NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2012 KA 1213

STATE OF LOUISIANA

VERSUS

WILLIE DUNN, JR.

* * * * * * *

Judgment Rendered: MAR 2 6 2013

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APPEALED FROM THE NINETEENTH JUDICIAL DISTRICT COURT
IN AND FOR THE PARISH OF EAST BATON ROUGE
STATE OF LOUISIANA
DOCKET NUMBER 02-010-0170, SECTION VIII

THE HONORABLE TRUDY WHITE, JUDGE

* * * * * * *

Hillar C. Moore, III
District Attorney
and
Jaclyn C. Chapman
Assistant District Attorney
Baton Rouge, Louisiana

Attorneys for Appellee
State of Louisiana

James P. Manasseh
Andre Belanger
Baton Rouge, Louisiana

Attorneys for Defendant/Appellant
Willie Dunn

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

McDONALD, J.

The defendant, Willie Dunn, Jr., was charged by grand jury indictment with second degree murder, a violation of La. R.S. 14:30.1. The defendant entered a plea of not guilty. After a trial by jury, the defendant was found guilty of the responsive offense of manslaughter, a violation of La. R.S. 14:31. The trial court sentenced the defendant to twenty years imprisonment at hard labor and ordered that "a minimum of fifteen years" of the sentence be served without the benefit of probation, parole, or suspension of sentence. The defendant now appeals, assigning error to the trial court's denial of his motion for mistrial and motion for new trial, and to the trial court's denial of his request for a special jury instruction on his claim of self-defense. For the following reasons, we affirm the conviction, vacate the sentence, and remand for resentencing.

STATEMENT OF FACTS

On November 25, 2009, at approximately 9:51 p.m., police officers of the Baton Rouge City Police Department were dispatched to the scene of a shooting at a night club establishment located at 5755 Airline Highway. On the night in question, the victim, Petra Jones, went to the club with his friends, Lethario Early and brothers Damion and Dedrick Dean. The defendant was in the club at the time with his brother, Robert Dunn. Lethario, Damion, and Dedrick grew up in the same area as the defendant and his brother. Damion and the victim exited the club and while they were in the parking lot consuming alcohol, the victim and the defendant had a verbal altercation. According to Lethario, Damion, and Dedrick, the defendant confronted the victim because he was rumored to have been communicating with the defendant's wife. Lethario, who had also exited the club by this time, observed Robert as he retrieved a gun from his truck. Lethario confronted Robert, and they struggled over the gun, but Robert ultimately regained

control over the weapon. As the victim attempted to get to his vehicle, he and the defendant exchanged words, and the defendant grabbed his brother's gun and fired a shot. The victim turned away and the defendant fired another shot, fatally hitting the victim on the left side of his face near his left ear. The bullet lodged in the top portion of the victim's right brain. The defendant denied confronting the victim about his wife, specifically testifying that when he exited the club, the victim was irate and confrontational. The defendant further testified that before he grabbed his brother's gun, the victim pointed a gun at him and verbally threatened to kill him. According to the defendant, the victim was still threatening to kill him when he fired the second shot. Robert grabbed the gun from the defendant, and they fled from the scene. The defendant contacted the police that night and turned himself in the next day. Lethario, Damion, and Dedrick denied having a gun, testified that the victim was unarmed and did not threaten to kill the defendant, and indicated that the gun used by the defendant was the only weapon they saw that night.

ASSIGNMENT OF ERROR NUMBER ONE

In assignment of error number one, the defendant argues that he was denied a fair trial because the State suppressed material impeachment and exculpatory evidence that was only discovered during cross-examination. The defendant specifically contends that the State suppressed the following information: (1) the criminal history of State eyewitness Lethario Early; (2) notice that Lethario's trial testimony would materially differ from his police statement; (3) notice that State eyewitness Damion Dean's trial testimony would differ from his statements during his 911 call; (4) notice that State eyewitnesses Damion and Dedrick Dean consumed alcohol and/or were intoxicated at the time of the offense; and (5) notice that the police had no records of interviews claimed by State witnesses to have taken place. The defendant contends that this case is unusual in that suppression of

exculpatory and impeachment evidence was common for each State witness. The defendant concludes that the State's suppression of exculpatory and impeachment evidence prevented the defense counsel from adequately preparing for the trial and that this was not cured by late disclosures of such evidence at trial.

A mistrial is a drastic remedy and should be declared only when the accused is unnecessarily prejudiced. *State v. Smith*, 430 So.2d 31, 44 (La. 1983). Determination of whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for mistrial will not be disturbed on appeal without abuse of that discretion. *State v. Berry*, 95-1610 (La. App. 1st Cir. 11/8/96), 684 So.2d 439, 449, writ denied, 97-0278 (La. 10/10/97), 703 So.2d 603.

The purpose of pretrial discovery procedures is to eliminate unwarranted prejudice to a defendant that could arise from surprise testimony. *State v. Mitchell*, 412 So.2d 1042, 1044 (La. 1982). Discovery procedures enable a defendant to properly assess the strength of the State's case against him in order to prepare his defense. *State v. Roy*, 496 So.2d 583, 590 (La. App. 1st Cir. 1986), writ denied, 501 So.2d 228 (La. 1987). The State's failure to comply with discovery procedures will not automatically demand a reversal. *State v. Burge*, 486 So.2d 855, 866 (La. App. 1st Cir.), writ denied, 493 So.2d 1204 (La. 1986). Accordingly, a conviction should not be reversed because of an erroneous ruling on a discovery violation absent a showing of prejudice. *State v. Gaudet*, 93-1641 (La. App. 1st Cir. 6/24/94), 638 So.2d 1216, 1220, writ denied, 94-1926 (La. 12/16/94), 648 So.2d 386. If a defendant is lulled into a misapprehension of the strength of the State's case by the State's failure to fully disclose evidence favorable to the defendant, such prejudice may constitute reversible error. *Roy*, 496 So.2d at 590.

The defendant has no general constitutional right to unlimited discovery in a criminal case. *State v. Lynch*, 94-0543 (La. App. 1st Cir. 5/5/95), 655 So.2d 470, 478, writ denied, 95-1441 (La. 11/13/95), 662 So.2d 466. Under the United States Supreme Court decision in *Brady v. Maryland*, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963), the State, upon request, must produce evidence that is favorable to the accused where it is material to guilt or punishment. This rule has been expanded to include evidence that impeaches the testimony of a witness, when the reliability or credibility of that witness may be determinative of guilt or innocence. *Giglio v. United States*, 405 U.S. 150, 154, 92 S.Ct. 763, 766, 31 L.Ed.2d 104 (1972). The test for determining materiality was firmly established in *United States v. Bagley*, 473 U.S. 667, 105 S.Ct. 3375, 87 L.Ed.2d 481 (1985) and has been applied by the Louisiana Supreme Court. See *State v. Rosiere*, 488 So.2d 965, 970-71 (La. 1986). The evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A "reasonable probability" is a probability sufficient to undermine confidence in the outcome. *Bagley*, 473 U.S. at 682, 105 S.Ct. at 3383.

Late disclosure as well as non-disclosure of evidence favorable to the defendant requires reversal if it has significantly impacted the defendant's opportunity to present the material effectively in its case and compromised the fundamental fairness of the trial. The impact on the defense of late disclosure of favorable evidence must be evaluated in the context of the entire record. *State v. Harris*, 2001–2730 (La. 1/19/05), 892 So.2d 1238, 1250, cert. denied, 546 U.S. 848, 126 S.Ct. 102, 163 L.Ed.2d 116 (2005). The State's constitutional obligation to disclose exculpatory evidence does not relieve the defense of its obligation to conduct its own investigation and prepare a defense for trial, as the State is not obligated under *Brady* or its progeny to furnish defendant with information he

already has or can obtain with reasonable diligence. *State v. Harper*, 2010-0356 (La. 11/30/10), 53 So.3d 1263, 1271.

Lethario Early

Lethario Early testified that as soon as he and his friends entered the club on the night in question, he bought them all a round of drinks. Regarding the subsequent shooting, Lethario testified that Robert put the gun up to his chest before they struggled over the gun. The defendant contends that this testimony was inconsistent with Lethario's police statement where he indicated that Robert tried to calm the situation. The trial court allowed the defense attorney to play Lethario's police statement in pertinent part during cross-examination. After the statement was played, Lethario was cross-examined regarding the differences between his police statement and trial testimony, admitting that he did not tell the police that Robert put the gun to his chest or that they wrestled over the gun. Lethario testified that he was nervous at the time of his statement, having just observed the murder of his friend.

Also during cross-examination, Lethario specified that he only had one beer to drink that night. He denied having any convictions. During redirect examination, Lethario clarified that after he and Robert wrestled over the gun, Robert tried to calm things down and tried to get the defendant to walk away. The trial court denied the defendant's motion for mistrial on the basis of a lack of notice of inconsistencies in Lethario's police statement in comparison to his trial testimony.

The next trial day, the State recalled Lethario to elicit testimony about his criminal record. Lethario admitted that he had a prior conviction and stated that he thought it had been reduced to a misdemeanor and therefore did not initially disclose it, believing that only felony convictions were being elicited. Lethario

confirmed his charge of felony theft in a bill of information wherein his first name was misspelled as "Lathalie." The defense did not move for a mistrial based on the lack of notice of Lethario's criminal record. The defendant now argues that the State led him to believe that only Robert Dunn had a criminal background.

Damion and Dedrick Dean

During cross-examination Damion Dean stated that he used to be a firefighter. Presumably recalling that one of the unidentified 911 callers said he was an ex-firefighter, the defense counsel asked Damion if he called 911 and he confirmed that he did so, and was subjected to cross-examination regarding the substance of his 911 call. When the defense initially attempted to play the 911 call before the jury, the State entered an objection. The trial court agreed to give the defense an opportunity to review the 911 call while the witness remained on subpoena and subject to recall.

Subsequently, the State recalled Damion and played the 911 call. When asked if he recognized his voice on the tape, Damion stated that it seemed to be his voice. Damion explained that while he told the 911 dispatcher that he had seen anything, the situation was chaotic and his friend had just been shot. Damion further noted that the situation had such an impact on him that he had not attempted to give his friend emergency care though as an ex-firefighter, he is a certified EMT. Damion also contemplated that at the time of his 911 call he may have had concerns about being questioned or implicated as being involved in the crime. He reiterated that his trial testimony was the absolute truth. Damion was fully cross-examined as to the inconsistency in his 911 statement and his trial testimony and even admitted that he must have been lying during the call. The defense did not move for a mistrial on the basis of lack of notice regarding Damion's 911 call.

Damion and Dedrick both confirmed that they consumed alcohol on the night in question and were cross-examined on the issue. As noted by the defendant, Damion and Dedrick seemed to indicate during cross-examination that the police conducted interviews of them. Prior to the trial, the trial court granted the defendant's request for an in camera inspection of police records in an effort to determine the list of interviewed witnesses. However, the police subsequently informed the court that there were no further records to provide to the court. The lead detective, Detective Brian Watson, testified that while Lethario was interviewed by the police, the Dean brothers were not.

We find that the defendant has failed to show that the State suppressed any evidence in this case. The defendant does not dispute that the State provided pretrial access to Lethario's statement and the 911 call in question. There is no indication that the State was aware of Lethario's criminal record, or that Damion was one of the unidentified 911 callers. Further, there is no indication that the State suppressed any police interviews. We further note that even if a discovery or *Brady* violation did occur, it would not constitute reversible error without actual prejudice to the defendant's case. See *State v. Francis*, 2000-2800 (La. App. 1st Cir. 9/28/01), 809 So.2d 1029, 1033. The defendant has failed to show how he was prejudiced or denied a fair trial. The defense fully cross-examined Lethario regarding his criminal record. The defense discovered that Damion was the 911 caller in sufficient time to play the call for the jury and fully cross-examine Damion as to the discrepancies between his statements in the call and his trial testimony. Further, the jury was fully aware of the fact that the witnesses consumed alcohol on the night in question.

Despite the defendant's claim that he was ambushed at trial by *Brady* violations, the record shows he effectively presented his defense and strategically incorporated the above evidence during the two days of evidence in the trial.

Moreover, the record does not reflect any manner in which the defendant might have been lulled into a misapprehension of the strength of the State's case. The defendant has failed to raise any substantial claim of suppression of evidence by the State or show any substantial prejudice such that he was deprived of any reasonable expectation of a fair trial. Based on the record before us, we find that the trial court did not abuse its discretion in denying the defendant's motion for mistrial and subsequent motion for a new trial. Assignment of error number one lacks merit.

ASSIGNMENT OF ERROR NUMBER TWO

In assignment of error number two, the defendant notes that he sought to have the court provide a specific jury instruction concerning his subjective belief that the victim was armed with a dangerous weapon. The defendant concedes that the trial court gave an accurate self-defense instruction, but argues that the instruction should have been supplemented with language from various appellate decisions. The defendant argues that it was important to emphasize the subjective component of his self-defense claim because the victim's gun was not found at the scene and the victim's three friends outnumbered the defendant, providing the State with a three-to-one, eyewitness testimony advantage. The defendant argues that the requested instruction was not novel, noting that it included language modeled from appellate decisions and a treatise. The defendant concludes that the omission of the requested special jury instruction prevented an acquittal in light of the testimony presented during the trial and the suppressed exculpatory evidence.

Louisiana Code Criminal Procedure article 802(1) mandates that a trial court shall charge the jury as to the law applicable in the case. A requested special charge shall be given by the court if it does not require qualification, limitation, or explanation, and if it is wholly correct and pertinent. It need not be given if it is

included in the general charge or in another special charge that is given. La. Code Crim. P. art. 807. Further, failure to give a special charge to the jury constitutes reversible error only when there is a miscarriage of justice, prejudice to substantial rights of the defendant, or a violation of a constitutional or statutory right. See *State v. Marse*, 365 So.2d 1319, 1323-24 (La. 1978). See also La. Code Crim. P. art. 921, and *State v. Gray*, 430 So.2d 1251, 1253 (La. App. 1st Cir. 1983).

Here, the defendant indicates that he proposed the following instruction:

> Actual Danger Not Required: The danger need not have been real. The applicability of self defense in a murder trial depends on the reasonableness of the defendant's subjective belief that he was in actual danger. La. Civil Law Treatise Vol. 17 Section 6.17; *State v. Brown*, 93-1471 (La.App. 3 Cir. 1994), 640 So.2d 488, 492.

During a recorded side-bar conference before closing arguments, the State reviewed the instruction at issue and argued that it was included in the general justifiable homicide instruction. Trial court denied the defendant's motion. The trial court's lengthy instruction on self-defense included the following language:

> A homicide is justified when committed in self-defense by one who reasonably believes that he is in imminent danger of losing his life or receiving great bodily harm and that the killing is necessary to save himself from that danger. A person who is not engaged in unlawful activity and who is in a place where he has a right to be shall have no duty to retreat before using deadly force and may stand his ground and meet force with force. You are not to consider the possibility of retreat as a factor in determining whether or not the person who used deadly force had a reasonable belief that deadly force was reasonable and apparently necessary to prevent a violent or forcible felony involving life or great bodily harm. In considering the defendant's subjective appreciation -- apprehension of danger, rather, the actual making of threats is immaterial if there was a communication made to the defendant of supposed threats and that communication was one from a source that defendant would honestly believe such information to be true. Some factors that you should consider in determining whether the defendant had a reasonable believe (sic) that the killing was necessary are: the excitement and confusion of the situation, the possibility of force short of killing, the possibility of retreat, the number of people accompanying the defendant compared to the number of people with the victim. The lack of a weapon is not dispositive of the issue of self-defense because it is the reasonableness of the apprehension and not the actuality of danger that determines the

question of self-defense.

The trial court further fully explained the State's burden of proof as to a self-defense claim and the law on aggressors. We find that the substance of the special jury instruction was fully addressed by the trial court's general jury charge. Therefore, the trial court properly refused to give the defendant's requested special jury instruction at issue. See La. Code Crim. P. art. 807. See also *State v. Crumholt*, 357 So.2d 526, 530 (La. 1978). The second assignment of error lacks merit.

SENTENCING ERROR

We have reviewed the record for error pursuant to La. Code Crim. P. art. 920(2), and discovered the following sentencing errors. Louisiana Revised Statute 14:31(B) provides that a person convicted of manslaughter shall be imprisoned at hard labor for not more than forty years. If a defendant who has been convicted of an offense is sentenced to imprisonment, the court shall impose a determinate sentence. La. Code Crim. P. art. 879. Here, the trial court sentenced the defendant to twenty years imprisonment at hard labor and ordered that "a minimum of fifteen years" be served without the benefit of parole, probation, or suspension of sentence.[1] The term "a minimum" renders the sentence indeterminate. See *State v. Cedars*, 2002-861 (La. App. 3d Cir. 12/11/02), 832 So.2d 1191, 1193; *State v. Trosclair*, 584 So.2d 270, 282 (La. App. 1st Cir.), writ denied, 585 So.2d 575 (La. 1991).

Moreover, the sentence imposed by the trial court is illegally harsh in that the denial of parole eligibility on the defendant's sentence for manslaughter is

[1] We note that the minutes and criminal commitment do not use the phrase "a minimum of" in stating the sentence. Nonetheless, according to *State v. Lynch*, 441 So.2d 732, 734 (La. 1983), where there is a discrepancy between the transcript and the minute entry, the transcript prevails.

unlawful. See La. R.S. 14:31(B). Additionally, La. Code Crim. P. art. 893(A) provides that the court shall not suspend the sentence of a person convicted of a crime of violence, such as manslaughter. See La. R.S. 14:2(B)(4). Accordingly, we must vacate the sentence and remand the case for resentencing.

CONVICTION AFFIRMED, SENTENCE VACATED, REMANDED FOR RESENTENCING.

1

2013-0902 (La. 11/8/13)

STATE of Louisiana

v.

Logan Michael CRAIG.

No. 2013–K–0902.

Supreme Court of Louisiana.

Nov. 8, 2013.

Prior report: La.App., 2013 WL 1189433.

In re Craig, Logan Michael;—Defendant; Applying For Writ of Certiorari and/or Review, Parish of Tangipahoa, 21st Judicial District Court Div. G, No. 25689; to the Court of Appeal, First Circuit, No. 2012 KA 1262.

Denied.

2

2013-0915 (La. 11/8/13)

STATE of Louisiana

v.

Willie DUNN, Jr.

No. 2013–K–0915.

Supreme Court of Louisiana.

Nov. 8, 2013.

In re Dunn Jr., Willie;—Defendant; Applying For Writ of Certiorari and/or Review, Parish of E. Baton Rouge, 19th Judicial District Court Div. J, No. 02–010–0170; to the Court of Appeal, First Circuit, No. 2012 KA 1213.

Denied.

3

2013-0926 (La. 11/8/13)

STATE of Louisiana

v.

Scott G. CLEVELAND.

No. 2013–KO–0926.

Supreme Court of Louisiana.

Nov. 8, 2013.

Prior report: La.App., 115 So.3d 578.

In re Cleveland, Scott G.;—Defendant; Applying For Writ of Certiorari and/or Review, Parish of Orleans, Criminal District Court Div. J, No. 498–978; to the Court of Appeal, Fourth Circuit, No. 2012–KA–0163.

Denied.

HUGHES, J., would grant.

4

2013-0958 (La. 11/8/13)

STATE of Louisiana

v.

Zachary PUSCH.

No. 2013–KO–0958.

Supreme Court of Louisiana.

Nov. 8, 2013.

Prior report: La.App., 2013 WL 1304497.

2019 WL 2089450

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.

Court of Appeal of Louisiana, First Circuit.

STATE of Louisiana

v.

Willie DUNN

NO. 2019 KW 0311

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MAY 13, 2019

In Re: Willie Dunn, applying for supervisory writs, 19th Judicial District Court, Parish of East Baton Rouge, No. 02-10-0170.

BEFORE: MCDONALD, CRAIN, AND HOLDRIDGE, JJ.

Opinion

***1 **1 WRIT DENIED.**

Holdridge, J., dissents and would stay the matter pending the ruling of the United States Supreme Court in State v. Ramos, 2016-1199 (La. App. 4th Cir. 11/2/17), 231 So.3d 44, writs denied, 2017-2133 (La. 6/15/18), 257 So.3d 679, and 2017-1177 (La. 10/15/18), 253 So.3d 1300, cert. granted, 2018-5924, —— U.S. ——, 139 S.Ct. 1318, —— L.Ed.2d ——.

All Citations

Not Reported in So. Rptr., 2019 WL 2089450, 2019-0311 (La.App. 1 Cir. 5/13/19)

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The instant matter presents a similar situation to that presented in *Abdallah* and *Sheffield*. In order to protect the public and maintain the high standards of the legal profession, respondent should not be allowed the opportunity to return to the practice of law in the future.

Accordingly, we will accept the board's recommendation and permanently disbar respondent.

DECREE

Upon review of the findings and recommendations of the hearing committee and disciplinary board, and considering the record, it is ordered that Louella P. Givens-Harding, Louisiana Bar Roll number 19920, be and she hereby is permanently disbarred. Her name shall be stricken from the roll of attorneys and her license to practice law in the State of Louisiana shall be revoked. Pursuant to Supreme Court Rule XIX, § 24(A), it is further ordered that respondent be permanently prohibited from being readmitted to the practice of law in this state. All costs and expenses in the matter are assessed against respondent in accordance with Supreme Court Rule XIX, § 10.1, with legal interest to commence thirty days from the date of finality of this court's judgment until paid.

1

2019-0880 (La. 1/14/20)

STATE of Louisiana

v.

Jason THOMAS

No. 2019-KH-0880

Supreme Court of Louisiana.

01/14/2020

Applying For Supervisory Writ, Parish of Jefferson, 24th Judicial District Court Number(s) 14-269, Court of Appeal, Fifth Circuit, Number(s) 19-KH-67.

PER CURIAM:

Denied. Applicant fails to show that he received ineffective assistance of counsel under the standard of *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984).

Applicant has now fully litigated his application 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.

2

2019-0868 (La. 1/14/20)

STATE of Louisiana

v.

Willie DUNN

No. 2019-KH-0868

Supreme Court of Louisiana.

01/14/2020

Applying For Supervisory Writ, Parish of East Baton Rouge, 19th Judicial District

Court Number(s) 02-10-0170, Court of Appeal, First Circuit, Number(s) 2019 KW 0311.

PER CURIAM:

Denied. Applicant fails to satisfy his post-conviction burden of proof. La.C.Cr.P. art. 930.2.

Applicant has now fully litigated his application 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.

Crain, J., recused.

Johnson, C.J., would grant and remand and assigns reasons.

JOHNSON, C.J., would grant and remand and assigns reasons.

Petitioner was apparently convicted by a non-unanimous jury verdict. Therefore I would grant this writ application and remand to the district court with instructions to stay the relator's application for post-conviction relief until the United States Supreme Court issues its ruling in the case of *Ramos v. Louisiana*, —— U.S. ——, 139 S.Ct. 1318, 203 L.Ed.2d 563 (2019).

2019-0608 (La. 1/14/20)

STATE of Louisiana

v.

Derek O'KEEFE

No. 2019-KH-0608

Supreme Court of Louisiana.

01/14/2020

Applying for Supervisory Writ, Parish of St. Tammany, 22nd Judicial District Court Number(s) 523,564, Court of Appeal, First Circuit, Number(s) 2018 KW 1610.

PER CURIAM:

Granted in part. The district court conceded that it did not advise applicant of the parole eligibility provisions found in R.S. 15:574.4, which require service of a greater portion of the sentence without the benefit of parole than does the sentence imposed under the plea agreement. Thus, applicant is entitled to withdraw his plea. *See State ex rel. LaFleur v. Donnelly*, 416 So.2d. 82 (La. 1982). The matter is remanded for a further hearing where applicant shall be represented by counsel and informed of the consequences that might lie if he withdraws his present plea. If applicant still wishes to withdraw his plea after receiving this information, the district court shall allow him to do so. The application is otherwise denied.

CRICHTON, J., dissents for the reasons assigned by Justice Crain.

Crain, J., dissents and assigns reasons.