

No. _____

In the
Supreme Court of the United States

ROBERT LEE HEARD, JR.
Petitioner

vs.

THE STATE OF LOUISIANA
Respondent

On Petition for a Writ of Certiorari to
The Louisiana Third Circuit Court of Appeal

PETITION FOR WRIT OF CERTIORARI

Christopher Albert Aberle
Louisiana Appellate Project
P.O. Box 8583
Mandeville, LA 70470-8583
aberle@appellateproject.org
(985) 871-4084

Counsel of Record for Petitioner

Question Presented*

Does the right to a jury trial guaranteed by the Sixth Amendment, as applied to the States through the Fourteenth Amendment, allow a state-court criminal conviction to stand on a nonunanimous jury verdict?

*NOTE: On March 18, 2019, this Court granted certiorari to review this precise issue in *Evangelisto Ramos v. Louisiana*, No. 18-5924.

Petition for Certiorari

Robert Lee Heard, Jr., petitions for a writ of certiorari to review the judgment entered below by Louisiana Third Circuit Court of Appeal in *State v. Heard*, 18-236 (La. App. 3 Cir. 11/7/16) (unpublished), *writ denied*, 18-K-2013 (La. 4/29/19), 251 So. 3d 1087.

Opinions Below

The unpublished opinion of the Louisiana Third Circuit Court of Appeal is appended to this Petition at A1. The Louisiana Supreme Court's order and judgment denying discretionary review is reported at 18-K-2013 (La. 4/29/19), 268 So. 3d 1029 and is appended at A14.

Jurisdiction

The Louisiana Supreme Court denied review on April 29, 2019. This Petition is filed with 30 days of that ruling. Accordingly, this Court has jurisdiction to review the judgment below. SUP. CT. R. 13(1); 28 U.S.C. § 1257.

Authorities Involved

The Sixth Amendment to the United States Constitution provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury"

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "[Nor shall any State deprive any person of life, liberty, or property, without due process of law.]"

Section 17(A) of Article I of the Louisiana Constitution (now repealed) provided, in relevant part: “A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict.”

Article 782 of the Louisiana Code of Criminal Procedure (now repealed) provided, in relevant part: “Cases in which the punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict.”

Statement of the Case

By a vote of 11 to 1, a jury in a Louisiana state court found Robert Lee Heard, Jr., guilty of one count of second degree murder, and the trial court sentenced him to a mandatory term of life without parole. Mr. Heard appealed, arguing, among other things, that the nonunanimous verdict and the state law provisions that authorize such verdicts¹ violate his Sixth Amendment right to a jury. As the appended rulings show, the Third Circuit rejected this claim on the merits, holding it foreclosed by the Louisiana Supreme Court’s decision in *State v. Bertrand*,² and by this Court’s decision in *Apodaca v. Oregon*.³ The Louisiana Supreme Court thereafter denied discretionary review of this claim.

¹ See LA. CONST. art. I, § 17 (repealed); LA. CODE CRIM. PROC. ANN. art 782(A) (repealed).

² 08-2215 (La. 3/17/09), 6 So. 2d 738.

³ 406 U.S. 404 (1972).

Reason for Granting the Petition

The Sixth Amendment requires that a jury verdict be unanimous, and the Fourteenth Amendment imposes that requirement on verdicts rendered in criminal trials in state courts.

As Mr. Heard argued in the courts below, his nonunanimous verdict and Louisiana's nonunanimous jury-verdict system violate the right to a jury trial guaranteed by the Sixth and Fourteenth Amendments. This is precisely the issue currently before this Court in *Evangelisto Ramos v. Louisiana*. Should this Court rule in Ramos's favor, Mr. Heard, who is on direct appeal, will also be entitled to the benefit of that ruling.⁴

Conclusion

This Court should hold the instant petition until it decides *Ramos*. This Court should then dispose of this petition as appropriate in light of that decision.

Respectfully submitted,

/s/ Christopher Albert Aberle
Christopher Albert Aberle
Louisiana Appellate Project
P.O. Box 8583
Mandeville, LA 70470-8583
caaberle@gmail.com
(985) 871-4084

Attorney of Record for Petitioner
Robert Lee Heard, Jr.

⁴ See *Griffith v. Kentucky*, 479 U.S. 314 (1987).