

No. _____

In the
Supreme Court of the United States

HORATIO JOHNSON
Petitioner

vs.

THE STATE OF LOUISIANA
Respondent

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

PETITION FOR WRIT OF CERTIORARI

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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 October 7, 2019, this Court heard oral argument on this precise issue in *Evangelisto Ramos v. Louisiana*, No. 18-5924.

Petition for Certiorari

Horatio Johnson petitions for a writ of certiorari to review the judgment entered below by Louisiana Fourth Circuit Court of Appeal in *State v. Johnson*, 18-0409 (La. App. 4 Cir. 3/13/19), 266 So. 3d 969, *writ denied*, 19-K-0601 (La. 10/01/19), ___ So. 3d ___.

Opinions Below

The published opinion of the Louisiana Fourth Circuit Court of Appeal is reported at 18-0409 (La. App. 4 Cir. 3/13/19), 266 So. 3d 969 and is appended to this Petition at A1. The Louisiana Supreme Court's order and judgment denying discretionary review is reported 19-K-0601 (La. 10/01/19), ___ So. 3d ___ and is appended at A28.

Jurisdiction

The Louisiana Supreme Court denied review on October 1, 2019. This Petition is filed within 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Section 17(A) of Article I of the Louisiana Constitution (now repealed) provided, in relevant part: “A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of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Article 782 of the Louisiana Code of Criminal Procedure (now repealed) provided, in relevant part: “Cases in which the punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of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 votes of 11 to 1, a jury in a Louisiana state court found Horatio Johnson guilty of one count of second degree murder and one count of conspiracy to obstruct justice. By unanimous vote, the jury also found Johnson guilty of a third count, for obstruction of justice. The trial court imposed consecutive sentences, totaling life without parole plus 60 years. Mr. Johnson appealed, arguing, among other things, that the two nonunanimous verdicts and the state law provisions that authorized such verdicts¹ violate his Sixth Amendment right to a jury.

As the appended rulings show,² the Fourth Circuit rejected this claim on the merits, holding, in part, that the claim is foreclosed by the Louisiana Supreme Court’s decision in *State v. Bertrand*,³ and by this Court’s decision in *Apodaca v. Oregon*.⁴ 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 See Appendix at A24-A26, A28.

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

⁴ 406 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. Johnson argued in the courts below, his nonunanimous verdicts 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*, No. 18-5924, which was argued on October 7, 2019. Should this Court rule in Ramos's favor, Mr. Johnson, who is on direct appeal, will also be entitled to the benefit of that ruling.⁵

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,

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⁵ See *Griffith v. Kentucky*, 479 U.S. 314 (1987).