

HOUSE BILL NO. 1691
BY REPRESENTATIVES LANCASTER, FONT-
ENOT, SCALISE, MONTGOMERY, WADDLE,
WALSWORTH, AND JENKINS AND SENATOR
DARDENNE

AN ACT

To amend and reenact R.S. 44:31, 32(D), and 35(EX2) and to enact R.S. 44:31.2 and 35(F), relative to public records; to declare the responsibility of a custodian to provide access to public records; to provide that the burden of proving a record cannot be disclosed rests with the custodian; to require the attorney general to establish a public records awareness program; to provide for the requirement of written notification to a requester; to limit the amount of attorney fees in certain actions involving access to records; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. R.S. 44:31, 32(D), and 35(EX2) are hereby amended and reenacted and R.S. 44:31.2 and 35(F) are hereby enacted to read as follows:

§31. Right to examine records.
A. Providing access to public records is a responsibility and duty of the appointive or elective office of a custodian and his employees.

(1) Except as otherwise specifically provided in this Chapter or as otherwise specifically provided by law, and in accordance with the provisions of this Chapter any person of the age of majority may inspect, copy or reproduce, or obtain a reproduction of any public record.

(2) The burden of proving that a public record is not subject to inspection, copying, or reproduction

§31.2. Public records awareness program.
The attorney general shall establish a program for educating the general public, public bodies, and custodians regarding the provisions of this Chapter. Such program may include brochures, pamphlets, videos, seminars, and Internet access to information which provides training on the provisions of this Chapter, including the custodian's responsibilities in connection with a request for records and the right of a person to institute court proceedings if access to a record is denied by the custodian.

§32. Duty to permit examination; prevention of alteration; payment for overtime; copies provided; fees

D. In any case in which a record is requested and a question is raised by the custodian of the record as to whether it is a public record, such custodian shall within three days, exclusive of Saturdays, Sundays, and legal public holidays, of the receipt of the request, in writing for such record, notify in writing the person making such request of his determination and the reasons therefor. Such written notification shall contain a reference to the basis under law which the custodian has determined exempts a record, or any part thereof, from inspection, copying, or reproduction.

§35. Enforcement

E.

(2) The custodian shall be personally liable for the payment of any such damages, and shall be liable in solido with the public body for the payment of the requester's attorney's attorney fees and other costs of litigation, except where the custodian has withheld or denied production of the requested record or records on advice of the legal counsel representing the public body in which the office of such custodian is located, and in the event the custodian retains private legal counsel for his defense or for bringing suit against the requester in connection with the request for records, the court may award ~~any~~ attorney fees to the custodian.

F. An award for attorney fees in any suit brought under the provisions of this Chapter shall not exceed the amounts approved by the attorney general for the employment of outside counsel.

Approved by the Governor, July 9, 1999

A true copy
W. Fox McKeithen
Secretary of State

ACT No. 984

HOUSE BILL NO. 787

BY REPRESENTATIVE DUPRE

AN ACT

To amend and reenact Code of Criminal

Procedure Article 413(B), relative to the selection of grand jury foremen; to provide for method of selection; and to provide for related matters.

Be it enacted by the Legislature of Louisiana:

Section 1. Code of Criminal Procedure Article 413(B) is hereby amended and reenacted to read as follows:

Art. 413. Method of impaneling of grand jury; selection of foreman

B. In parishes other than Orleans, the court shall select one person from the grand jury venire to serve as foreman of the grand jury. The sheriff shall draw indiscriminately and by lot from the envelope containing the remaining names on the grand jury venire a sufficient number of names to complete the grand jury. The envelope containing the remaining names shall be replaced into the grand jury box for use in filling vacancies as provided in Article 415. The court shall cause a random selection to be made of one person from the impaneled grand jury to serve as foreman of the grand jury.

Approved by the Governor, July 9, 1999

A true copy
W. Fox McKeithen
Secretary of State

EXHIBIT 20

118 S.Ct. 1419, 523 U.S. 392, *Campbell v. Louisiana*, (U.S.L. 1998)

(Formerly 92k42.2(2), 193k2.5)

[See headnote text below]

[2] Grand Jury 9

193 ----

193k9 Summoning jurors in general.

White criminal defendant alleging discriminatory exclusion of blacks from grand jury has standing to litigate whether his conviction was procured by means or procedures which contravene due process. U.S.C.A. Const. Amends. 5, 14.

[3] Federal Courts 3181

170B ----

170BXXVI Supreme Court

170BXXVI(D) Presentation of Questions Below or on Review: Record; Waiver

170Bk3181 In general.

(Formerly 170Bk461)

With very rare exceptions, Supreme Court will not consider petitioner's federal claim unless it was either addressed by, or properly presented to, the state court that rendered the decision Supreme Court has been asked to review.

[4] Federal Courts 3181

170B ----

170BXXVI Supreme Court

170BXXVI(D) Presentation of Questions Below or on Review: Record; Waiver

170Bk3181 In general.

(Formerly 170Bk461)

Supreme Court would not address issue whether white criminal defendant had standing to raise Sixth Amendment fair cross-section based on alleged discrimination against blacks in selection of grand jury, where defendant made no effort to meet his burden of showing that issue was properly presented to state appellate courts, even after state pointed out omission before Supreme Court. U.S.C.A. Const. Amend. 6.

Syllabus (FN*)

A grand jury in Evangeline Parish, Louisiana, indicted petitioner Campbell for second-degree murder. In light of evidence that, for the prior 16 1/2 years, no black person had served as grand jury foreperson in the Parish even though more than 20 percent of the registered voters were black, Campbell filed a motion to quash the indictment on the ground that his grand jury was constituted in violation of his Fourteenth Amendment equal protection and due process rights and the Sixth Amendment's fair-cross-section requirement. The trial judge denied the motion because Campbell, a white man accused of killing another white man, lacked standing to complain about the exclusion of black persons from serving as forepersons. He was convicted, but the Louisiana Court of Appeal ordered an evidentiary hearing, holding that Campbell could object to the alleged discrimination under the holding in *Powers v. Ohio*, 499 U.S. 400, 111 S.Ct. 1364, 113 L.Ed.2d 411, that a white defendant had standing to challenge racial discrimination against black persons in the use of peremptory challenges. In reversing, the State Supreme Court declined to extend *Powers* to a claim such as Campbell's. It also found that he was not afforded standing to raise a due process objection by *Hobby v. United States*, 468 U.S. 379, 104 S.Ct. 3013, 82 L.Ed.2d 260, in which the Court held that no relief could be granted to a white defendant even if his due process rights had been violated by discrimination in the selection of a federal grand jury foreperson whose duties were purely "ministerial." Noting that the Louisiana foreperson's role was similarly "ministerial," the court held that any discrimination had little, if any, effect on Campbell's due process right of fundamental fairness.

Held:

1. A white criminal defendant has the requisite standing to raise equal protection and due process objections to discrimination against black persons in the selection of grand jurors. Pp. 1427-1428.

(a) This case must be treated as one alleging discriminatory selection of grand jurors, not just of a grand jury foreperson. In the federal system and in most States using grand juries, the foreperson is selected from the ranks of the already seated jurors. In Louisiana, by contrast, the judge selects the foreperson from the grand jury venire before the remaining members are chosen by lot. In addition to his other [523 U.S. 393] duties, the Louisiana foreperson has the same full voting powers as other grand jury members. As a result, when the Louisiana judge selected the foreperson, he also selected one member of the grand jury outside of the drawing system used to compose the balance of that body. Pp. 1422.

(b) Campbell, like any other white defendant, has standing under *Powers, supra*, to raise an equal protection

118 S.Ct. 1419, 523 U.S. 392, *Campbell v. Louisiana*, (U.S.La. 1998)

challenge to the discriminatory selection of his grand jury. The excluded jurors' own right not to be discriminatorily denied grand jury service can be asserted by Campbell because he satisfies the three preconditions for third-party standing outlined in *Powers*, *supra*, at 411, 111 S.Ct. at 1370-1371. First, regardless of skin color, an accused suffers a significant "injury in fact" when the grand jury's composition is tainted by racial discrimination. The integrity of the body's decisions depends on the integrity of the process used to select the grand jurors. If that process is infected with racial discrimination, doubt is cast over the fairness of all subsequent decisions. See *Ruse v. Mitchell*, 443 U.S. 545, 555-556, 99 S.Ct. 2993, 2999-3000, 61 L.Ed.2d 739. The Court rejects the State's argument that no harm is inflicted when a single grand juror is selected based on racial prejudice because the discrimination is invisible to the grand jurors on that panel, and only becomes apparent when a pattern emerges over the course of years. This argument underestimates the seriousness of the allegations here: If they are true, the impartiality and discretion of the judge himself would be called into question. Second, Campbell has a "close relationship" to the excluded jurors, who share with him a common interest in eradicating discrimination from the grand jury selection process, and a vital interest in asserting their rights because his conviction may be overturned as a result. See, e.g., *Powers*, 499 U.S., at 413-414, 111 S.Ct. at 1372-1373. The State's argument that Campbell has but a tenuous connection to jurors excluded in the past confuses his underlying claim—that black persons were excluded from his grand jury—with the evidence needed to prove it—that *1421 similarly situated venirepersons were excluded in previous cases on account of intentional discrimination. Third, given the economic burdens of litigation and the small financial reward available, a grand juror excluded because of race has little incentive to sue to vindicate his own rights. See *id.*, at 415, 111 S.Ct. at 1373. Pp. 1422-1424.

(c) A white defendant alleging discriminatory selection of grand jurors has standing to litigate whether his conviction was procured by means or procedures which contravene due process. *Hobby*, *supra*, at 350, 104 S.Ct. at 3099, proceeded on the implied assumption that such standing exists. The Louisiana Supreme Court's reading of *Hobby* as foreclosing Campbell's standing is inconsistent with that implicit assumption and with the Court's explicit reasoning in *Hobby*. Campbell's challenge is different [523 U.S. 394] in kind and degree from the one there at issue because it implicates the impermissible appointment of a member of the grand jury. What concerns Campbell is not the foreperson's performance of his ministerial duty to preside, but his performance as a grand juror, namely, voting to charge Campbell with second-degree murder. The significance of this distinction was acknowledged in *Hobby*, *supra*, at 348, 104 S.Ct. at 3098. By its own terms, then, *Hobby* does not address a claim like Campbell's. Pp. 1424-1425.

2. The Court declines to address whether Campbell also has standing to raise a fair-cross-section claim. Neither of the Louisiana appellate courts discussed this contention, and Campbell has made no effort to meet his burden of showing the issue was properly presented to those courts. See *Adams v. Robertson*, 520 U.S. 83, 86, 117 S.Ct. 1028, 1029, 137 L.Ed.2d 203 (*per curiam*). Pp. 1425-1426.

673 So.2d 1061, reversed and remanded.

KENNEDY, J., delivered the opinion for a unanimous Court with respect to Parts I, II, IV, and V, and the opinion of the Court with respect to Part III, in which REHNQUIST, C.J., and STEVENS, O'CONNOR, SOUTER, GINSBURG, and BREYER, JJ., joined. THOMAS, J., filed an opinion concurring in part and dissenting in part, in which SCALIA, J., joined. *post*, p. 1426.

Dmitry I. Burnes, Alexandria, LA, for petitioner.

Richard P. Iyoub, Baton Rouge, LA, for respondent.

For U.S. Supreme Court briefs, see:

1997 WL 720444 (Pet. Brief)

1997 WL 781670 (Resp. Brief)

Justice KENNEDY delivered the opinion of the Court.

We must decide whether a white criminal defendant has standing to object to discrimination against black persons in the selection of grand jurors. Finding he has the requisite standing to raise racial protection and due process claims, we reverse and remand.

A grand jury in Evangeline Parish, Louisiana, indicted petitioner Terry Campbell on one count of second-degree murder, 523 U.S. 395. Campbell, who is white, filed a timely pretrial motion to quash the indictment on the grounds the grand jury was constituted in violation of his equal protection and due process rights under the Fourteenth Amendment and in violation of the Sixth Amendment's fair-cross-section requirement. Campbell alleged a long-standing practice of racial discrimination in the selection of grand jury forepersons in the parish. His sole piece of evidence is that, between January 1976 and August 1993, no black person served as a grand jury foreperson in the parish, even though more than 20 percent of the registered voters were black persons. See Brief for Petitioner 16. The State does not dispute this evidence. The trial judge refused to quash the indictment because "Campbell, being a white man accused of killing another white man," lacked standing to complain "where all of the forepersons were white." App. to Pet. for Cert. G-33.

After Campbell's first trial resulted in a mistrial, he was retried, convicted of second-degree murder, and sentenced to life in prison without possibility of parole. Campbell renewed his challenge to the grand jury foreperson *1422

The Supreme Court of the State of Louisiana

STATE OF LOUISIANA

No.2019-KH-00829

VS.

ANDREW ROBINSON

IN RE: Andrew Robinson - Applicant Defendant; Applying For Supervisory Writ,
Parish of Caddo, 1st Judicial District Court Number(s) 192,090, Court of Appeal,
Second Circuit, Number(s) 52,903-KH;

January 22, 2020

Writ application denied. See per curiam.

BJJ

JLW

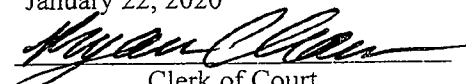
JDH

SJC

JTG

WJC

Supreme Court of Louisiana
January 22, 2020


Deputy Clerk of Court
For the Court

SUPREME COURT OF LOUISIANA

No. 19-KH-0829

STATE OF LOUISIANA

JAN 22 2020

v.

ANDREW ROBINSON

ON SUPERVISORY WRITS TO THE FIRST
JUDICIAL DISTRICT COURT, PARISH OF CADDO



PER CURIAM:

Denied. The application was not timely filed in the district court, and applicant fails to carry his burden to show that an exception applies. La.C.Cr.P. art. 930.8; *see State ex rel. Glover v. State*, 93-2330, pp. 9-11 (La. 9/5/95), 660 So.2d 1189, 1195-96 (distinguishing habeas corpus from post-conviction relief and endorsing La.C.Cr.P. art. 351 and its cmt. (c), which states that “habeas corpus is not the proper procedural device for petitioners who may file applications for post conviction relief;” rather, it “deals with pre-conviction complaints concerning custody.”).

Applicant has now fully litigated two applications for post-conviction relief in state court. Similar to federal habeas relief, *see* 28 U.S.C. § 2244, Louisiana post-conviction procedure envisions the filing of a second or successive application only under the narrow circumstances provided in La.C.Cr.P. art. 930.4 and within the limitations period as set out in La.C.Cr.P. art. 930.8. Notably, the legislature in 2013 La. Acts 251 amended that article to make the procedural bars against successive filings mandatory. Applicant’s claims have now been fully litigated in accord with La.C.Cr.P. art. 930.6, and this denial is final. Hereafter,

unless he can show that one of the narrow exceptions authorizing the filing of a successive application applies, applicant has exhausted his right to state collateral review. The district court is ordered to record a minute entry consistent with this per curiam.