

**Sharpe Vs. Buchanan**

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**Court :** US Supreme Court

**Decided On :** Dec-14-1942

**Appeal No. :** 317 U.S. 238

**Appellant :** Sharpe

**Respondent :** Buchanan

**Judgement :**

Sharpe v. Buchanan - 317 U.S. 238 (1942)

U.S. Supreme Court Sharpe v. Buchanan, 317 U.S. 238 (1942)

**Sharpe v. Buchanan**

**No. 525**

**Decided December 14, 1942**

**317 U.S. 238**

*ON PETITION FOR WRIT OF CERTIORARI TO THE*

*CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT*

**SYLLABUS**

Where a judgment of the Circuit Court of Appeals affirming the District Court's refusal of habeas corpus was upon the sole ground that the applicant, who was confined in a state penitentiary, had not applied for habeas corpus to the state courts, this Court vacated the judgment because, after the filing of the petition for certiorari here, habeas corpus had been expressly refused by the State's highest court. P. [317 U. S. 238](#) .

121 F.2d 448 vacated.

Petition for writ of certiorari to review the affirmance of a judgment denying habeas corpus, 36 F.Supp. 386.

PER CURIAM.

The motion for leave to proceed *in forma pauperis* is granted, and the petition for certiorari is also granted. It appears from the record that, after a hearing, the district court denied an application for habeas corpus filed by petitioner, who is confined in a state penitentiary pursuant to a judgment of conviction of a state court. The circuit court of appeals affirmed the district court's order, 121 F.2d 448, on the sole ground that petitioner had not exhausted his state remedies by applying to the state courts for habeas corpus, although an application for a writ of error *coram nobis* had previously been denied by the Kentucky Court of Appeals. *Sharpe v. Commonwealth*, 284 Ky. 88, 143 S.W.2d 857. The circuit court of appeals denied a petition for rehearing, 133 F.2d 100, when it appeared that an application for habeas corpus, filed in a state court after the circuit court of appeals had rendered its judgment, was still pending on appeal in the

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Kentucky Court of Appeals. After the petition for certiorari was filed here, the Kentucky Court of Appeals affirmed the state court's order denying habeas corpus. *Sharpe v. Commonwealth*, Ky., 165 S.W.2d 993, decided November 13, 1942. It thus appears that this obstacle to a consideration of the merits of petitioner's application, which the circuit court of appeals encountered, has now been removed. The judgment is therefore vacated, without costs, and the cause

remanded to the circuit court of appeals for such further proceedings as it may deem appropriate.

*So ordered.*

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