

SUPREME COURT OF ARIZONA

State of Arizona v. Bernard Smith, 203 Ariz. 75

50 P.3d 825 (2002) · No. CR-01-0272-AP · Decided July 29, 2002

SUMMARY

The Supreme Court of Arizona reviewed Bernard Smith’s challenge to the impartiality of the sentencing judge and his request for jury findings on capital aggravating factors. The court upheld the denial of the motion for change of judge, but held that Arizona’s judge-based capital sentencing procedure was unconstitutional under Ring v. Arizona. The court reserved decision regarding Smith’s sentence and stated that the opinion was not a final disposition.

CASE DETAILS

COURT	Supreme Court of Arizona
WRITING FOR THE COURT	Rebecca White Berch, Vice Chief Justice; Ruth V. McGregor, Vice Chief Justice; Charles E. Jones, Chief Justice; Stanley G. Feldman, Justice; Rebecca White Berch, Justice; William J. O'Neil, Judge, designated
JURISDICTION	Arizona
DECIDED	July 29, 2002
DOCKET	CR-01-0272-AP
DISPOSITION	other
PROCEDURAL POSTURE	Automatic direct appeal from the denial of a motion for change of judge and from a capital resentencing. The Arizona Supreme Court addressed the recusal issue, held that the judge-based capital-sentencing procedure was unconstitutional under Ring v. Arizona, and reserved decision on the sentence.
STANDARD OF REVIEW	The denial of the motion for change of judge was reviewed for abuse of discretion. A motion under Arizona Rule of Criminal Procedure 10.1 required the defendant to prove judicial bias or prejudice by a preponderance of the evidence.
PRECEDENTIAL VALUE	Published en banc opinion of the Supreme Court of Arizona; precedential, subject to later supersession of its judge-based capital-sentencing analysis by Ring v. Arizona.
PARTIES	Bernard Smith v. State of Arizona

TOPICS

sentencing criminal procedure sixth amendment appellate procedure constitutional law

PRACTICE AREAS

criminal procedure capital sentencing judicial disqualification constitutional law appellate procedure

QUESTIONS PRESENTED

1. Whether Smith's motion for change of judge was properly treated as a motion under Arizona Rule of Criminal Procedure 10.1 and was untimely.
2. Whether the sentencing judge was required to recuse himself because of his limited professional contacts with the victim's son and daughter-in-law.
3. Whether Arizona's capital-sentencing procedure, which permitted a judge rather than a jury to find the aggravating factors necessary for imposition of the death penalty, violated the Sixth and Fourteenth Amendments after *Ring v. Arizona*.

HOLDINGS

1. A motion framed as a hybrid change-of-venue and change-of-judge request was properly treated as a motion for change of judge for cause under Arizona Rule of Criminal Procedure 10.1. Because Smith knew of the relevant professional relationship more than ten days before filing the motion, the motion was untimely.
2. Judge Nelson was not required to recuse himself. The limited professional relationships with the victim's son and daughter-in-law were too attenuated, and Smith neither alleged nor proved actual bias or prejudice.
3. Arizona Revised Statutes section 13-703 was unconstitutional insofar as it permitted a sentencing judge, rather than a jury, to find the aggravating factors necessary to authorize imposition of the death penalty. The sentencing judge therefore erred in applying that procedure to Smith.

KEY QUOTATIONS

“The Court held section 13-703 unconstitutional, insofar as it permits a judge to find the aggravating factors that permit imposition of the death penalty.” (203 Ariz. 75, 80-81; 50 P.3d 830-831)

“For the foregoing reasons, we approve Judge Johnson's denial of Smith's motion for change of judge and reserve decision regarding Smith's sentence.” (203 Ariz. 75, 83; 50 P.3d 833)

FACTUAL BACKGROUND

Bernard Smith was convicted of robbing the Low Cost Market in Yuma and shooting cashier Charles Pray, who later died from his wounds. The sentencing judge, John N. Nelson, disclosed professional contacts with Pray's son and daughter-in-law, both longtime employees of the Yuma County Superior Court. Smith sought a change of judge, arguing that the relationships created an appearance of impropriety and required recusal. The superior court denied the motion and resentenced Smith to death after finding three aggravating circumstances.

PROCEDURAL HISTORY

Smith was convicted of armed robbery and first-degree murder and sentenced to death. The Arizona Supreme Court affirmed on direct appeal in 1985. After federal habeas proceedings resulted in a determination that Smith received ineffective assistance during the penalty phase, the case was remanded for resentencing. The Yuma County Superior Court again imposed death, and the Arizona Supreme Court reviewed the matter automatically. Before resentencing, the motion for change of judge was denied as untimely and unsupported; the Supreme Court approved that denial but reserved decision regarding the sentence because Ring had invalidated Arizona's judge-found aggravating-factor procedure.

DISPOSITION

other

REMAND INSTRUCTIONS

The court reserved decision regarding Smith's sentence and ordered supplemental briefing and argument on the procedures required after Ring. The case was consolidated with other nonfinal direct-appeal capital cases for consideration of capital-sentencing issues.

CASES CITED

- State v. Schackart, 190 Ariz. 238, 257, 947 P.2d 315, 334 (1997)
- State v. Carver, 160 Ariz. 167, 172, 771 P.2d 1382, 1387 (1989)
- State v. Valencia, 124 Ariz. 139, 141, 602 P.2d 807, 809 (1979)
- State v. Leslie, 136 Ariz. 463, 463-64, 666 P.2d 1072, 1072-73 (1983)
- Walton v. Arizona, 497 U.S. 639, 110 S. Ct. 3047, 111 L. Ed. 2d 511 (1990)
- Apprendi v. New Jersey, 530 U.S. 466, 120 S. Ct. 2348, 147 L. Ed. 2d 435 (2000)
- State v. Ring, 200 Ariz. 267, 279-80, 25 P.3d 1139, 1151-52 (2001)
- Ring v. Arizona, 536 U.S. 584, 122 S. Ct. 2428, 153 L. Ed. 2d 556 (2002)
- State v. Sansing, 200 Ariz. 347, 361, 26 P.3d 1118, 1132 (2001)
- State v. Rossi, 146 Ariz. 359, 366, 706 P.2d 371, 378 (1985)
- State v. Harrod, 200 Ariz. 309, 320, 26 P.3d 492, 503 (2001)
- State v. Gillies, 135 Ariz. 500, 507, 662 P.2d 1007, 1014 (1983)
- State v. Gretzler, 135 Ariz. 42, 50, 659 P.2d 1, 9 (1983)
- State v. Salazar, 173 Ariz. 399, 416, 844 P.2d 566, 583 (1992)
- State v. Poyson, 198 Ariz. 70, 82-83, 7 P.3d 79, 91-92 (2000)
- State v. Pandeli, 200 Ariz. 365, 382, 26 P.3d 1136, 1153 (2001)
- State v. Smith, 146 Ariz. 491, 707 P.2d 289 (1985)

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