

No. 19-8337

IN THE
Supreme Court of the United States

JERMAINE RUFFIN

PETITIONER,

v.

STATE OF LOUISIANA,

RESPONDENT.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
LOUISIANA COURT OF APPEAL, FIRST CIRCUIT

PETITIONERS' REPLY TO RESPONDENT'S
BRIEF IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

G. Ben Cohen*
The Promise of Justice Initiative
1024 Elysian Fields Avenue
New Orleans, LA 70117
(504) 529-5955
bcohen@defendla.org

* Counsel of Record

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REPLY BRIEF

Pursuant to Rule 15.6, Petitioner¹ files this *Reply Brief* to the State of Louisiana's *Brief in Opposition*.

The Brief in Opposition's is predicated on the assertion that the Louisiana Supreme Court did not consider petitioner's timely application for reconsideration. The circumstances in this instance are clear: the Louisiana Supreme Court considered the application and denied it rendering this petition timely.

Respondent suggests that this case is different from the plethora cases identified in his petition for certiorari, because in a number of those cases the Court granted the application for reconsideration and then denied the writ, whereas in this case "the court simply denied the application thus *indicating by omission*, that it was not considered." See BIO at pg 5-6. This reads too much from nothing.

When the Louisiana Supreme Court does not consider an application for rehearing, it indicates as much. Indeed in at least ten cases this calendar year, -- covering the time period in which petitioner's application was denied -- the Louisiana Supreme Court has specifically "declined to consider" an application for reconsideration. *State v. Allen*, 2018-01685 (La. 07/17/20), 2020 La. LEXIS 1396, ("Application for reconsideration not considered"); *State v. Forman*, 2019-00782 (La. 07/17/20) ("Application for reconsideration not considered."); *State v. Samuels*, 2019-

¹ As noted in the initial opinion affirming Mr. Ruffin's conviction, "The record contains various spellings of the defendant's last name. We adopt the spelling used in the grand jury's indictment as the official charging instrument." *State v. Ruffen*, 2018-1280 (La. App. 1 Cir 02/28/19) n.1. Undersigned counsel uses the spelling that the petitioner has used.

01641 (La. 07/17/20) (“Application for reconsideration not considered.”); *Gautreaux v. La. Farm Bureau Cas. Ins. Co.*, 2019-01782 (La. 06/03/20) (“Application for reconsideration not considered.”); *State v. Williams*, 2018-00447 (La. 03/09/20), 294 So. 3d 479, 480 (“Application for reconsideration not considered.”); *State ex rel. Declouet v. State*, 2018-01827 (La. 02/18/20) (“Application for reconsideration not considered.”); *State v. Spells*, 2018-01248 (La. 02/18/20) (“Application for reconsideration not considered.”); *State v. Davis*, 2018-01820 (La. 01/22/20), 291 So. 3d 1041 (“Application for reconsideration not considered.”); *State v. West*, 2018-01204 (La. 01/22/20), 291 So. 3d 1040 (“Application for reconsideration not considered.”); *State v. Ford*, 2018-01594 (La. 01/14/20), 291 So. 3d 678 (“Application for reconsideration not considered.”). In doing so, in each instance, the Court cited Louisiana Supreme Court Rule IX, § 6.

On the other hand, the Louisiana Supreme Court does not prohibited reconsideration entirely. In many instances the Louisiana Supreme Court has granted requests for reconsideration. *State v. Edwards*, 2019-01660 (La. 07/17/20) (“Reconsideration granted. ...If applicant's representation is correct, the court of appeal is ordered to consider and act on the writ. If applicant's representation is incorrect, the court of appeal is ordered to accept, file and act upon the pleading which is herewith transferred to the court of appeal...”).

In other instances, the Court grants reconsideration and but denies the writ. *State v. Decay*, 2019-01249 (La. 03/16/20) (“Application for reconsideration granted. Writ application denied. Johnson, C.J., would grant the writ application. Hughes, J.,

would grant the writ application.”); *State v. Bratton*, 2019-01542 (La. 02/18/20) (“Application for reconsideration granted. Writ denied.”); *State v. Mahogany*, 2019-01324 (La. 02/18/20) (“Application for reconsideration granted. Writ denied.”).

Finally, and most importantly, in an analogous circumstance, the Court granted reconsideration in light of *Ramos*, and remanded for further proceedings. See *State v. Jackson*, 2019-02023 (La. 06/12/20) (“Application for reconsideration granted. The matter is remanded to the court of appeal for further proceedings in light of *Ramos v. Louisiana*, 590 U.S. , 2020 WL 1906545 (2020). If the non-unanimous jury claim was not preserved for review in the trial court, the court of appeal should consider the issue as part of an error patent review. See La.C.Cr.P. art. 920(2).”). The only difference between this case and *State v. Jackson, supra*, is that the application for reconsideration in *Jackson* was adjudicated after this Court’s decision in *Ramos v. Louisiana*, whereas the Louisiana Supreme Court considered the issue in this case just prior to the decision in *Ramos*. That the Louisiana Supreme Court continued to maintain the legitimacy of *Apodaca v. Oregon* up until April 20, 2020 explains the reason why it denied the application for reconsideration – but it does not convert that denial into a procedural bar.

As Chief Justice Johnson explained in a similar case: “Reconsideration of a writ following a denial of a writ application is rare, but not unprecedented, and appears justified by the extreme circumstances in the present case.” *State v. LeBlanc*, 2006-1714 (La. 03/23/2007), 951 So. 2d 1087, 1089. The federal Fifth Circuit and the Eastern District of Louisiana have recognized that a conviction does not become final

until the denial of the Application for Reconsideration.² At the very least, to the extent that the Brief in Opposition seeks to enforce a procedural bar, it is one that has not been consistently or regularly applied. See *Johnson v. Mississippi*, 486 U.S. 578, 588-89, 108 S. Ct. 1981, 1988 (1988) (holding procedural bar invoked by the state is not an adequate and independent ground where it has not been “consistently or regularly applied.”).

As the *Brief in Opposition* acknowledges, this Court’s rules provide:

[I]f a petition for re-hearing is timely filed in the lower court by any party, or if the lower court appropriately entertains an untimely petition for rehearing or sua sponte considers rehearing, the time to file the petition for a writ of certiorari for all parties (whether or not they requested rehearing or joined in the petition for rehearing) runs from the date of the denial of rehearing or, if rehearing is granted, the subsequent entry of judgment.

United States Supreme Court, Rule 13.3.

There is no question that petitioner timely filed for reconsideration in the Louisiana Supreme Court, and that the Court considered – but denied – his application. As such, the time to file the petition for a writ of certiorari runs from the date the Louisiana Supreme Court denied the request. This case is governed by *Griffith v. Kentucky*, 479 U.S. 314 (1987), and the matter should be remanded to the

² See *Wilson v. Cain*, 564 F. 3d 702, 707 (5th Cir. 2009) (“It thus appears that Wilson’s motion for a rehearing was timely filed following the LSC’s Sept. 13, 2002, denial of his writ application. Accordingly, the motion for rehearing must be considered in determining the finality of Wilson’s conviction.”); *Buniff v. Cain*, 349 Fed. Appx. 3 (5th Cir. 2009) (“The district court found that Buniff’s timely motion for reconsideration in the Louisiana Supreme Court did not alter this conclusion. However, after the district court ruled in this case, we held that a timely filed motion for reconsideration should be considered in determining when an applicant’s conviction became final.”); *Walker v. Vannoy*, No. 15-6809, 2016 U.S. Dist. LEXIS 58795 (E.D. La. Mar. 21, 2016) (same).

Louisiana Supreme Courts as it summarily granted, vacated and remanded for further consideration twelve cases (eleven from Louisiana) based upon the decision in light of *Ramos*.³ (Order List, 4/27/2020).

CONCLUSION

Wherefore, Petitioner respectfully requests that this Court grant, vacate and summarily reverse the conviction and remand to the Louisiana courts for further proceedings consistent with this Court's opinion in *Ramos v. Louisiana*.

Respectfully Submitted,



G. Ben Cohen*
The Promise of Justice Initiative
1024 Elysian Fields Avenue
New Orleans, LA 70113
(504) 529-5955
bcohen@defendla.org

*Counsel of Record

³ See *Nagi, Kassim M. v. Louisiana*, 18-1585 (Order of 4/27/2020) (Justice Thomas would deny); *Lewis, Billy R v. Louisiana*, 18-7488 (Order of 4/27/2020); *Alridge, Dajuan v. Louisiana*, 18-8748 (Order of 4/27/2020); *Dyson, Corlious v. Louisiana*, 18-8897 (Order of 4/27/2020) (Justice Thomas would deny); *Brooks, Michael v. Louisiana*, 18-9463 (Order of 4/27/2020) (Justice Thomas would deny); *Dick, Shaun v. Oregon*, 18-9130 (Order of 4/27/2020); *Sheppard, Kevin v. Louisiana*, 18-9693 (Order of 4/27/2020); *Crehan, Jace v. Louisiana*, 18-9787 (Order of 4/27/2020); *Heard, Robert v. Louisiana*, 18-9821 (Order of 4/27/2020); *Richards, Aaron v. Louisiana*, 19-5301 (Order of 4/27/2020) (Justice Thomas would deny); *Victor, Errol v. Louisiana*, 19-5989 (Justice Thomas would deny); *Johnson v. Horatio v. Louisiana*, 19-6679 (Order of 4/27/2020).