bias, prejudice, or harassment based upon race, sex, gender, religion, national origin, ethnicity, disability, age, sexual orientation, marital status, socioeconomic status, or political affiliation, and shall not permit court staff, court officials, or other subject to the judge's direction and control to do so." (2020 Kan. S. Ct. R. 449.)

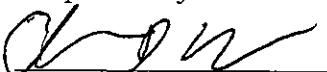
In its opinion the Kansas Supreme Court did acknowledge the Sentencing Court did come close to the "advocacy line" (Appendix A Pg 15) in repeatedly asking Bowser to consider his choices. *Id*. The closest evidence available is the Sentencing Courts own words and the Kansas Supreme Courts own opinion.

However, no case thus far has this Court ruled upon that evidence of bias in a pretrial setting translated in to judicial vindictiveness at sentencing. This court should vacate Bowers sentence and remand for resentencing.

CONCLUSION

For the foregoing reasons, the Petitioner respectfully prays that a writ of certiorari be issued to review the judgement of the Kansas Supreme Court.

Respectfully submitted,



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