

24-6347

No. \_\_\_\_\_

ORIGINAL

IN THE  
SUPREME COURT OF THE UNITED STATES

DEMARIO G. WARREN --- PETITIONER

VS.

STATE OF LOUISIANA --- RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE LOUISIANA SUPREME COURT

(NAME OF COURT THAT LAST RULED ON MERITS OF MY CASE)

PETITION FOR WRIT OF CERTIORARI

DEMARIO G. WARREN #490559

LOUISIANA STATE PENITENTIARY

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ANGOLA, LA 70712

**QUESTION(S) PRESENTED**

1. Whether the State engaged in prosecutorial vindictiveness by belatedly filing habitual offender bills in connection with Counts Two and Three, counts that it had not previously sought to enhance, following Petitioner's successful appeal of Count One; and
2. Whether the trial court erred by increasing, without cause, Petitioner's sentence following his successful appeal.

## LIST OF PARTIES

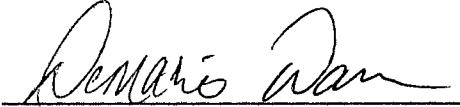
All parties appear in the caption of the case on the cover page.

All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE  
SUPREME COURT OF THE UNITED STATES  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

For cases from **federal courts**:

The opinion of the United States Fifth Circuit Court of Appeals appears at Appendix - \_\_\_\_ to the petition and is  
 reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the United States District Court for the \_\_\_\_\_ District of Louisiana appears at Appendix - \_\_\_\_ to the petition and is  
 reported at \_\_\_\_\_; or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

For cases from **state courts**:

The opinion of the Louisiana Supreme Court to review the merits appears at Appendix - E to the petition and  
 is reported at 391 So.3d 1059 (La. 9/4/2024); or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

The opinion of the Louisiana First Circuit Court of Appeal appears at Appendix - D to the petition and is

reported at 2023 WL 4008395 (La.App. 1 Cir. 6/15/2023); or,  
 has been designated for publication but is not yet reported; or,  
 is unpublished.

#### **JURISDICTION**

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was

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No petition for rehearing was timely filed in my case.  
 A timely petition for rehearing was denied by the United States Court of Appeals on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
 An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.  
The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

For cases from **state courts**:

The date on which the Louisiana Supreme Court decided my case was 9/4/2024

A copy of that decision appears at Appendix E.

A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.  
\_\_\_\_\_

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. \_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL PROVISIONS INVOLVED

*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, Demario G. Warren, was charged in a three-count indictment with the second degree murder of K. Williams, in violation of La. R.S. 14:30.1 (Count 1); the aggravated assault with a firearm of J. Burkhalter, in violation of La. R.S. 14:37.4 (Count 2); and the aggravated assault with a firearm of S.B., a juvenile, in violation of La. R.S. 14:37.4 (Count 3).

The jury trial commenced on April 1, 2019 and, on that date, a jury was seated and sworn. The presentation of evidence began the following day and continued through April 3, 2019, when the jury returned a responsive verdict of guilty of manslaughter with respect to Count 1 and of guilty as charged for Counts 2 and 3. The verdict on Count 1 was non-unanimous. The verdict on Counts 2 and 3 were unanimous.

The State thereafter filed an habitual offender bill against Petitioner in which it alleged that Petitioner was a fourth felony habitual offender. On June 19, 2019, the court

arraigned Petitioner on the habitual offender bill. The trial court explained to Petitioner some of the rights that he would possess were he to deny his guilt and require the State to prove the allegations in the habitual offender bill; however, the trial court neglected to advise Petitioner of his right to remain silent at the hearing. Further, although Petitioner's admission that he "was convicted" as a stipulation to the habitual offender charge, and adjudicated him an habitual offender upon that statement.

The court then proceeded with a sentencing hearing in which it entertained victim impact testimony. At the conclusion of the victim impact testimony, the trial court sentenced Petitioner on Count One, pursuant to the habitual offender adjudication, to life imprisonment without the benefit of parole, probation, or suspension of sentence. For Count Two, the court sentenced Petitioner to 10 years at hard labor to be served concurrently with Count One. And, for Count Three, the Court sentenced Petitioner to 10 years at hard labor to be served concurrently with Counts One and Two.

Petitioner thereafter filed a *pro se* motion to reconsider sentence which the trial court denied, and a counseled motion for appeal which the trial court granted. On appeal, the Louisiana First Circuit Court of Appeal vacated the conviction on Count One as non-unanimous, as well as the habitual offender adjudication that had been applied to enhance that conviction. The court of appeal affirmed the convictions on Counts Two and Three, and remanded the matter for further proceeding on Count One. *State v. Warren*, 2019-1410, p. 5 (La.App. 1 Cir. 7/24/20). (Appendix-C).

Following the remand, the State took up the prosecution of Count One as it was the Count that had been vacated by the court of appeal. Despite the fact that the court of appeal had affirmed the convictions and sentences on Counts Two and Three, the State belatedly filed two additional habitual offender bills seeking to enhance both Counts Two and Three. The bills relied in support of their accusation that Petitioner was a fourth felony habitual offender on the same three predicate offenses, all of which convictions were obtained on November 30, 2004. Petitioner filed a motion to quash the habitual offender bills.

On January 21, 2022, the trial court held a hearing on the habitual offender bills and on the motion to quash. The trial court denied the motion to quash, rejecting the defense's objection that the predicate convictions which resulted from convictions obtained together on a single day should be treated as only one conviction for purposes of the habitual offender act.<sup>1</sup> The trial court adjudicated Petitioner a fourth felony habitual offender with respect to both Counts Two and Three. It then vacated the ten-year sentences, sentences that had been affirmed by the court of appeal, and imposed sentences to life imprisonment for Count Two as well as for Count Three. The court specifically noted that it was up to the State to decide whether to re-prosecute Petitioner on Count One. The State has yet to take up that prosecution.

Petitioner timely filed a motion to reconsider sentence arguing, *inter alia*, that the

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1 Petitioner's predicate offenses were committed prior to the operative date of October 19, 2004, but he did not plead guilty to them until November of 2004 so, the trial court found, Paragraph B of La.R.S. 15:529. 1 did not mandate that the multiple convictions obtained on the same day be counted as one.

sentences were the result of vindictiveness stemming from the successful exercise of his appellate rights. On April 22, 2022, the trial court denied the motion to reconsider sentence.

Petitioner timely filed a motion for appeal which the trial court granted. Ms. Gwendolyn Brown, attorney with the Louisiana Appellate Project, was assigned to represent Petitioner on appeal of his excessive and vindictive sentences. Ms. Brown filed her brief in a timely manner. She submitted the following Assignments of Error in her brief to the court of appeal:

1. The State engaged in prosecutorial vindictiveness by belatedly filing habitual offender bills in connection with Counts Two and Three, counts that it had not previously sought to enhance, following Petitioner's successful appeal of Count One; and
2. The trial court erred by increasing, without cause, Petitioner's sentence following his successful appeal.

The Louisiana First Circuit Court of Appeal affirmed Petitioner's habitual offender sentence as imposed by the trial court. *State v. Warren*, 2023 WL 4008395 (La.App. 1 6/15/2023)(Appendix-D). The Louisiana Supreme Court denied Application for Writ of Certiorari. *State v. Warren*, 391 So.3d 1059, 2023-01049 (9/4/2024)(Appendix-E).

Petitioner now seek relief with this Honorable Court to vacate his excessive and vindictive sentence as imposed by the trial court.

## REASONS FOR GRANTING THE PETITION

In *North Carolina v. Pearce*, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969), overruled in part by *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989), the court held that the Due Process Clause of the Fourteenth Amendment prevented an increased sentence following a retrial if the increase in the sentence was motivated by vindictiveness against the defendant, because the fear of such retaliation would have a chilling effect on the defendant's exercise of his appeal rights. The court held that, when a judge imposes a more severe sentence upon a defendant after a new trial, the reasons must affirmatively appear in the record and must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. The court in *Pearce* found that this need for objective information arises because, without it, there is a presumption that the greater sentence is imposed for a vindictive purpose.

The Louisiana Supreme Court followed *Pearce* in *State v. Rutledge*, 259 La. 543, 250 So.2d 734 (1971), in which a defendant's guilty plea and sentence of one year imprisonment were vacated and defendant was subsequently tried before a jury, convicted, and sentenced to two and one-half years imprisonment. Because the reasons for the increase in the sentence did not appear in the record, the court found that the second sentence was constitutionally objectionable under *Pearce*. See also *State v. Allen*, 446 So.2d 1200, 1202-1203 (La.1984).

In *Alabama v. Smith*, 490 U.S. 794, 109 S.Ct. 2201, 104 L.Ed.2d 865 (1989), the defendant entered guilty pleas to charges of burglary and rape in exchange for the dismissal of a sodomy charge. The defendant later successfully had his guilty pleas vacated by an appellate court. He then proceeded to trial on all three original charges, was convicted on each, and received greater sentences than those imposed after his guilty pleas. The trial court stated that the greater sentences were being imposed because of evidence presented at trial of which the court was unaware at the time of the defendant's first sentencing. The United States Supreme Court found that, when a greater sentence is imposed after a trial than was imposed after a guilty plea, the presumption of vindictiveness present in *Pearce* does not exist because the trial court is generally privy to less relevant sentencing information after a plea than after a trial, such as the full nature and extent of the crimes and the defendant's conduct during the trial itself, and because the factors for leniency attendant to a guilty plea are no longer present after a trial. *Alabama v. Smith*, 490 U.S. at 801, 109 S.Ct. at 2205-06.

While our state's courts have acknowledged that a defendant may not be punished for seeking appellate redress, *State v. Tremain P.*, 06-438 (La.App. 5 Cir. 1/16/07), 956 So.2d 1, it has also said that the presumption of vindictiveness is inapplicable where different judges have imposed the different sentences against the defendant, because a sentence "increase" cannot truly be said to have taken place. *State v. Dauzart*, 07-15 (La.App. 5 Cir. 5/15/07), 960 So.2d 1079, 1086; *State v. Rodriguez*, 550 So.2d 837

(La.App. 2 Cir. 1989), citing *Texas v. McCullough*, 475 U.S. 134, 106 S.Ct. 976, 89 L.Ed.2d 104.

However, a presumption of vindictiveness exists when the same judge imposes a more severe sentence upon a defendant who successfully exercised his right to appeal or to attack his conviction collaterally. This presumption of vindictiveness may be overcome only by objective information in the record justifying the increased sentence. *State v. Rodriguez*, 550 So.2d 837, 839 (La.App. 2 Cir. 1989). As the *Pearce* court explained:

In order to assure the absence of such a [vindictive] motivation, we have concluded that whenever a judge imposes a more severe sentence upon a defendant after a new trial, the reasons for his doing so must affirmatively appear. Those reasons must be based upon objective information concerning identifiable conduct on the part of the defendant occurring after the time of the original sentencing proceeding. And the factual data upon which the increased sentence is based must be made part of the record, so that the constitutional legitimacy of the increased sentence may be fully reviewed on appeal.

*Pearce*, 89 S.Ct. at 2081. These principles apply in the context of prosecutorial vindictiveness in the filing of an habitual offender bill following a successful appellate attack. *See State v. Dauzart*, 960 So.2d at 1087.

In this case, the same judge that originally imposed a sentence of life imprisonment has now imposed a second, and has left open the possibility of a third, life sentence based on the same conduct, with the only distinguishing feature being the successful exercise of Petitioner's right to appeal. Thus, the presumption of vindictiveness

applies to this Petitioner.

While the State may argue that concurrent life sentences result in no practical increase in time served, its decision to seek two enhanced sentences on counts that it had not previously sought to enhance until after Petitioner made a successful attack on his conviction sentence on Count One clearly belies the sincerity of any such contention.

The record provide no support for the increase in sentencing. Indeed, the trial court made no effort to justify the increase in harshness and simply denied the motion to quash the predicate offenses which had they been obtained only a month earlier, would have provided only a single predicate conviction rather than the three that made the life sentences available.

The law is clear that when a judge imposes a more severe sentence on a defendant when he is convicted following a successful appeal, the trial judge's reasons for the increased sentence must affirmatively appear in the record. Otherwise, there is a presumption of vindictiveness. The purpose behind this rule is to prevent defendants from being penalized for having exercised their constitutional rights. *See State v. Fletcher*, 845 So.2d 1213. In this case, the presumption of vindictiveness must apply.

Although the court of appeal only vacated Count One and remanded the matter for further proceedings on that count alone, the State filed delayed<sup>2</sup> habitual offender bills of

2 La. C.Cr.P. art. 874 provides that a sentence shall be imposed without unreasonable delay. Under LSA-R.S. 15:529.1 D(1)(a), a multiple bill may be filed against a defendant who has been convicted of a felony "at any time, either after conviction or sentence." While LSA-R.S. 15:529.1 does not establish a time limit for habitual offender proceedings, the jurisprudence holds that a multiple offender bill must be filed within a reasonable time after the state learns the defendant has prior felony convictions. *State v. Muhammad*, 03-2991 (La.5/25/04), 875 So.2d 45, 55. This rationale is based upon a defendant's constitutional right to a

information on Counts Two and Three and the trial court, after adjudicating Petitioner a fourth felony habitual offender for those counts, imposed life sentences for them. Upon this record, it is not reasonable to defer to the trial court's increase in harshness. The habitual offender adjudication and sentence should be vacated as being the product of prosecutorial and judicial vindictiveness.

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speedy trial and to know the full consequences of the verdict within a reasonable time. *State v. Anderson*, 01-158 (La.App. 5 Cir. 5/16/01), 788 So.2d 561, 562.

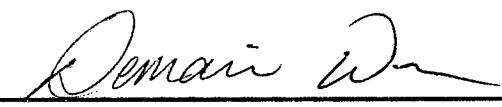
Speedy trial concerns require that habitual offender proceedings also be completed in a timely manner. *State v. Muhammad*, 875 So.2d at 55. The Muhammad court stated, "Abusive or vindictive delays should not be tolerated. The longer the state delays filing and is responsible for postponing the completion of the habitual offender proceeding, the more likely it is that the delay will be charged against the state." *Id.* The Louisiana Supreme Court, overruling *State ex rel. Williams v. Henderson*, 289 So.2d 74 (La.1974), found that there is no bright line deadline by which a multiple offender proceeding must be completed. *Muhammad*, 875 So.2d at 56. Any conclusion as to what constitutes a reasonable time must be determined on a case-by-case basis. *State v. Broussard*, 416 So.2d 109, 110-111 (La.1982); *State v. Anderson*, 01-158 (La.App. 5 Cir. 5/16/01), 788 So.2d 561, 563; *State v. Douzart*, 07-15 (La.App. 5 Cir. 5/15/07, 5-6), 960 So.2d 1079, 1084.

## CONCLUSION

This Honorable Court should grant Writ of Certiorari.

**DONE AND SIGNED** this 18 day of November, 2024.

Respectfully submitted pro se by:

  
\_\_\_\_\_  
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