

No. 24-6847

In the
Supreme Court of the United States

RICHARD DARREN EMERY,

Petitioner,

v.

CAPITAL CASE

STATE OF MISSOURI,

Respondent.

On Petition for a Writ of Certiorari
To the Supreme Court of the State of Missouri

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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REASONS FOR GRANTING THE WRIT

A. Introduction

This case presents a vital constitutional question about the limits of judicial neutrality in capital sentencing. Specifically, whether a judge may rely on a defendant's lack of spirituality to diminish his mitigation case and justify a death sentence. That question goes to the heart of the Due Process Clause of the Fourteenth Amendment and has profound implications for how reviewing courts evaluate religious bias in sentencing. The Missouri Supreme Court declined to treat the trial judge's religious commentary as constitutionally problematic and instead recast it as a benign assessment of credibility. The State now echoes that framing, but in doing so, it avoids the core issue: the sentencing judge explicitly drew moral distinctions between Mr. Emery and his son based on the strength of their religious beliefs and used that distinction to discredit Mr. Emery's role as a father and to cast doubt on his credibility in general.

Rather than engage with a full context of the trial court's remarks, the State urges this Court to view the sentencing record as broad, detailed, and benign. However, that narrative fails to account for the judge's express reliance on spirituality as a metric of moral standing and parental worth. The State offers no explanation for how such reasoning fits within constitutional boundaries. Furthermore, if existing cases permit this use of religious beliefs as a sentencing factor, as claimed by the State, then these cases warrant a reexamination by this Court. The Constitution does not allow a person's faith to serve as a proxy for their

humanity, credibility, or fitness for mercy. *See Zant v. Stephens*, 462 U.S. 862, 885 (1983) (noting that a defendant may not be sentenced based on constitutionally impermissible considerations, including religious beliefs). If capital sentencing is to remain anchored in objectivity rather than religious preference, this line must be drawn clearly. This case offers a direct and compelling opportunity to do so.

B. The State and the Missouri Supreme Court Misused the Context of the Sentencing Court’s Remark to Excuse the Error

The State and the Missouri Supreme Court both suggest that the trial court’s comments regarding Mr. Emery’s lack of spirituality were part of a broader analysis and thus should not be “plucked from context.” (App. at 37; BIO at 6). However, it is precisely that context—the court’s formal explanation of its sentencing decision—that makes the remarks constitutionally concerning. The trial court made the comparison between Mr. Emery’s lack of spirituality and his son’s faith while explaining at length and on the record why it was imposing four death sentences. When a judge chooses to highlight a defendant’s lack of spirituality during its formal explanation of a death sentence, the problem is not a distortion of the context but the context itself. For example, the sentencing court emphasized that Mr. Emery’s son was “going on mission trips, studying to be a Christian counselor” and contrasted that in the very next sentence with Mr. Emery’s statement, “I’m not a spiritual person.” (A-37-A-38; TR 5274-5275). These statements were not incidental—they were integrated into the court’s formal sentencing explanation.

No amount of contextualization can transform a spiritual litmus test into a constitutionally permissible credibility statement. The fact that the court’s religious comparison was embedded in its formal sentencing rationale makes it more, not less, constitutionally problematic.

The State praises the sentencing court’s “detailed record” of relevant factors it used when sentencing Mr. Emery to death (BIO at 11), but it never explains how the specific detail of Mr. Emery’s lack of spirituality fits into that record except by pretending it does not exist. Neither the State nor the Missouri Supreme Court offers any explanation for how Mr. Emery’s lack of spirituality could plausibly diminish the credibility of testimony concerning his feelings of abandonment, a well-documented symptom of borderline personality disorder. By allowing the trial court to rely on Mr. Emery’s lack of spirituality to discredit his mitigation case and his role as a father, the Missouri Supreme Court effectively sanctioned the use of religion as a proxy for credibility and moral standing.¹ The Missouri Supreme Court’s opinion invites future sentencing courts to treat the spiritual or religious identity of a defendant as a metric of human worth. However, the Due Process

¹ Although the State points to evidence suggesting Mr. Emery was less present early in his son’s life, it cites no evidence suggesting that he remained uninvolved or played no meaningful role in shaping who his son ultimately became. (BIO at 12). That absence of evidence makes the trial court’s spiritual comparison all the more inappropriate.

Clause should not be interpreted to merely forbid overt religious discrimination; instead, it should be read to forbid any mode of judicial reasoning that treats a person's faith, or lack thereof, as evidence of diminished worth, credibility, or entitlement to mercy, especially when a person's life is at stake.

C. The State's Attempt to Distinguish *Torres*, *Pattno*, and *Bakker* Ignores the Legal Tests Those Courts Applied, Underscoring the Need for Certiorari Review

The Missouri Supreme Court's reasoning in this case—that a judge's express comparison between a defendant's lack of spirituality and his son's religious faith was merely a benign comment on credibility—conflicts directly with decisions from other courts that have found constitutional error in similar or even less explicit invocations of religion at sentencing. The State attempts to distinguish those cases by minimizing their actual similarities and insisting that Mr. Emery's case involves no comparable error. (BIO at 9-11). However, the distinctions the State draws fail to address the common constitutional principle at stake: sentencing may not rest even in part on a judge's disapproval of a defendant's religious identity or beliefs.

In attempting to distinguish *Torres v. State*, 124 So.3d 439 (Fla. 1st DCA 2013), *State v. Pattno*, 579 N.W.2d 503 (Neb. 1998), and *U.S. v. Bakker*, 925 F.2d 728 (4th Cir. 1991), the State avoids addressing the actual due process tests those courts applied and instead focuses on superficial factual differences.

The State asserts that *Torres* involved a “lengthy discussion of irrelevant religious norms,” and that the judge in that case “chastised the defendant” for personal behavior using “shared religious values.” (BIO at 9-10). The State, however, does not apply or even mention the test used by the Florida Court of Appeals: whether the “trial judge’s comments can reasonably be construed to suggest that the trial judge based appellant’s sentence, at least in part, on religion.” 124 So.3d at 442. Here, a reasonable observer could easily conclude that the trial court discredited Mr. Emery in large part because of his religious beliefs.

The State asserts that in *Pattno*, the sentencing judge quoted biblical passages disparaging homosexuality that were not relevant to the crime charged. (BIO at 9-10). However, the State avoids addressing the test used by the Nebraska Supreme Court: whether “a reasonable person who knew the circumstances of the case would question the judge’s impartiality under an objective standard of reasonableness, even though no actual bias or prejudice was shown.” 579 N.W.2d at 507-08. In the present case, Mr. Emery’s lack of spirituality was a characteristic that should have had absolutely no bearing on his credibility or whether he “abandoned” his son. A reasonable person who knew the circumstances of the case would absolutely question the judge’s impartiality in this case.

Finally, the State asserts that in *Bakker*, “the judge believed the defendant’s crime had victimized the judge and other religious observers.” (BIO at 10-11). By focusing exclusively on this fact, the State fails to grapple with the 4th Circuit’s statement that it could not “sanction sentencing procedures that create the

perception of the bench as a pulpit from which judges announce their personal sense of religiosity and simultaneously punish defendants for offending it.” *Bakker*, 925 F.2d at 740. In the present case, the fact that the sentencing court chose to contrast Mr. Emery’s lack of spirituality with his son’s missionary work and aspirations to become a Christian counselor also created the perception that Mr. Emery had offended the judge’s personal sense of religiosity.

By failing to engage with the legal standards that guided the decisions of *Torres*, *Pattno*, and *Bakker*, the State offers no meaningful way to distinguish those cases from the present case. Instead, it treats each case as limited to its own facts without asking whether the same due process principles apply. This kind of case-by-case parsing misses the broader point: using a defendant’s religious beliefs to help justify a death sentence is fundamentally at odds with due process and the duty of judicial neutrality.

The State similarly dismisses *Andrew v. White*, 145 S. Ct. 75 (2025) and *State v. Lovell*, 565 P.3d 497 (Utah 2024) because their holdings do not specifically address a judge taking a defendant’s religion into account at sentencing. (BIO at 8, 10). However, in *Andrew*, this Court specifically rebuked the prosecutor for contrasting the defendant “with the victim, whom they asserted had been ‘committed to God.’” 145 S. Ct. at 78. The clear implication of this line is that the defendant had *not* been committed to God. This constitutional violation is even worse when made by a judge rather than by a prosecutor.

In *Lovell*, the Utah Supreme Court noted that “the use of religiously charged arguments supporting death has been universally condemned” and that they “have no place in our non-ecclesiastical courts and may not be tolerated there.” 565 P.3d at 515 (quoting *Bennett v. Angelone*, 92 F.3d 1336, 1346 (4th Cir. 1996)). This principle is absolutely relevant to the present case, where the sentencing judge invoked Mr. Emery’s religious beliefs to assign moral credit and diminish his credibility. This is precisely the kind of religiously charged reasoning *Lovell* recognized as incompatible with due process.

A judge’s religious reasoning cannot be immunized from review simply because it is framed as a credibility judgment or a response to mitigation. Had the reasoning of the Missouri Supreme Court been applied in *Torres*, *Pattino*, or *Bakker*, those courts likely would have reached the opposite conclusion and denied relief. This confirms a doctrinal conflict for this Court to resolve. To prevent further variance in standards, this Court should grant certiorari to establish a uniform approach for reviewing judicial reliance on religion in sentencing decisions. As argued in Mr. Emery’s initial petition, this case is an ideal vehicle for review because the trial court explicitly invoked Mr. Emery’s spiritual identity as part of its sentencing rationale, allowing this Court to clarify this critical constitutional boundary.

D. The Cases Cited by the State Do Not Resolve the Constitutional Question Raised Here and Are Readily Distinguishable

The State attempts to downplay the constitutional concerns in this case by citing three decisions in which courts upheld sentencing decisions despite religious references by the sentencing judges. (BIO at 13). *See U.S. v. Ayers*, 855 F. App'x 111, 112 (4th Cir. 2021); *U.S. v. Johnson*, 374 Fed.Appx. 1 (11th Cir. 2010); and *Singleton v. State*, 783 So.2d 970 (Fla. 2001). However, none of these cases involved the kind of value-based comparison between a defendant's lack of spirituality and another individual's faith that occurred in Mr. Emery's case. Nor did any of these cases involve a sentencing judge explicitly assigning moral credit and parental merit based on religious identity, as happened here. These cases simply do not raise the same due process concerns that exist in the present case.

In *Ayers*, an unpublished case, the defendant pleaded guilty to “using, attempting to use, and threatening to use a weapon of mass destruction against a person and property within the United States.” 855 F. App'x at 112. There, the Fourth Circuit emphasized that the district court had merely referred to the defendant's “interest in a fringe group of terrorists who commit violent acts in the name of a particular religion,” and did so only in connection with “the nature and circumstances of Ayers' offenses.” *Id.* at 114. This is not analogous to the present case, where Mr. Emery's lack of spirituality should have had no bearing whatsoever on his credibility or whether his borderline personality disorder made him especially susceptible to feelings of abandonment.

In *Johnson*, another unpublished case, the defendant argued that the sentencing court had considered his religion in imposing his sentence. 374 Fed.Appx. at 1. Although the sentencing court in that case referred to the defendant and others like him as “charlatans in religious disguise,” the Eleventh Circuit noted that the sentencing court had specifically acknowledged that “under the Constitution, religious matters had no place in the courtroom.” *Id.* at 2. The Eleventh Circuit noted that the sentencing court’s statement that the defendant had committed a “fraudulent scheme . . . under some figurative robes of religion was an objective comment on the offense conduct, not an indication that religion would play a role in determining his sentence.” *Id.* In the present case, the sentencing court did *not* acknowledge that religious matters had no place in the courtroom, and the court did *not* limit its discussion of religion to the conduct of the offense.

Finally, in *Singleton*, the Florida Supreme Court implied that a reference to “Sodom and Gomorrah” by a sentencing judge imposing the death penalty *was* an error, but that “any error was harmless.” 783 So.2d at 979. The Florida Supreme Court determined that the “plain language” of the sentencing order “stated that no aggravators were considered other than Singleton’s prior violent felony” and that the murders were “heinous, atrocious, or cruel (HAC).” *Id.* at 972, 979. In contrast, the reference to Mr. Emery’s lack of spirituality in the present case was *not* harmless. Indeed, the court’s comments were made as part of what the State described as a “detailed record” of relevant factors it used when sentencing Mr. Emery to death (BIO at 11). Furthermore, the comments were made after the trial

court stated that it had reviewed the record extensively and had “spent many sleepless nights thinking about” the sentencing decision. (A-36-A-37; TR 5272-5273). In a case where the judge acknowledged the difficulty of the decision, every factor that shaped the outcome—including Mr. Emery’s expressed religious beliefs—must be taken seriously instead of being brushed aside as harmless.

In short, the cases cited by the State do not answer the constitutional question raised here and instead underscore its importance. None of the decisions involved a judge using religious identity as a basis to assign or deny moral value, parental worth, or mitigation. And none excused such reasoning as constitutionally permissible. To the extent the State believes these cases can be interpreted to justify the sentencing judge’s actions in the present case, this only reinforces the need for this Court’s intervention. If current standards permit a death sentence to rest, even in part, on a judge’s view that a spiritually devout parent is more worthy of credit than a non-spiritual one, then those standards require reexamination. The Constitution does not permit capital sentencing to turn on religious character assessments. Certiorari is needed to ensure that line is both clear and respected.

E. Conclusion

This case presents an urgent need for this Court to make clear that a defendant’s religious beliefs cannot be used as a metric of credibility, character, or parental worth in capital sentencing. The trial court’s express comparison between Mr. Emery’s lack of spirituality and his son’s Christian faith was not an offhand

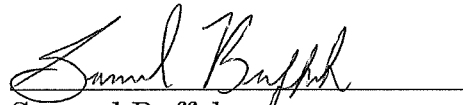
remark, but a component of the court's formal sentencing explanation. It was used to discredit Mr. Emery's mitigation evidence and to justify the death penalty. The court's reasoning crossed a constitutional line. *See Zant*, 462 U.S. at 885. The Missouri Supreme Court's decision to excuse it creates doctrinal confusion and invites lower courts to do the same.

This is not a case about religious language in isolation, but about the misuse of a defendant's religious beliefs as a sentencing factor in a death penalty case. The standards applied by other courts in *Torres*, *Pattno*, and *Bakker* underscore the constitutional violation here, and the State's reliance on distinguishable or unpublished cases only amplifies the need for clarity. If courts may justify death sentences by favorably comparing one person's faith to a defendant's lack thereof, then the Due Process Clause is emptied of meaning in precisely the context where its protections matter most. *See Woodson v. North Carolina*, 428 U.S. 280, 305 (1976) (noting the Eighth Amendment demands that capital sentencing be conducted with heightened reliability, free from arbitrary considerations). This Court's review is necessary to restore the constitutional limits that prevent faith-based value judgments from determining who lives and who dies.

CONCLUSION

For the foregoing reasons, Mr. Emery respectfully requests that this Court grant his Petition for a Writ of Certiorari.

Respectfully submitted,

A handwritten signature in cursive script, reading "Samuel Buffaloe", is written over a horizontal line.

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